

AURIZON NETWORK'S 2017 DAU QRC SUBMISSION

VOLUME 1: POLICY SUBMISSION

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Executive summary

1 Background

This submission is provided by the Queensland Resources Council (**QRC**) in response to a request from the Queensland Competition Authority (**QCA**) for comments on Aurizon Network Pty Ltd's (**Aurizon Network**) draft 2017 access undertaking (**UT5**). The QRC thanks the QCA for the opportunity to provide this submission. The QRC would welcome the opportunity to discuss this submission with the QCA secretariat.

The QRC is the peak representative organisation of the Queensland minerals and energy sector. The QRC's membership encompasses minerals and energy exploration, production, and processing companies and associated service companies. The QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively and in a socially and environmentally sustainable way.

All operating Queensland coal producers are members of the QRC. A number of coal mining companies in development and operating phase are also members of the QRC.

This submission has been prepared in close consultation with the QRC's rail working group. The rail working group meets regularly throughout the year to discuss rail regulatory matters. The rail working group has met on numerous occasions in finalising this submission. All QRC members who are current or likely future users of the declared network are members of the rail working group. The rail working group has high levels of participation from the QRC's coal members.

The QRC's rail working group has been supported by expert advisers including an expert rail regulation consultant, two law firms, an economic consultancy and a technical consultant.

2 Should there be change from UT4

The 2016 access undertaking (**UT4**) was approved by the QCA on 11 October 2016. The UT4 process had commenced on 30 April 2013. There were more than 50 separate submissions on UT4 (most submissions being multi-faceted) and 5 decisions by the QCA. It is fair to say that the UT4 process was prolonged. UT4 has been in operation for 5 months. There is a strong case to suggest that for UT5 there should be no change from UT4 other than for:

- matters which are peculiar to UT4 (such as the Baseline Capacity Assessment);
- manifest errors; and
- improvements which are broadly supported by stakeholders.

The QRC's position is that UT5 should be the same as UT4 other than for these matters. In the QRC's view all parties would benefit from a period of regulatory stability. It is also the case that UT4 has not been in operation for long enough to assess what if any changes should be made to it.

Aurizon Network considers that some changes to UT4 are warranted. The QRC is pleased and appreciative of the fact that Aurizon Network has proposed a limited number of changes (and not a re-write of UT4). However, all of the issues which are proposed by Aurizon Network were fully ventilated during the UT4 process, circumstances have not changed and the changes (with very limited exceptions) are not supported by stakeholders. In light of the extensive UT4 process and limited life span of UT4, there is no need to re-examine those issues, and any re-examination which the QCA is bound to undertake should lead to the same conclusions. The QRC considers that the UT4 terms should continue to apply to UT5 other than for matters which are peculiar to UT4, manifest errors and broadly supported changes.

If the QCA considers that some change to UT4 is warranted, the QRC has set out in this submission its position on Aurizon Network's proposed changes. Aurizon Network's proposed

changes, if approved, would alter the commercial balance of the undertaking further in Aurizon Network's favour. We consider that the changes should not be approved or at the very least require substantial amendment. In the event that the QCA is minded to support a version of any of Aurizon Network's proposed changes, then the QRC requests that the QCA also considers a very small number of additional matters which may go some way to maintaining the balance of the undertaking. Those changes are only proposed if, in principle, the QCA determines that there should be some change from UT4.

3 Outline of QRC submission

The QRC's submission is comprised of two volumes.

Volume 1 addresses the policy aspects of UT5 and is comprised of:

- (a) this summary;
- (b) the QRC's submission on drafting changes pertaining to policy matters;
- (c) annexure 1 – table identifying Aurizon Network drafting changes accepted and not accepted by the QRC (this table is Appendix P.1 from Aurizon Network's submission, with the addition of an extra column);
- (d) annexure 2 - QRC mark-up of UT5 (marked against UT5);
- (e) annexure 3 – QRC mark-up of UT5 (marked against UT4);
- (f) annexure 4 – QRC mark-up of the Standard Access Agreement;
- (g) annexure 5 – QRC mark-up of the Standard Train Operations Deed;
- (h) annexure 6 – QRC redraft of the Standard Rail Connection Agreement (clean); and
- (i) annexure 7 – QRC redraft of the Standard Rail Connection Agreement (marked up against UT5).

Volume 2 addresses the pricing aspects of UT5 and is comprised of:

- (a) the QRC's submission on pricing matters;
- (b) annexure 1 – Report from Castalia; and
- (c) annexure 2 – Allens' advice to the QRC regarding pricing matters.

4 Collaboration with Aurizon Network

The QRC has had the benefit of meeting with Aurizon Network on a number of occasions to discuss Aurizon Network's UT5 submission. The QRC's submission incorporates those compromises that the QRC is able to accept and make in respect of Aurizon Network's drafting. The QRC intends to work further with Aurizon Network with a view to finding additional common ground. To the extent that additional common ground can be found, that will be the subject of a further submission by the QRC on 17 March.

Reference Table

The table set out below identifies how the QRC has addressed each policy issue regarding UT5 in this volume of its submission. The items highlighted grey are amendments which the QRC requests the QCA to consider which do not relate to any amendments proposed by Aurizon Network. The remainder of the items are in response to amendments requested by Aurizon Network.

Topic	UT5 Reference	Covering submission	Mark-up
Beyond powers	N/A	 Beyond powers	N/A
Access Conditions	Clause 6.13	 Access Conditions	 Annexure 2 – Mark-up of UT5
Transfers	Clause 7.4	 Transfers	 Annexure 2 – Mark-up of UT5
Supply chain coordination	Clause 7A.3	 Supply chain coordination	 Annexure 2 – Mark-up of UT5
Capacity assessments	Clause 7A.4	 Capacity assessments	 Annexure 2 – Mark-up of UT5
Assessment of system capacity	Clause 7A.4	 Capacity assessments	 Annexure 2 – Mark-up of UT5
First right to fund	Clause 8.7	 First right to fund	 Annexure 2 – Mark-up of UT5
SUFA development	Clause 8.8	 SUFA development	 Annexure 2 – Mark-up of UT5
Expansion shortfalls	Clause 8.9	 Expansion shortfall	 Annexure 2 – Mark-up of UT5

Topic	UT5 Reference	Covering submission	Mark-up
Disputes	Part 11	 Disputes	 Annexure 2 – Mark-up of UT5
Regulatory Asset Base	Schedule E	 Expansion shortfall Annexure 1 - Response to Aurizon Network's proposed amendments to UT4	 Annexure 2 – Mark-up of UT5
Changes in payload	Clause 7.4.3 Standard Access Agreement Standard Train Operations Deed	 Changes in payload	 Annexure4 – QRC mark-up of the Standard Access Agreement Annexure 5 – QRC mark-up of the Standard Train Operations Deed
Standard Rail Connection Agreement	Standard Rail Connection Agreement	 Standard Rail Connection Agreement	 Annexure 6 – Standard Rail Connection Agreement (clean) Annexure 7 – Standard Rail Connection Agreement (marked up against UT5)
Response to Aurizon Network's proposed amendments to UT4	N/A	 Annexure 1 - Response to Aurizon Network's proposed amendments to UT4	N/A

1 The QCA's powers

1.1 Overview of Aurizon Network's position on the QCA's powers (sections 2.1 and 2.4 of Aurizon Network's submission)

- (a) Aurizon Network considers that the QCA does not have the power to refuse an 'appropriate' draft access undertaking on the basis that it prefers a 'more appropriate' draft access undertaking.
- (b) Aurizon Network also considers it inappropriate for the QCA to impose terms in an access undertaking which:
 - (1) are inconsistent with the QCA Act; or
 - (2) extend beyond the terms on which access is to be provided.
- (c) Aurizon Network acknowledges that its current and previous access undertakings include matters which are, in Aurizon Network's view, beyond the scope of matters that the QCA has the power to require in an access undertaking. Aurizon Network has either not included or modified some of these matters in UT5.
- (d) Aurizon Network considers that the QCA cannot seek to impose amended or new provisions in response to a draft access undertaking if it does not have the statutory power to require those provisions in the first place.
- (e) Aurizon Network's submission evinces a general position that the QCA must not be given any function or power under an access undertaking unless there is a specific provision in the QCA Act that explicitly grants the relevant function or power to the QCA. The QRC does not support this position on the basis that this position:
 - (1) is inconsistent with the intended operation of the QCA Act and, in particular, the object of Part 5 (Access to services) of the QCA Act; and
 - (2) would, if adopted, unreasonably fetter the QCA's role in overseeing third party access to declared services and the QCA's broad rights in relation to the approval and supervision of access undertakings.
- (f) Aurizon Network's position on the QCA's powers is applied to its submissions on:
 - (1) Access Conditions (section 3.3 of Aurizon Network's submission);
 - (2) investment in Expansions (section 3.4 of Aurizon Network's submission);
 - (3) capacity shortfall rectifications (section 3.5 of Aurizon Network's submission);
 - (4) supply chain coordination (section 3.6 of Aurizon Network's submission);
 - (5) dispute resolution (section 3.7 of Aurizon Network's submission); and
 - (6) SUFA (section 3.8 of Aurizon Network's submission).
- (g) A summary of Aurizon Network's position on the QCA's powers in relation to these aspects of UT5 is described in further detail below and, in each case, is followed by the QRC's response.
- (h) The QRC's response to Aurizon Network's submissions on the matters listed in section 1.1(f) other than in relation to the QCA's powers is separately set out in the sections of this submission with the following headings:
 - (1) Access Conditions;
 - (2) Expansion shortfalls;
 - (3) First right to fund;

- (4) Supply chain coordination;
- (5) Disputes; and
- (6) SUFA development.

1.2 Aurizon Network's position on the QCA's powers regarding Access Conditions (section 3.3 of Aurizon Network's submission)

- (a) Aurizon Network considers that:
 - (1) under the negotiate-arbitrate framework of the QCA Act, the right (and freedom) to negotiate an access agreement is paramount and the access provider and access seeker must not be divested of this right; and
 - (2) the negotiate-arbitrate framework of the QCA Act does not require that any agreement reached by the parties be subject to approval by the QCA.
- (b) Aurizon Network also considers that a process in an access undertaking that permits the QCA to accept, or otherwise approve, Access Conditions, or an agreed deviation from a Reference Tariff, cannot be required by the QCA because the QCA Act does not give the QCA any functions relating to the approval of any aspect of an access agreement.

1.3 QRC's position

Overview

- (a) The QRC does not support Aurizon Network's position that the QCA cannot require an access undertaking to include a process that permits the QCA to approve Access Conditions or Reference Tariff deviations. Nor does the QRC support Aurizon Network's position that the QCA Act does not give the QCA any functions relating to the approval of any aspect of an access agreement.
- (b) As discussed in sections 1.3(e) to 1.3(j) below:
 - (1) the QCA is granted wide powers and functions under the QCA Act in relation to the approval of draft access undertakings and has a wide discretion when deciding whether it is appropriate to approve a draft access undertaking; and
 - (2) the definition of 'access undertaking' is drafted in broad terms and the QCA Act does not otherwise specify or restrict the terms of an access undertaking (other than requiring an access undertaking to include an expiry date).
- (c) These broad functions, powers and discretions under the QCA Act are not consistent with Aurizon Network's submission that the QCA does not have the power to require an access undertaking to include an approval process for any aspect of an access agreement.
- (d) If Aurizon Network's interpretation were correct there would be little that the QCA could do in relation to access agreements (other than arbitrate access disputes). That is not a sensible interpretation and could not have been what was intended.

QCA's broad functions and powers in relation to access undertakings

- (e) As discussed in further detail in sections 1.3(f) to 1.3(i) below, the reason for the QRC's position (as described in section 1.3(a)) is that it considers the QCA is granted very broad functions and powers under the QCA Act in relation to access undertakings including with respect to:
 - (1) the approval of access undertakings (sections 10(h), 10(n) and 11) (see section 1.3(f));
 - (2) the factors that the QCA may consider in deciding whether it is appropriate to approve an access undertaking submitted in response to an 'initial undertaking notice' (section 138(2)) (see section 1.3(g));
 - (3) if the QCA refuses to approve a draft access undertaking, the amendments the QCA may ask the owner/operator of a declared service to make to a draft

access undertaking under a 'secondary undertaking notice' (section 134(2)) (see section 1.3(h)); and

- (4) if the owner/operator of a declared service does not comply with the initial or secondary undertaking notice, the terms of a draft access undertaking that the QCA may itself prepare and approve (section 135), taking in account the allowable contents of an access undertaking (section 137) and the definition of 'access undertaking' (Schedule 2 Dictionary) (see section 1.3(i)).

(f) **(approval of undertakings)**

- (1) The QCA's functions are set out in section 10 of the QCA Act and include:
- (A) the approval of undertakings for services (section 10(h)); and
- (B) functions **incidental to** the approval of such undertakings (section 10(n)) [emphasis added].
- (2) The term 'incidental' is not defined in the QCA Act. However the phrase 'incidental to' is defined in the Macquarie Dictionary as meaning 'liable to happen in connection with; naturally appertaining to'. There is a wide range of functions that would be considered 'in connection with' the undertaking approval function which means the QCA's functions in this regard are potentially wide-ranging.
- (3) The QCA's powers are set out in section 11 of the QCA Act. The QCA is granted the power to do anything necessary or convenient to be done for, or in connection with, the performance of its functions (section 11(1)(e)). Again, this is a wide-ranging power, which indicates that the scope of the QCA's powers and functions in relation to the approval of undertakings under the QCA Act should not be construed narrowly.
- (4) As noted in section 1.1(e), Aurizon Network's submission evinces a general position that the QCA must not be given any function or power under an access undertaking unless there is a specific provision in the QCA Act that explicitly grants the relevant function or power to the QCA. This general position is reflected in Aurizon Network's position on the QCA's powers regarding Access Conditions. The QCA considers that Aurizon Network's position is unduly narrow given the breadth of the QCA's functions and powers under sections 10 and 11 of the QCA Act (as described in sections 1.3(f)(1) and 1.3(f)(2)).

(g) **(decision whether to approve undertaking)**

- (1) The QCA has a wide discretion when deciding whether it is appropriate to approve an access undertaking.
- (2) The QCA may approve a draft access undertaking if it considers it appropriate to do so having regard to the factors listed in section 138(2) of the QCA Act (**section 138(2) factors**). The section 138(2) factors are not mandatory conditions that must be satisfied before a draft access undertaking may be approved by the QCA. Rather, the section 138(2) factors are matters that the QCA must take into account when it decides whether it is appropriate to approve a draft access undertaking.
- (3) The section 138(2) factors include:
- (A) the object of Part 5 of the QCA Act (as discussed in sections 1.3(k) to 1.3(n)) (section 138(2)(a));
- (B) the legitimate business interests of the owner/operator of the service (section 138(2)(b));
- (C) the interests of access seekers (section 138(2)(e)); and
- (D) 'any other issues the [QCA] considers relevant' (section 138(2)(h)).
- (4) The QCA Act does not:

- (A) specify an order of priority with respect to the section 138(2) factors;
 - (B) allocate relative weightings to the section 138(2) factors;
 - (C) identify any section 138(2) factor as being paramount;
 - (D) require a draft access undertaking to be consistent with all section 138(2) factors to the same extent; or
 - (E) require a draft undertaking to be consistent with all section 138(2) factors to a minimum extent or at all.
- (5) The impossibility of the hypothetical 'requirements' in paragraphs 1.3(g)(4)(D) and 1.3(g)(4)(E) is highlighted by the conflicting nature of certain section 138(2) factors, such as the interests of the owner, the operator and access seekers and the public interest.
- (6) Accordingly, the QRC considers that the QCA, when making a decision as to whether it is appropriate to approve the draft access undertaking:
- (A) must balance the section 138(2) factors and determine the relative priority or weight that should be given to each factor; and
 - (B) may approve a draft access undertaking that is in some respects inconsistent with a section 138(2) factor provided that the QCA has had regard to all section 138(2) factors and considers it appropriate to approve the draft access undertaking.
- (7) Beyond the requirements to:
- (A) have regard to the factors specified in section 138(2) factors;
 - (B) publish the draft access undertaking, invite submissions and consider submissions received by the due date (section 138(3)); and
 - (C) not refuse to approve a draft access undertaking where the QCA considers a minor and inconsequential amendment should be made to a particular part of the undertaking (section 138(5)),
- the QCA has a very wide discretion to determine whether it is appropriate to approve a draft access undertaking.
- (8) The QRC does not support Aurizon Network's position that the QCA does not have a power to refuse a draft access undertaking on the basis that it prefers an alternative, 'more appropriate' draft access undertaking. The QRC considers that if the QCA determines that an alternative draft access undertaking would address the section 138(2) factors to a greater extent than the draft access undertaking under review, then the QCA may determine that it is not appropriate to approve the draft access undertaking under review.
- (h) **(requested amendments to undertaking)**
- (1) If the QCA refuses to approve a draft access undertaking, it must give the owner/operator a secondary undertaking notice stating the reasons for the refusal and asking the owner/operator to amend the draft access undertaking in the way the QCA considers appropriate (section 134(2)(a)).
 - (2) The QCA's powers under section 134(2)(a) are not expressly restricted by any other provisions of the QCA Act. Accordingly, the QCA's powers under section 134(2)(a) to ask for amendments to a draft access undertaking that it 'considers appropriate' covers a wide spectrum of possible amendments. This is consistent with the wide-ranging powers granted to the QCA under sections 10 and 11 of the QCA Act (as discussed in section 1.3(f)).
- (i) **(imposing QCA undertaking)**
- (1) If an owner/operator of a declared service does not comply with an initial or secondary undertaking notice, the QCA may prepare, and approve, a draft

access undertaking for the declared service in relation to the owner/operator (section 135).

- (2) The QCA's power under section 135 is not expressly limited by any other provisions of the QCA Act. Accordingly, the QCA has a very wide discretion to determine the terms of the draft access undertaking that it prepares under section 135. This is consistent with the wide-ranging powers granted to the QCA under sections 10 and 11 of the QCA Act (as discussed in section 1.3(f)).
 - (3) Furthermore, the scope of matters that may be included in an access undertaking is broad. The QCA Act specifies that an access undertaking must state the expiry date (section 137(1)) and sets out list of matters that **may** be included in an access undertaking (section 137(3)). The Explanatory Notes to the *Queensland Competition Authority Bill 1997* (Qld) state that this list 'does not preclude other matters from being detailed in access undertaking for a service'.
 - (4) The broad scope of matters that may be included in an access undertaking is also contemplated by the definition of 'access undertaking' in Schedule 2 of the QCA, where it is defined as:
*'a written undertaking that sets out details of the terms on which an owner or operator of the service undertakes to provide access to the service **whether or not it sets out other information about the provision of access to the service.**'* [emphasis added]
 - (5) Aurizon Network submitted that it is not appropriate for the QCA to seek to impose terms of an access undertaking that extend beyond the terms on which access will be provided (section 2.4 of Aurizon Network's submission). However, the words in bold in the definition above indicate an intention that an access undertaking may include provisions beyond those dealing with the terms on which access will be provided.
 - (6) The QRC is of the view that section 137 and the definition of 'access undertaking' together impose minimal restrictions on the contents of an access undertaking that the QCA may prepare under section 135.
- (j) Based on:
- (1) the QCA's broad functions and powers in general (sections 10 and 11 of the QCA);
 - (2) the QCA's broad powers and functions in relation to the approval of draft access undertaking (sections 138, 134 and 135); and
 - (3) the minimal restrictions on the content of access undertaking (section 137 and definition of 'access undertaking'),

the QRC considers that the QCA may approve an access undertaking that includes a process that permits the QCA to accept, or otherwise approve, Access Conditions or an agreed deviation from a Reference Tariff.

Object of Part 5

- (k) The QCA Act must be interpreted in accordance with the *Acts Interpretation Act 1954* (Qld) including section 14(A)(1) which provides that:
'In the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act is preferred to any other interpretation.'
- (l) The object of Part 5 of the QCA Act (which is relevant to this submission) is:
'...to promote the economically efficient operation of, use of and investment in, significant infrastructure by which services are provided, with the effect of promoting effective competition in upstream and downstream markets.' (section 69E).
- (m) Accordingly, the scope of the QCA's functions and powers under Part 5 should be considered in the context of the object of Part 5. In particular, the QCA's functions and powers in relation to the review and approval of access undertakings (as set out in Part 5

and as described in sections 1.3(e) to 1.3(j) above) should be interpreted in a way that will best achieve the object of Part 5.

- (n) The QRC submits that the UT4 Access Conditions regime (subject to the QRC's slight modifications) is consistent with the object of Part 5 in terms of promoting:
- (1) economically efficient investment in the rail network, particularly given that Aurizon Network has no obligation to invest in expansions of the rail network; and
 - (2) the economically efficient operation and use of non-expansion capacity on the Network, given that the UT4 Access Conditions regime (subject to the QRC's slight modifications) is a key protection against Aurizon Network's monopoly power.

1.4 Aurizon Network's position on the QCA's powers regarding Aurizon Network's right to invest in Expansions (section 3.4 of Aurizon Network's submission)

Aurizon Network considers that:

- (a) there is no legislative basis for the UT4 provisions that give Access Seekers the right to invest in Expansions where Aurizon Network is willing to invest in the Expansion on regulatory terms and has given the required notice;
- (b) it is in the legitimate business interests of Aurizon Network that it has a paramount right to invest in Expansions. The QCA cannot make an access determination relating to an Expansion that would result in Aurizon Network's legitimate business interests not being protected. Therefore, the QCA can have no power to require such an outcome under an approved access undertaking; and
- (c) the UT4 approach to Aurizon Network's 'right' to invest in the Network seeks to achieve an outcome that could not be achieved if the funding of the relevant Expansion was the subject of an access dispute.

1.5 QRC's position

- (a) The QRC does not support Aurizon Network's position regarding Aurizon Network's right to invest in Expansions.

Legislative basis

- (b) For the reasons set out in section 1.3, the QRC considers that the QCA has very broad powers under the QCA Act in relation to access undertakings, including in relation to expansion processes.
- (c) As noted in section 1.1(e), Aurizon Network's submission evinces a general position that the QCA must not be given any function or power under an access undertaking unless there is a specific provision in the QCA Act that explicitly grants the relevant function or power to the QCA. This general position is reflected in Aurizon Network's position its right to invest in Expansions. The QCA considers that Aurizon Network's position is unduly narrow given the breadth of the QCA's functions and powers under sections 10 and 11 of the QCA Act (as described in sections 1.3(f)(1) and 1.3(f)(2)).

Legitimate business interests

- (d) The QRC notes Aurizon Network's submissions in relation to its legitimate business interests with respect to investment in Expansions. As discussed in section 1.3(g), Aurizon Network's legitimate business interests is just one of many factors that the QCA must have regard to when making a decision as to whether it is appropriate to approve a draft access undertaking. The QCA Act does not give any relative priority or weight to this factor. Nor does it prohibit the QCA from approving a draft access undertaking that is in some respects inconsistent with this factor if the QCA has had regard to all of the section 138(2) factors and considers it appropriate to approve the draft access undertaking.

- (e) The QRC considers that access seekers also have an interest in retaining a right to invest in Expansions. The interests of access seekers is one of the factors that the QCA must consider when deciding whether it is appropriate to approve a draft access undertaking (section 138(2)(e)).
- (f) The QRC also acknowledges Aurizon Network's submission that the QCA has no power to override Aurizon Network's right to invest in an Expansion because the QCA has no power to make an access determination to that effect. Aurizon Network notes that the QCA may only make an access determination requiring an access provider to extend a facility if certain requirements are met, including that the legitimate business interest of the owner and operator of the facility are protected (ss 119(4B)(b) and 119(5)(b)).
- (g) However, the QCA Act does not restrict the contents of an access undertaking by reference to the prescribed restrictions on access determinations. The QRC agrees that the QCA cannot make an access determination that is inconsistent with an approved undertaking (section 119(1)(a)). However, section 119(1)(a) cannot be read as prohibiting the QCA from approving a draft access undertaking that is inconsistent with the restrictions on access determination in section 119(2). The notion that restrictions on access determinations determine the content of an access undertaking seems to reverse the intended operation of section 119(1)(a), which is that the terms of an access undertaking restrict the content of an access determination, not vice versa. On this basis, the QRC does not support Aurizon Network's argument in relation to this matter.
- (h) Aurizon Network states that the retention of its 'right' to invest in an Expansion on regulatory terms after providing notice that it is willing to do so meets the object of Part 5 of the QCA Act. However, the QCA considers that the words 'investment in' in section 69E should not be read as being limited to investment by Aurizon Network. Rather, the QCA considers that these words may also apply to investment by access seekers, access holders and third parties. On this basis, the QRC does not consider that giving Aurizon Network a paramount right to invest in an Expansion is the sole means by which the object of Part 5 may be met.

Scope of QCA's dispute resolution powers

- (i) The QRC does not support Aurizon Network's interpretation of the scope of the QCA's dispute resolution powers. For the reasons set out in section 1.11, the QRC considers that the QCA has very broad powers under the QCA Act in relation to access undertakings, including in relation to any dispute resolution process in an access undertaking.

1.6 Aurizon Network's position on the QCA's powers regarding capacity shortfall rectifications (section 3.5 of Aurizon Network's submission)

Aurizon Network considers that:

- (a) imposing an obligation on Aurizon Network to bear the cost of rectifying a capacity shortfall (**CSR Obligation**) is inconsistent with the provision of the QCA Act that prevents the QCA from making an access determination that requires Aurizon Network to fund an expansion;
- (b) the CSR obligation is contrary to section 138(2)(b) of the QCA Act because it would not result in Aurizon Network's legitimate business interests being protected; and
- (c) it is outside the QCA's power to ascribe remedies for default or negligent acts or omissions.

1.7 QRC's position

- (a) The QRC does not support Aurizon Network's position regarding capacity shortfall rectifications.
- (b) The QRC notes Aurizon Network's submission that the CSR Obligation is inconsistent with section 119(2)(c) of the QCA Act which provides that the QCA must not make an access determination that would require an access provider to pay some or all of the costs of extending the facility. However, the QRC does not agree that the QCA Act

restricts the contents of an access undertaking by reference to the prescribed restrictions on access determinations. The QRC agrees that the QCA cannot make an access determination that is inconsistent with an approved undertaking (section 119(1)(a)). However, this section cannot be read as prohibiting the QCA from approving a draft access undertaking that is inconsistent with the restrictions on access determination in section 119(2). The notion that restrictions on access determinations determine the content of an access undertaking seems to reverse the intended operation of section 119(1)(a), which is that the terms of an access undertaking restrict the content of an access determination, not vice versa. On this basis, the QRC does not support Aurizon Network's argument in relation to this matter.

- (c) Aurizon Network considers that the CSR Obligation is contrary to section 138(2)(b) of the QCA Act. This section provides that the QCA must have regard to the legitimate business interests of an owner/operator of a declared service when considering whether it is appropriate to approve a draft access undertaking. Aurizon Network considers that the CSR Obligation is inconsistent with section 138(2)(b) because it will incentivise Aurizon Network to act against its own legitimate business interests.
- (d) The QRC does not support Aurizon Network's position in relation to section 138(2). As discussed in section 1.3(g), Aurizon Network's legitimate business interests is just one of many factors listed in section 138(2) that the QCA must have regard to when making a decision as to whether it is appropriate to approve a draft access undertaking. The QCA Act does not give any relative priority or weight to this factor. Nor does it prohibit the QCA from approving a draft access undertaking that is in some respects inconsistent with this factor if the QCA has had regard to all of the section 138(2) factors and considers it appropriate to approve the draft access undertaking.
- (e) The QRC does not support Aurizon Network's interpretation of the scope of the QCA's powers. For the reasons set out in section 1.3, the QRC considers that the QCA has very broad powers under the QCA Act in relation to access undertakings, including in relation to capacity shortfalls.
- (f) In addition, the QRC notes that section 119(2) interpreted on a stand-alone basis cannot be read in the way suggested by Aurizon Network. In particular, section 119(2) could not have been intended to apply to projects which Aurizon Network had already agreed to fund or to negligent acts and omission of Aurizon Network.

1.8 Aurizon Network's position on the QCA's power regarding supply chain coordination (section 3.6 of Aurizon Network's submission)

Aurizon Network considers that the QCA Act does not empower the QCA to require the access undertaking to include provisions which:

- (a) do not relate to the terms upon which access is provided;
- (b) mandate Aurizon Network's participation in Supply Chain Groups; or
- (c) require Aurizon Network to make operational changes required by third parties or comply with business directions from third parties.

1.9 QRC's position

- (a) The QRC does not support Aurizon Network's position regarding supply chain coordination.
- (b) As discussed in section 1.3(i), the QRC is of the view that section 137 and the definition of 'access undertaking' together impose minimal restrictions on the contents of an access undertaking and an access undertaking may include provisions beyond those dealing with the terms on which access will be provided.
- (c) For the reasons set out in section 1.3, the QRC considers that the QCA has very broad powers under the QCA Act in relation to access undertakings, including in relation to the approval of supply chain coordination matters.

- (d) As discussed in sections 1.3(j) to 1.3(m), the QCA's powers should be interpreted in a way that will best achieve the object of Part 5 (as described in section 1.3(k)). The QRC submits that limiting Aurizon Network's obligations in relation to supply chain coordination in the manner proposed by Aurizon Network will not promote the economically efficient operation of, use of and investment in the rail network.

1.10 Aurizon Network's position on the QCA's powers regarding disputes (section 3.7 of Aurizon Network's submission)

- (a) Aurizon Network considers that the dispute resolution process in Part 11 of UT4 is beyond the QCA's powers under the QCA Act.
- (b) Aurizon Network also considers that:
- (1) the QCA's dispute resolution powers are limited to the arbitration of access disputes, as set out in Division 5, Part 5 of the QCA Act;
 - (2) the QCA must comply with Division 5, Part 5 of the QCA Act when it hears disputes and these requirements cannot be altered;
 - (3) UT5 must not be inconsistent with the requirements in Division 5, Part 5 of the QCA Act;
 - (4) the QCA cannot determine contractual or other types of disputes unless, in the case of access agreements, the disputing parties agree;
 - (5) the QCA Act gives the QCA no power to arbitrate claims where an access provider is in breach of an access undertaking or the QCA Act;
 - (6) the QCA cannot grant a right to any person other than an access seeker or an access provider to commence an access dispute;
 - (7) the QCA does not have authority to establish a dispute resolution process for disputes which enables proposed Expansion Funders to commence an access dispute because the QCA Act does not require Aurizon Network to negotiate with proposed Expansion Funders; and
 - (8) the QCA does not have the power to nominate an expert.

1.11 QRC's position

- (a) The QRC does not support Aurizon Network's position regarding the powers of the QCA regarding disputes. The QRC considers that the intention of the QCA Act is to give the QCA much broader powers in relation to disputes than Aurizon Networks contends.
- (b) By way of background, the second reading speech for the *Queensland Competition Authority Bill 1997* (Qld) characterises the dispute resolution process in the Bill as the second step in the general two-step third party access regime.¹ The first step is ensuring that the infrastructure to which another person seeks to gain access is of a special category, which can be broadly classified as a natural monopoly. The second step is described as involving compulsory dispute resolution through either a private arbiter or the QCA.
- (c) Therefore, the QRC considers that the dispute resolution regime in Division 5, Part 5 of the QCA Act is intended to be a general dispute process in relation to disputes about third party access to any declared service irrespective of whether the owner/operator of the declared service is subject to an access undertaking. The QRC considers that the dispute resolution process in Division 5, Part 5 stands apart from Division 7, Part 5 (which deals with access undertakings for declared services) in that:
- (1) the dispute resolution process in Division 5, Part 5 is not a matter that the QCA must have regard to when determining under Division 7, Part 5 whether it is appropriate to approve a draft access undertaking; and

¹ <http://www.parliament.qld.gov.au/documents/hansard/1997/970430ha.pdf#page=28>

- (2) the permissible contents of an access undertaking which is submitted for approval by the QCA under Division 7, Part 5 are not limited by the parameters of Division 5, Part 5.

Furthermore, the QCA's general functions and powers in relation to access disputes under sections 10 and 11 of the QCA Act are not expressly limited by the QCA's functions or powers in Division 5, Part 5.

QCA's wide functions and powers

- (d) For the reasons set out in section 1.3, the QRC considers that the QCA has very broad powers under the QCA Act in relation to the approval of access undertakings, including in relation to approving any dispute resolution process in an access undertaking. The breadth of such powers is indicated, in part, by section 138(2) which lists a wide range of factors that the QCA must consider when deciding whether it is appropriate to approve a draft access undertaking. This list includes 'any other issues the [QCA] considers relevant' (section 138(2)(h)). The QRC considers it within the scope of the QCA's powers to not approve a draft access undertaking on the basis that the dispute resolution process is inappropriate or likely to be ineffective provided that the QCA has had regard to the factors listed in section 138(2) in determining whether to approve the draft access undertaking.
- (e) Furthermore, the QCA is granted wide-ranging functions and powers under sections 10 and 11 of the QCA Act (respectively). As discussed in sections 1.3(f)(1) and 1.3(f)(2), the functions of the QCA include the approval of undertakings for services (section 10(h)) and functions **incidental to** the approval of such undertakings (section 10(n)) [emphasis added]. There is a wide range of functions that would be considered 'in connection with' the undertaking approval function which means the QCA's functions in this regard are potentially wide-ranging.
- (f) As discussed in section 1.3(f)(3) of this submission, the QCA is granted a wide-ranging power to do anything necessary or convenient to be done for, or in connection with, the performance of its functions (section 11(1)(e)). On that basis, the QRC considers that it is within the wide scope of the QCA's functions and powers to:
- (1) hear and determine the type of disputes specified in the dispute resolution process under UT4; and
 - (2) not approve a draft access undertaking on the basis that the dispute resolution process is inappropriate or likely to be ineffective.
- (g) The access dispute provisions in Division 5, Part 5 are not intended to be the QCA's exclusive dispute resolution powers. Division 5, Part 5 does not limit the QCA's powers in relation to the approval of access undertaking. There is no policy reason to need Division 5, Part 5 in an exclusionary way.

Contents of access undertakings

- (h) The QCA Act states that an access undertaking for a service may include details of the following:
- (1) information to be given to the QCA or another person; and
 - (2) an obligation on the owner or operator to comply with decisions of the QCA or another person about disputes about matters stated in the undertaking (sections 137(2)(ba) and 137(2)(bb)).
- (i) The explanatory notes to the Amendment Act that introduced these provisions state that:
- The second amendment [being the amendment to section 137 to introduce sections 137(2)(ba) and 137(2)(bb)] will allow the QCA (or another person, eg. An independent auditor or technical expert) to resolve a dispute in relation to a matter specified in an undertaking (eg. in relation to ringfencing or a technical matter) during the period of the operation of the undertaking and make a decision which must be complied with. These provisions, based on similar provisions in the access regime contained in the Trade*

Practices Act 1974, are primarily designed to allow the regulator to require (enforceable) dispute resolution provisions to be included in an access undertaking.²

...

These provisions [being sections 137(2)(ba) and 137(2)(bb)] are primarily designed to allow the regulator to require (enforceable) dispute resolution provisions, in relation to a matter specified in an undertaking (eg, in relation to ringfencing or a technical matter), to be included in an access undertaking.³

- (j) Neither section 137 of the QCA Act nor the explanatory notes indicate that a decision of the QCA or another person about disputes about matters stated in the undertaking must be read subject to the limitations in Division 5, Part 5. To the contrary, sections 137(2)(ba) and 137(2)(bb) demonstrate that the access dispute provisions in Division 5, Part 5 are not intended to be the QCA's exclusive dispute resolution powers.

Powers in relation to access disputes

- (k) Under section 10 of the QCA Act, the QCA's functions include the power to:
- (1) mediate to resolve access disputes (section 10(fa));
 - (2) if asked by the parties to access agreements, to mediate to resolve disputes under the agreements (section 10(fb));
 - (3) to conduct arbitration hearings for resolving access disputes (section 10(g));
 - (4) if asked by the parties to access agreements – to arbitrate to resolve disputes under the agreements (section 10(ga)); and
 - (5) to perform a function incidental to the functions referred to above (section 10(n)).
- (l) The term 'access dispute' is used in section 10 (as described above). The term 'access dispute' is also extensively used in Division 5, Part 5 of the QCA Act (which deals with access disputes about declared services). However, this term is not defined in the QCA Act. Furthermore, when the term is used in section 10 of the QCA Act it is not expressly limited to an access dispute referred to in Part 5, Division 5. The QRC submits that the term 'access dispute' in sections 10 and 11 of the QCA Act is open to a wider interpretation than just access disputes under Part 5, Division 5.
- (m) Division 5, Part 5 of the QCA Act sets out a statutory process whereby the QCA may be involved in the resolution of an access dispute. The QRC does not consider that the purpose of Division 5, Part 5 is to limit the parameters of a dispute resolution process specified in an access undertaking. Division 5, Part 5 refers to the requirement for consistency between an access determination and an approved access undertaking but does not specify any intended restrictions on the scope of an access undertaking.
- (n) In addition, the QRC does not consider that Aurizon Network's proposed limitation on the QCA's dispute resolution power is in the interests of access seekers. The interests of access seekers is one of the factors that the QCA must consider when deciding whether to approve a draft access undertaking (section 138(2)(e)).
- (o) As discussed in sections 1.3(j) to 1.3(m), the QCA's dispute resolution powers should be interpreted in a way that will best achieve the object of Part 5 (as described in section 1.3(k)). The QRC submits that restricting the QCA's dispute resolution powers in the manner proposed by Aurizon Network will not promote the economically efficient operation of, use of and investment in the rail network.

Remedies under the QCA Act

- (p) Aurizon Network submits that the QCA Act does not give the QCA a general power to arbitrate claims that an access provider is in breach of an access undertaking or the QCA Act on the basis that there are specific remedies available to the QCA and other persons under the QCA Act for a breach of the undertaking. In particular, section 158A of

² Page 4 of <https://www.legislation.qld.gov.au/Bills/49PDF/2000/QLdCompAuthAmdB00Expl.pdf>.

³ Page 17 of <https://www.legislation.qld.gov.au/Bills/49PDF/2000/QLdCompAuthAmdB00Expl.pdf>.

the QCA Act states that the QCA or another person may apply to the court for an order with respect to a breach of an approved access undertaking.

- (q) The explanatory notes to the relevant Amendment Act indicate that the purpose of section 158A of the QCA Act is to ensure that there is:
- (1) an alternative statutory process available to an access seeker in response to an alleged breach of an approved access undertaking where the access seeker does not wish to progress with 'a possibly lengthy and costly arbitration'; and
 - (2) a statutory process available to an access holder in respect of an alleged breach of an approved access undertaking that occurs after an access agreement has been entered into.
- (r) Importantly, neither section 158A nor the explanatory notes to the Amendment Act state that the specific statutory remedies are:
- (1) the sole remedy for a breach of an approved access undertaking; or
 - (2) exclude the QCA's general power to arbitrate claims that an access provider is in breach of an approved access undertaking or the QCA Act.

Parties who may commence a dispute

- (s) Aurizon Network submits that the QCA does not have authority to establish a dispute resolution process under an access undertaking which allows proposed Expansion Funders to commence a dispute because the QCA Act does not require Aurizon Network to negotiate in good faith with proposed Expansion Funders.
- (t) As described in detail in this section 1.11, the QRC submits that the QCA has wide powers to establish a dispute resolution process under an access undertaking. Without limiting those submissions, the QRC also notes the QCA Act contemplates that persons other than access seekers may be adversely affected by a breach of an approved access undertaking and that those persons may apply for a court order to enforce the undertaking (section 158A QCA Act).
- (u) Accordingly, the QRC is of the view that it would be reasonable for a dispute process in an access undertaking to allow persons such as proposed Expansion Funders to commence a dispute.

1.12 Aurizon Network's position on the QCA's powers regarding SUFA (section 3.8 of Aurizon Network's submission)

- (a) Aurizon Network considers that:
- (1) there is no need for a QCA notification to constitute a trigger event because it replicates the QCA's power under section 139 of the QCA Act; and
 - (2) the UT4 provisions about how the QCA will consider SUFA submission are unnecessary because the QCA Act addresses this matter.
- (b) Aurizon Network also submits that the QCA would be acting beyond its powers if it did not approve Aurizon Network's UT5 submission on the grounds that the QCA required the UT4 position on the incorporation of SUFA to be adopted in UT5.

1.13 QRC's position

- (a) The QRC does not support Aurizon Network's position regarding the restriction of SUFA processes in UT5.
- (b) For the reasons set out in section 1.3, the QRC considers that the QCA has very broad functions and powers under the QCA Act in relation to access undertakings, including in relation to the approval of SUFA.
- (c) As discussed in sections 1.3(j) to 1.3(m), the QCA's powers should be interpreted in a way that will best achieve the object of Part 5 (as described in section 1.3(k)). The QRC

submits that restricting the SUFA approval process in the manner proposed by Aurizon Network will not promote the economically efficient operation of, use of and investment in the rail network.

- (d) As noted in section 1.3(g)(8), the QRC does not support Aurizon Network's position that the QCA does not have a power to refuse a draft access undertaking on the basis that it prefers an alternative 'more appropriate' draft access undertaking. The QRC considers that if the QCA determines that an alternative draft access undertaking would address the section 138(2) factors to a greater extent than the draft access undertaking under review then the QCA may determine that it is not appropriate to approve the draft access undertaking under review.

Access Conditions

1 Aurizon Network's changes

Aurizon Network has proposed substantially limiting regulatory oversight of Access Conditions. Aurizon Network's proposal falls into two parts:

- (a) First, narrowing the definition of "Access Conditions" such that only significant deviations from the standard access agreement which significant deviations meet 4 criteria are required to follow the clause 6.13 process. Otherwise, changes from the standard access agreement which do not satisfy the narrow definition proposed do not attract regulatory oversight.
- (b) Secondly, limiting the QCA's power to not approve Access Conditions to a narrow set of circumstances, being:
 - (1) the Access Conditions will materially disadvantage access seekers who are not a party to the agreements; or
 - (2) the Access Conditions will breach the QCA Act.

Aurizon Network's reasons for seeking substantial modification to the Access Condition process can be summarised as follows:

- (c) The Access Conditions regime should be confined to Expansions;
- (d) The Access Conditions regime is burdensome, time consuming and risks "adversely affecting customers and holding up Expansions, potentially at significant cost";
- (e) The burden imposed by the Access Conditions regime is disproportionate to the risk it is trying to regulate and other aspects of the undertaking provide access seekers with sufficient protection, namely:
 - (1) the undertaking dispute process;
 - (2) the option of using SUFA as an alternative to Aurizon Network funding an Expansion; and
 - (3) the fact that access seekers tend to be sophisticated and robust organisations.
- (f) The QCA does not have the power to approve or not approve Access Conditions.

2 QRC's position

2.1 Overview of QRC position

The QRC does not support any of the changes to the definition of Access Conditions or to clause 6.13 proposed by Aurizon Network.

The QRC does not consider any of Aurizon Network's reasons for changing the UT4 position to be valid or appropriate. In fact, the QRC considers that the definition of Access Conditions in UT4 is too narrow and that clause 6.13 could be slightly modified from that in UT4 to clarify the intention of the regime. The QRC's minor changes to clause 6.13 from UT4 are shown in the comparison of the QRC draft and UT4 attached as annexure 3. The QRC's proposed changes to the definition of Access Conditions is explained below, and shown in attachment annexure 2.

2.2 Why the QRC does not think that a narrowing of the Access Conditions regime could be justified

Regulatory oversight of Access Conditions is extremely important to customers. The Access Conditions regime is a key protection against Aurizon Network's monopoly power despite Aurizon Network's view that risks to Access Seekers from Access Conditions are low.

The QRC does not agree that Access Conditions should be confined to Expansions (as is proposed by Aurizon Network). Access Conditions could feasibly be sought by Aurizon Network in a range of scenarios, including where capacity generated from an Expansion such as WIRP subsequently became Available Capacity. It is recognised that in non-Expansion scenarios the undertaking dispute process (as drafted in UT4 (and not Aurizon Network's UT5)) provides an element of protection, but:

- (a) that protection only arises where a dispute arises; and
- (b) there is no downside in there being a need to obtain QCA approval for an Access Condition for non-Expansionary Capacity.

In fact, it is entirely appropriate that where Aurizon Network seeks an Access Condition for non-Expansionary Capacity that it should be required to obtain QCA approval. Such an approval right is necessary to ensure that the Access Condition is appropriate, balanced and consistent with the undertaking. The fact that Aurizon Network considers it necessary to exclude non-Expansionary Capacity from the Access Conditions regime is of concern.

Where an Expansion is concerned, the protection provided by the Access Conditions regime is important for the following reasons:

- (c) First, Aurizon Network has no obligation to invest. Without an obligation to invest and in the absence of a competitive alternative to Aurizon Network funding, Aurizon Network's monopoly power is unchecked.
- (d) Secondly, because Aurizon Network cannot be compelled to invest, the undertaking dispute process has no teeth. That is, whilst the QCA may be able to resolve disputes over some aspects of the negotiation process, it cannot compel Aurizon Network to fund an Expansion.

The QRC does not agree that SUFA is counter-balance against Aurizon Network's monopoly power. As is evident to all parties, SUFA is only useable for a large project and for a customer with the highest credit rating. SUFA is, in the current and foreseeable financial market, not a viable option for the vast majority of Expansions or access seekers.

The QRC does not agree that access seekers' general level of sophistication or resourcefulness is a protection against Aurizon Network's monopoly power. The fact of the matter is that the largest resources houses in the world cannot bridge the gulf in negotiating power.

The QRC does not agree that the Access Conditions regime is inconsistent with the negotiate-arbitrate model reflected in the QCA Act and competition principles. A negotiate arbitrate model does not exclude the possibility of regulatory oversight where necessary.

Nothing in the QCA Act prohibits the Access Conditions regime. Aurizon Network has not identified any such provision. In the QRC's view, the Access Conditions regime is clearly in the public interest and within the powers of the QCA to impose.

2.3 Specific comments on Aurizon Network's drafting

Aurizon Network's modifications to the definition of Access Conditions puts the test of what constitutes an Access Condition at "significant". In addition, Aurizon Network seeks to create steps in the definition of Access Condition which have the effect of narrowing and complicating the definition. A narrow definition creates additional ambiguity and increases the scope for parties to seek to avoid the Access Condition regime. For the reasons explained above, a narrowing of the definition of Access Conditions cannot be justified.

Aurizon Network has also sought to narrow the circumstances in which the QCA can withhold its approval of an Access Condition. The two circumstances in which Aurizon Network proposes that the QCA can withhold its approval of an Access Condition are remote. It is in practice highly

unlikely that an Access Seeker who is not a party to an Access Condition will be “directly” and “materially disadvantaged” by an Access Condition. Secondly, it is unlikely that an Access Condition would breach the QCA Act. The QCA Act is not specific enough to regulate the appropriateness of an Access Condition - that is the role of the QCA and the terms of the undertaking. Aurizon Network’s formulation of clause 6.13 does not address the purpose of the clause which is to regulate the exercise of Aurizon Network’s monopoly power. Aurizon Network’s changes to clause 6.13 should be rejected.

2.4 Why should the Access Conditions definition be changed in the way proposed by the QRC

The QRC consider that the UT4 Access Conditions definition has been drafted in an unintentionally narrow way. In particular, the definition could be interpreted to require satisfaction of all elements of the definition, whereas it was clearly intended that some of the elements were alternatives. For example, an Access Condition could be sought by Aurizon Network simply because it seeks a higher return and not to off-set an additional risk not contained in the reference tariff (as is a requirement in the current UT4 definition). As drafted the definition could be read to only capture a premium included to off-set an additional risk. Such a reading would be a perverse result. The QRC’s drafting seeks to address these ambiguities with the definition.

As an aside, the QRC notes that Aurizon Network has suggested that the definition of Access Conditions should only capture material changes to a standard access agreement. The definition proposed by Aurizon Network sets the bar much higher than at “material”. The QRC is willing to accept that an Access Condition should not apply to a matter that is immaterial. Immaterial has a plain English meaning. However, what may be immaterial to one person may be material to another. Accordingly and in recognition of the fact that Access Conditions have a protective purpose, if there is an immaterial test, it should be clarified that anything that an access seeker (or affected access holder) considers to be material should automatically be deemed material.

1 The need for change

Under UT4, Aurizon Network is required to undertake a review of the transfer provisions within 3 months of the anniversary of the Approval Date.

Aurizon Network has not proposed any changes to the transfer provisions in UT5. The QRC (and the QRC believes Aurizon Network too) recognises a need for change.

With the benefit of practical application of the transfer provisions, it is clear that the transfer provisions are overly complex and difficult to navigate. This has greatly reduced the potential utility of those provisions.

2 QRC's proposal

Flexibility of Access Rights is a key requirement of coal producers in the current difficult climate. A key component to achieving flexibility is to ensure useable transfer provisions are in place.

The QRC has proposed a redraft of the UT4 transfer provisions with the intention of:

- (a) largely preserving the substance of those provisions;
- (b) clarifying areas which may have previously been unclear;
- (c) simplifying and streamlining processes; and
- (d) improving overall readability.

There is a trend for coal sales to move to shorter term contracting. This trend leads to greater fluctuations in demand for infrastructure and a higher number of transfers of rail and port capacity.

2.1 Simplification

The QRC has proposed a number of amendments to the transfer provisions which seek to simplify and clarify various key aspects of the regime. These include:

- (a) more clearly defining Short Term Transfers and Long Term Transfers;
- (b) simplifying the process requirements for Short Term Transfers and Long Term Transfers; and
- (c) making a clearer distinction between Customer Initiated Transfers and other transfers and applying a tailored approach to Customer Initiated Transfers.

2.2 Substantive amendments

The QRC has proposed one amendment in substance to the transfer provisions, to increase the period for Short Term Transfers from one year to two years. This allows for a more streamlined approach to Short Term Transfers by applying a consistent approach to the definition of Short Term Transfers and the relief from paying a transfer fee. This also removes the need to apply a cumulative test to the period of Short Term Transfers in the context of transfer fees. Whilst the QRC understands the intention behind proposing a shorter Short Term Transfer period was to assist with preventing gaming behaviour, it considers this risk is appropriately addressed through the criteria which must be met for a transfer to be effective. That is, the requirement for the Transferee to provide evidence that it is likely to use the transferred access rights.

Supply chain coordination

1 Aurizon Network's proposal

Aurizon Network has made a number of changes to clause 7A.3 from that contained in UT4. The changes are:

- (a) First, to qualify the extent to which Aurizon Network is required to participate in Supply Chain Groups. In this regard, Aurizon Network says that it should not have a mandatory obligation to participate in Supply Chain Groups. It also says that it should only be required to participate to a reasonable extent.
- (b) Secondly, Aurizon Network has deleted the obligation to implement an operational change determined by a Supply Chain Group which change may increase Capacity, despite UT4 setting out a range of protections for Aurizon Network in the case where such a change is required. Aurizon Network considers that increases in Capacity should exclusively be dealt with under the expansion process (clause 8). Aurizon Network also considers:
 - (1) that Supply Chain Groups could make different determinations;
 - (2) one Supply Chain Group may make a determination which benefited that supply chain at the expense of another supply chain;
 - (3) it is possible that more than one Supply Chain Group may exist within a supply chain, and that these may have conflicting interests or give conflicting directions; and
 - (4) only one party, being Aurizon Network should make determinations in respect of the rail infrastructure.

2 QRC position

2.1 Importance of Supply Chain Groups and Aurizon Network's participation

Supply Chain Groups are an important part of every supply chain. They serve many purposes, including coordination, a forum for communication and a forum for ideas. The rail infrastructure is a central piece of each supply chain. The effectiveness of Supply Chain Groups depends on Aurizon Network's meaningful participation.

2.2 Mandatory and reasonable participation

The QRC believes that Aurizon Network should be obliged to participate in Supply Chain Groups. Aurizon Network's participation in Supply Chain Groups benefits all parts of the supply chain, including Aurizon Network. In no way can it be said that participation in a Supply Chain Group is an onerous obligation. Supply Chain Groups typically involve a one to two hour meeting once a month. Supply Chain Groups are stable and have not grown in number for some time.

Given the nature of Supply Chain Groups, the QRC does not consider it necessary to qualify Aurizon Network's participation by some reasonableness test. Despite that view, the QRC understands that a test of "reasonableness" provides Aurizon Network with some comfort and accepts that the scope of Aurizon Network's participation can be qualified by a reasonableness test. Accordingly, the QRC accepts Aurizon Network's drafting in clauses 7A.3(a), (b), (c) and (e).

2.3 Obligation to make operating changes which are not adverse

The QRC does not consider the risks which Aurizon Network presents to justify a change to clause 7A.3(d) are likely to occur. Aurizon Network is not obliged to implement a change which would adversely affect Network Management Principles, System Rules or the System Operating Parameters (among other things). The adverse effect test is not confined to consideration of the affect in the System proposing the change. The adverse effect test allows consideration of “any” System. That test, adequately protects against the risks identified by Aurizon Network.

The QRC does not agree that clause 7A.3(d) should be modified because it relates to Capacity increases and therefore should be deleted on the basis that Expansions are covered by Part 8 of the undertaking. The QRC’s reasons are as follows:

- (a) First, as a matter of principle Supply Chain Groups should (from time to time) consider, and be encouraged to consider, means by which Capacity could be increased. Our mark-up does not address this issue for the reason that we have tried to retain the UT4 drafting.

The expansion process does not facilitate such considerations. Nor does the expansion process seem to be an appropriate fit for the nature of the Capacity increases which are likely to be considered by Supply Chain Groups. In particular, the Capacity increases considered by Supply Chain Groups are likely to be smaller than Expansions which require material capital investment and commitments by parties to studies and the like.

- (b) Secondly, in the QRC’s view, the clause should not be confined to operational changes which are aimed at increasing Capacity. It may be the case that a change to the operation of the below rail infrastructure will have a material benefit to other parts of the supply chain. The QRC accept that if this change were made to clause 7A.3 it may be necessary to broaden the protection provided by the adverse effect test to “any reasonable and genuine adverse effect”.

Capacity assessments

1 Aurizon Network's proposal

Aurizon Network has made three primary changes to the Capacity assessment process from that contained in UT4. In the QRC's view, Aurizon Network's submission in support of its changes does not accurately describe the changes proposed by Aurizon Network. In the QRC's view, Aurizon Network's changes are as follows:

- (a) To remove the provision for a Baseline Capacity Assessment to be made. The reason for this is that the Baseline Capacity Assessment was intended to be a one-off exercise under UT4.
- (b) To change the nature of the independent expert's role from a genuine review of Capacity, to an audit of whether Aurizon Network's Capacity model has properly applied the assumptions determined by Aurizon Network.
- (c) To delete the requirement for Aurizon Network to use reasonable endeavours to modify its Capacity assessment to accommodate the independent expert's determination.

2 QRC position

2.1 Baseline Capacity Assessment

With one proviso, the QRC agrees with Aurizon Network that it is appropriate that the requirement for a Baseline Capacity Assessment be confined to UT4 (and deleted from UT5). The proviso, is that the Baseline Capacity Assessment is completed and approved under UT4. If the Baseline Capacity Assessment is not completed and approved under UT4 it would be necessary for it to be undertaken under UT5 (on the same terms as is provided for in UT4).

2.2 The role of the independent expert

The QRC objects to Aurizon Network's proposed change to the scope of the independent expert's role. An audit of the application of Aurizon Network's model defeats the purpose of the independent expert assessment, which is to make an independent assessment of Capacity and interrogate the assumptions developed by Aurizon Network in determining Capacity. Limiting the expert's role to one of audit of application relegates and narrows the expert's role to identifying application errors.

The determination of Capacity will largely depend on the assumptions which are used by Aurizon Network to build the model. Even with parameters such as Access Agreements, System Rules, and the System Operating Parameters it will be necessary to develop assumptions. A key role for the independent expert under clause 7A.4 is to consider the Aurizon Network assumptions and propose different assumptions where it believes that they should be used. A broad first principles review of Capacity is an important way for stakeholders to be confident about the accuracy or otherwise of Aurizon Network's Capacity assessment. Confidentiality restrictions mean that Access Holders and Customers have no other way of verifying Aurizon Network's Capacity assessment.

It is therefore the QRC's view that the independent expert's assessment of Capacity should be a first principles review of Capacity, as contemplated by the UT4 drafting.

2.3 Aurizon Network's obligation in relation to the expert's assessment

As is noted above, Aurizon Network has proposed deleting the requirement for it to use reasonable endeavours to seek to adopt the independent expert's determination. The QRC is agreeable to this. However, in lieu of such a provision, the QRC consider that Aurizon Network should be obliged to

notify Access Holders where it intends entering into a new⁴ Access Agreement in circumstances where the independent expert has determined that there is insufficient Available Capacity to meet the demand of the new Access Agreement. The purpose of such a notice is to give Access Holders an opportunity to dispute Aurizon Network's entry into the access agreement. Without such a notice Access Holders would not be aware that Aurizon Network was intending on entering into an Access Agreement where the expert believes that there is no Available Capacity.

3 QRC recommended amendments

Separate to the revisions proposed by Aurizon Network in UT5, the QRC proposes two additional amendments to the capacity assessment provisions which existed under UT4:

- (a) Capacity assessments should be undertaken separately for each Expansion in a coal system where that Expansion has a separate Expansion Tariff.
- (b) Aurizon Network should be required to undertake a Capacity assessment which assesses "system" capacity annually and should be prohibited from contracting any additional capacity where system capacity does not exist.

3.1 Separate capacity assessment for an Expansion group

The QRC has proposed amendments to the Capacity assessment provisions under Part 7A to require a separate capacity assessment in respect of an Expansion within a coal system where that Expansion has a separate Expansion Tariff. The QRC considers this information may be relevant under commercial arrangements in respect of an Expansion and is useful information for the purpose of any future decisions with respect to pricing of that Expansion group. Any Capacity shortfall which may arise following a Capacity assessment should also be confined either to the main system or the relevant Expansion, depending on where it arises.

3.2 System capacity assessments

Aurizon Network recently released its draft System Operating Parameters and draft Baseline Capacity Assessment under UT4 for industry comment. In reviewing those drafts, it became evident that Aurizon Network has adopted a very narrow interpretation of Capacity and the parameters for assessing that Capacity under UT4. In particular, the System Operating Parameters, which describe the assumptions on which Aurizon Network models Capacity:

- (a) assess the capacity of the rail infrastructure as an isolated asset, ignoring the impact of the operating mode of ports, planned maintenance of loading and unloading facilities and supply chain capability and interaction; and
- (b) make assumptions of the rail infrastructure capability which does not reflect reality including using nominal payloads rather than planned or actual payloads, theoretical sectional run times and assumptions about train control which do not reflect actual train control.

Aurizon Network appears to have aligned its Baseline Capacity Assessment to contractual parameters reflected in Access Agreements and has not considered (as is required by UT4) interface matters. Even if the System Operating Parameters were rectified to comply with UT4, it does not go far enough. In order for the Capacity assessment process to be meaningful, it needs to assess system capacity. Unless there is an assessment of system capacity, the QRC considers that there will be misrepresentations of available capacity, the commitment of capacity beyond the level that can actually be delivered by the supply chain and misinformed development processes.

For the purposes of UT5, the QRC recommends:

- (a) Aurizon Network is required to undertake a realistic assessment of "system" capacity in parallel to its existing capacity assessment; and

⁴ Meaning not as a result of a transfer or renewal.

- (b) Aurizon Network should be prohibited from contracting any additional capacity where system capacity does not exist. This prohibition is necessary because without it there would be no penalty on contracting capacity that could not be fulfilled in the system (but which could be fulfilled in the below rail).

A system capacity assessment should model capacity based on the following assumptions (amongst others):

- (a) reasonable requirements in respect of maintenance and repair of each element of the supply chain (including loading facilities, load out facilities and coal export terminal facilities);
- (b) reasonably foreseeable delays or failures occurring in the relevant supply chain (including mine, port and rolling stock associated losses); and
- (c) the supply chain operating mode.

This assessment of system capacity will provide all stakeholders with a useful alternative and more realistic measure of capacity. That information will be invaluable in the context of future contracting and capacity planning.

First right to fund

1 Aurizon Network's proposal

UT4 provides that an access seeker (or a funder) may user fund an Expansion, including where Aurizon Network agrees to fund at the regulatory rate (that is, without access conditions). In its draft UT5, Aurizon Network propose that Aurizon Network have the first right to fund Expansions where it is willing to fund at the regulatory rate. Aurizon Network had proposed this position in its UT4 position.

Aurizon Network's UT5 draft does not include an obligation on Aurizon Network to fund Expansions. For example, the draft UT5 does not include an obligation on Aurizon Network to fund Expansions of a value below \$300M, as was included in UT3.

Aurizon Network believes that:

- (a) a first right to fund at the regulatory rate is consistent with the QCA Act;
- (b) the absence of a first right for Aurizon Network to fund at the regulatory rate is inconsistent with the QCA Act because the object of the QCA Act is to promote economically efficient investment in the infrastructure; and
- (c) the QCA has not identified a legislative basis to give access seekers a first right to fund their Expansions.

2 QRC position

The QRC does not support Aurizon Network having a first right to fund an Expansion unless Aurizon Network has a corresponding obligation to fund Expansions (up to a cap). The QRC consider that a capped funding obligation is necessary and prudent. Without such a funding obligation there needs to be a competitive alternative to Aurizon Network funding. Providing Aurizon Network with a first right to fund Expansions at the regulatory rate will lessen the interest of potential funders for user funding.

The QRC does not accept that the absence of a first right to fund is inconsistent with the QCA Act. As noted above, in the absence of a funding obligation, investment in the infrastructure is best serviced by creating competition for sources of funding for Expansions.

The QRC does not accept that there needs to be an express provision in the QCA Act in order for access seekers to have the first option to fund their Expansions. Providing access seekers with a right to fund is not inconsistent with any provision of the QCA Act. Promoting competition in investment in the infrastructure is both in the public interest and consistent with the objects of the QCA Act.

SUFA development

1 Aurizon Network's proposal

Clause 8.8 of UT5 obliges Aurizon Network to submit a Standard User Funding Agreement and sets out the QCA's powers to require changes to the draft documents submitted by Aurizon Network.

Aurizon Network proposes two sets of changes to the UT4 version of clause 8.8. Those changes are as follows:

- (a) including an acknowledgement that if a Standard User Funding Agreement has been approved under UT4 Aurizon Network should submit a draft Standard User Funding Agreement which complies with that decision; and
- (b) limiting the QCA's powers to require changes to the Standard User Funding Agreement proposed under UT5 to such powers as are contained in section 139 and 141 of the QCA Act.

2 QRC position

The QRC agrees with Aurizon Network that if a Standard User Funding Agreement is approved under UT4 Aurizon Network's UT5 Standard User Funding Agreement should be based on the UT4 version. This change appears at clause 8.8.3(a) of Aurizon Network's draft.

The QRC does not agree with the remaining changes to clause 8.8.3 of the draft UT5. As is noted above, Aurizon Network's changes seek to replace a specific and clear process for dealing with the consideration of a draft of a Standard User Funding Agreement with references to processes under the QCA Act. The difficulty with replacing a bespoke and specific process with a reference to the QCA Act is that the relevant sections of the QCA Act are not purpose built. The QRC are concerned that the lack of specificity in Aurizon Network's draft of clause 8.8.3 creates scope for ambiguity, delay and disagreement. Consideration of a user funding regime has been ongoing for some time. The QRC believe that it is important that the robust and specific version of clause 8.8.3 which was contained in UT4 be preserved. Accordingly, apart from clause 8.8.3(a), all of Aurizon Network's changes to clause 8.8.3 should be rejected.

Expansion shortfalls

1 Aurizon Network's proposal

Under UT4, Aurizon Network is obliged to rectify a capacity shortfall following an Expansion if:

- (a) Aurizon Network funded the original Expansion; or
- (b) the capacity shortfall was caused by Aurizon Network's default or negligence.

In both cases, Aurizon Network's obligation is limited to the extent Aurizon Network had control over the scope and standard of works of the Expansion (ie excluding the extent to which that scope or standard was altered by the Conditional Access Holders or determined through dispute resolution).

Aurizon Network has proposed to remove this obligation in UT5 on the basis that the obligation:

- (c) is inconsistent with the QCA's powers and the UT5 Expansion process and contracting model;
- (d) creates a "perverse risk allocation";
- (e) incentivises Aurizon Network to lobby for an "ample scope" when funding an Expansion; and
- (f) is inconsistent with Aurizon Network's obligations in respect of a capacity deficit identified following a capacity assessment (under Part 7A).

2 QRC position

The QRC recommends that Aurizon Network's UT4 obligation to rectify a capacity shortfall following an Expansion be reinstated in UT5. That is, Aurizon Network should be required to rectify a capacity shortfall following an Expansion where:

- (a) Aurizon Network funded the original Expansion; or
- (b) the capacity shortfall was caused by Aurizon Network's default or negligence.

2.1 Should Aurizon Network be required to fund a shortfall Expansion?

Where Aurizon Network funded the original Expansion, it should be required to rectify any shortfall following completion of that Expansion because:

- (a) Aurizon Network has no compulsory obligation to fund an Expansion, meaning any Expansion which Aurizon Network funds is one that it has elected to fund; and
- (b) any election by Aurizon Network to fund an Expansion is made with the knowledge that it will be required to rectify any shortfall which may result following completion of that Expansion.

For this reason (amongst others), the QRC disagrees with Aurizon Network's submission that the QCA is seeking to *impose* a funding obligation on Aurizon Network. Aurizon Network's obligation to fund a shortfall expansion can only arise if Aurizon Network first *voluntarily* elects to fund the Expansion, with the knowledge that in doing so, it may later be required to fund a shortfall Expansion.

The one exception to this is where Aurizon Network is required to fund a capacity shortfall following a user funded Expansion. This will only materialise where that shortfall was caused by Aurizon Network's default or negligence. For example, if an Expansion is developed based on a user funding arrangement (eg under SUFA) and Aurizon Network negligently scopes the Expansion. The QRC considers this a reasonable obligation that can easily be protected against. Aurizon Network

need only act appropriately (and not negligently) in determining the scope of an Expansion. The prohibition on funding an Expansion could not have been intended to apply so broadly as to excuse Aurizon Network from a breach of an agreement or a negligent act or omission.

2.2 Does the obligation to fund a shortfall create perverse incentives?

Aurizon Network claims that imposing an obligation on it to rectify Expansion shortfalls will create perverse incentives for Aurizon Network to propose “ample scope” for Expansions going forward. In the QRC’s view, this risk has been overstated by Aurizon Network and seemingly already manifests.

In the QRC’s experience, Aurizon Network already adopts a conservative approach to scoping Expansions. The risk of this getting worse is outweighed by the benefit of having certainty of contracted access rights following an Expansion.

Aurizon Network’s proposition that, if allocated such a risk in an expansion project, it will respond with “ample scope” (which we take to mean excessive scope) also highlights the importance of ensuring that the Expansion process has appropriate checks and balances on Aurizon Network’s ability to gold plate. For example, Aurizon Network’s obligation to act reasonably and in good faith in determining the scope of an Expansion and the rights of various stakeholders to dispute a determination by Aurizon Network as to scope are critical provisions.

2.3 Is the position in respect of capacity shortfalls following a capacity assessment comparable?

Aurizon Network considers that its obligation to rectify a shortfall following an Expansion should be consistent with its obligations in respect of a capacity deficit identified following a capacity assessment. Where a capacity deficit is identified following a capacity assessment under Part 7A, Aurizon Network is not automatically required to fund an Expansion to rectify that shortfall. Rather, Aurizon Network is required to explore appropriate solutions.

This difference in approach is appropriate. Where a capacity shortfall inherently exists in the system, it may not be appropriate for that shortfall to be rectified. For example, if access holders have over contracted based on an assumption that Aurizon Network would otherwise be incapable of providing the capacity required. In those circumstances it would be futile to carry out an Expansion to create that additional contracted capacity. However, where an Expansion has recently been commissioned, it will always be appropriate for Aurizon Network to rectify the capacity shortfall as real demand for that capacity must exist for the Expansion to occur.

The QRC would be more than happy for the two positions to be aligned by creating an obligation for Aurizon Network to rectify any shortfall identified in a capacity assessment, provided that access holders support the need for investment to rectify the shortfall. This was the position put forward by the QRC during the UT4 consultation process, however, Aurizon Network successfully argued that such an obligation contained an element of retrospectivity. No such issue exists in regard to future expansions.

2.4 Approval of capital expenditure under Schedule E

Where a capacity shortfall in respect of an Expansion is determined after the QCA has made its decision to approve the relevant capital expenditure into the Regulatory Asset Base, the QCA should have the ability to reconsider that approval. For example, the QCA may have considered the relevant capital expenditure prudent and efficient on the basis that a certain amount of capacity is expected to result from that Expansion, however, if significantly less capacity is produced, the relevant expenditure may no longer be considered prudent and efficient. The QRC has recommended an amendment to Schedule E of UT5 to recognise these circumstances.

1 Aurizon Network's proposal

Aurizon Network has proposed a substantial narrowing of the dispute resolution regime under UT5 including:

- (a) Limiting the QCA's powers in undertaking any determination.
- (b) Limiting the parties that have a right to bring a dispute and become involved in a dispute under the undertaking.
- (c) Limiting the matters that can be disputed under the undertaking.
- (d) Limiting expert determination to be consistent with the requirements of a QCA determination under the QCA Act.
- (e) Ensuring any dispute resolution powers do not interfere with Aurizon Network's Safety Management System and its legislated duties and obligations.

Aurizon Network's reasoning for these changes can be summarised as follows:

- (f) The QCA is only empowered to deal with disputes under and in accordance with the QCA Act.
- (g) Allowing a wider range of parties to bring a dispute is "detrimental to Aurizon Network and other coal supply chain participants" as it allows for the dispute resolution process to be "gamed" by "third parties".
- (h) Although Aurizon Network "volunteered" substantive dispute resolution procedures in previous undertakings (for example, under UT4), Aurizon Network is not willing to volunteer dispute resolution procedures under UT5.
- (i) The QCA does not have the power to require Aurizon Network to implement an effective dispute resolution regime.

2 QRC's position

2.1 Importance of the dispute resolution regime

A robust dispute resolution framework is integral to the accountability of Aurizon Network to users. The assurances and obligations provided by Aurizon Network under an undertaking are worthless without a true means of holding Aurizon Network accountable for those obligations. Those means must also be available to all parties who's rights are intended to be protected by the undertaking.

The QRC considers Aurizon Network's proposed amendments unravel the utility of the dispute resolution regime. The QRC proposes that the UT4 dispute resolution provisions be reinstated, except where Aurizon Network has proposed:

- (a) reasonable and insubstantial changes to process requirements; and
- (b) to ensure any dispute resolution powers do not interfere with Aurizon Network's safety obligations.

2.2 Aligning Part 11 to the QCA Act

Aurizon Network is seeking to align the dispute resolution procedures under UT5 with the specific requirements of the QCA Act. This is unnecessary. An undertaking is not required to be limited to the matters specifically called out under the QCA Act. Rather, an undertaking should go further than the QCA Act, otherwise there would be little point in requiring an access undertaking at all.

2.3 Parties to a dispute

Aurizon Network has proposed to significantly limit the parties that can bring a dispute under Part 11 of the undertaking. Aurizon Network claims a broader application is “detrimental” to both Aurizon Network and other coal supply participants. Aurizon Network believes a broader application could lead to vexatious third party claims.

In reviewing Aurizon Network’s proposed amendments, it is difficult to understand how those changes are merely intended to prevent non bona fide disputes. Aurizon Network has proposed to remove many dispute rights of Prospective Access Seekers, Access Seekers, Access Holders, Customers and Operators. For example, under Aurizon Network’s proposal, none of those parties would be able to bring a dispute concerning Aurizon Network’s obligations under Part 7A regarding capacity assessments, the development of system rules, system operating parameters and network development plans. A Customer is also afforded certain rights under Part 4 in respect of the negotiation of Access, yet would be unable to dispute the application of any of those rights under Part 11. Restricting the dispute resolution procedures in this way is inappropriate and does not appear to be directed at preventing vexatious third party claims.

The QRC is willing to acknowledge that an access seeker who wishes to initiate a dispute needs to be a bona fide and good faith access seeker. That small change is sufficient to address the vexatious party. At any rate, the QRC is not aware of any party who has purported to be an access seeker in order to create vexatious disputes.

2.4 Joining of parties

Aurizon Network has sought to remove the requirement for a related party to receive notice of a dispute. For example, where Aurizon Network and an Operator are involved in a dispute, Aurizon Network considers that they should have the choice of whether or not to notify the relevant Access Holder of the dispute.

The QRC disagrees with this proposal and finds it difficult to understand why such a change would be required. UT4 requires other interested parties to be notified of an existing dispute. Those parties then have the right to elect to become part of the dispute. This approach appropriately reflects the integrated nature of access disputes.

2.5 Expansion Funders

Aurizon Network has proposed to remove the ability of an Expansion Funder to bring a dispute under Part 8 on the basis that it is not willing to deal with disputes from parties that are not Access Seekers, Access Holders or Customers. The QRC disagrees with this proposal and considers the definition of Expansion Funder appropriately deals with Aurizon Network’s concern.

2.6 Scope of matters that can be disputed

During the UT4 approval process, Aurizon Network removed references to the ability to refer a matter to dispute resolution throughout the remainder of UT4 on the basis that those matters would be dealt with under the general application of Part 11. For this to be achieved, it is essential that the application of Part 11 under UT5 remains broad enough to encompass any disputes arising under those and other parts of the undertaking.

Under UT5, Aurizon Network has proposed to limit Part 11 to:

- (a) the negotiation of an Access Agreement, Train Operations Deed or Standard User Funding Agreement;
- (b) the negotiation of any other Standard Agreement; and
- (c) the negotiation or grant of Access.

Aurizon Network’s proposal will mean that many disputes which relate to the rights and obligations expressed in the undertaking will fall outside the scope of Part 11. For example, an Access Holder would be incapable of bringing a dispute relating to the application of pricing principles by Aurizon Network in accordance with the undertaking.

Aurizon Network's answer to such concerns is to point to the QCA Act. The QCA Act allows an affected person (or the QCA on behalf of an affected person) to apply to the court for an order to require Aurizon Network to comply with an approved access undertaking. Pointing to the compliance provisions of the QCA Act is insufficient and is a poor excuse for limiting the dispute resolution procedures under UT5. The ability to commence court proceedings is not comparable to practical and commercial dispute resolution procedures such as chief executive resolution and expert determination.

2.7 Expert determination

Aurizon Network considers an expert and the QCA should be "subject to the same constraints when making a determination". For this reason, Aurizon Network has proposed to limit expert determination to be consistent with the requirements of a QCA determination under the QCA Act. Aurizon Network has also proposed that an expert be appointed by the parties to the dispute or an independent party (rather than the QCA).

The QRC is willing to accept the changes to the appointment of an expert as proposed by Aurizon Network. However, the QRC cannot agree to the constraints Aurizon Network is seeking to impose on that expert. The requirements and procedures for a QCA determination under the QCA Act were never intended to apply to expert determination. It is also inappropriate for those requirements and procedures to be imposed in such a way.

2.8 Disputes impacting on safety

The QRC is willing to consider Aurizon Network's proposed amendments regarding its safety obligations on the basis that the remainder of Part 11 is reinstated as it exists under UT4.

Changes in payload

1 Aurizon Network's proposal

Aurizon Network has proposed to introduce new relinquishment provisions which operate in three distinct ways:

- (a) To provide Aurizon Network with the right to resume train paths from an Access Holder where its Operator is exceeding the Maximum Payload for the Train Service Type.
- (b) To provide an Access Holder with the right to request Aurizon Network to increase the Maximum Payload for a Train Service Type.
- (c) To provide Aurizon Network with the right to require an Access Holder and its Operator to increase the Nominal Payload for a Train Service Type.

In each circumstance:

- (a) triggering a recalculation of 'required' train paths; and
- (b) resulting in a deemed relinquishment of any 'excess' train paths held by that Access Holder without the payment of any relinquishment fee.

2 QRC position

2.1 Relinquishment or resumption provisions?

Aurizon Network claims the proposed provisions are driven by industry and will provide Access Holders with additional 'relinquishment' rights. Although the QRC supports some aspects of the proposal, we are not aware of any coal producer having requested these changes. The QRC's coal producer members have also all shared concerns (and suggested amendments) to those provisions, as set out in this submission.

Aurizon Network's proposal is more closely aligned to a resumption regime rather than a voluntary relinquishment regime. Regardless of how the change in payloads materialise, an Access Holder is stripped of contracted train paths. This appears to be based on the assumption that an increase in payloads allows an Access Holder to transport the same number of tonnes using fewer train paths. Although this is technically correct, it is inconsistent with the way in which Aurizon Network contracts capacity – based on train paths, not tonnage. Also, in many cases, the underlying objective of the Operator, when increasing payloads, will be to increase tonnage. Achieving this will, in some cases, require investment and increased costs. Such an initiative will not proceed if the likely result is the resumption of train paths.

To preserve an Access Holder's security of contractual access rights, an Access Holder which voluntarily increases its payload should have the right to elect to either:

- (a) maintain its existing train paths; or
- (b) reduce its existing train paths by relinquishing the capacity that it no longer requires.

Without this election, the QRC is unable to support the relevant provisions.

Section 2.6 includes discussion regarding the ability to maintain contracted train paths in the case where Aurizon Network initiates an increase in payloads due to capacity constraints.

2.2 Access Holder request to increase payloads

Subject to the QRC's comments above regarding flexibility of outcomes, the QRC broadly agrees with the concept of allowing an Access Holder to request an increase of contracted payloads.

However, the QRC disagrees with the discretion afforded to Aurizon Network in determining whether to accept or reject an Access Holder's request. Aurizon Network should be obliged to consider defined criteria including:

- (a) whether the increased payload would have a material adverse effect on an Access Seeker or another Access Holder; and
- (b) whether the rail infrastructure is capable of handling the increased payload.

If this criteria is met, Aurizon Network should be required to approve a request to increase payloads.

2.3 Relinquishment fee

The QRC supports the payment of a relinquishment fee where an Access Holder elects to relinquish train paths following an increase of payloads. Under Aurizon Network's proposal, relinquishment fees would not be payable, regardless of whether the increase in payload and relinquishment occurred at the request of Aurizon Network, or at the request of the Access Holder. The payment of a relinquishment fee is necessary to ensure other Access Holders are not adversely affected by a loss of system revenue arising from the relinquishment. As AT2 is the only reference tariff component calculated based on train paths, the relinquishment fee should be based on AT2 only. The QRC suggests that a relinquishment fee based on the AT2 component should be payable, except where Aurizon Network has required an Access Holder and its Operator to increase payloads. In this case, alternative demand for the paths will exist, such that there is no loss of revenue to the system.

2.4 Operator exceeding maximum payload without approval

Aurizon Network has proposed a process to allow it to resume train paths from an Access Holder where an Operator is exceeding its Maximum Payload without approval. The QRC considers that this proposal largely repeats the section dealing with an approved increase in payload. Also, in the case where the Access Holder intends to respond to Aurizon Network's notice by ensuring compliance with the contracted payload, the forced resumption of paths without an opportunity to remedy the situation is punitive. The QRC has proposed a redraft of this provision which seeks to:

- (a) streamline the process and remove repetition; and
- (b) reflect a less punitive approach, whereby the Access Holder is first given the opportunity to either:
 - (1) require the Operator to rectify its behaviour; or
 - (2) trigger the voluntary process to increase its Maximum Payload.

2.5 Dispute rights generally

Aurizon Network proposed very narrow dispute rights in respect of the proposed relinquishment provisions. Under Aurizon Network's proposal, an Access Holder is given the right to dispute the application of a formula only. This is more akin to an audit.

The proposed relinquishment provisions impact an Access Holder's certainty and security of contracted access rights. Substantive dispute rights are therefore required in all circumstances. The QRC's proposed drafting affords real dispute rights and gives an expert enough scope to make a proper determination.

2.6 Should Aurizon Network have the power to force an increase in payloads?

Aurizon Network's proposed relinquishment provisions afford it the right to require an Access Holder and its Operator to increase the Nominal Payload for a Train Service Type. Aurizon Network claims this will be used where increasing payloads is the preferred option to increase capacity. This intention is not reflected in Aurizon Network's draft. Rather, Aurizon Network is afforded absolute

discretion in determining whether or not to require an increase in payloads, with little to no parameters applying to that determination.

Aurizon Network's proposal is also lacking any requirement to critically assess a proposal to increase payloads. Requiring (non-binding) consultation with the Access Holder and offering some compensation to Operators, fails to appropriately recognise the potential impacts on *all* stakeholders and the reality that compensation may not be sufficient in all circumstances. For example:

- (a) Will a longer train be compatible with a Customer's balloon loop and the unloading facilities?
- (b) Does an Operator have the capability of running longer trains?
- (c) Does requiring a higher payload favour some Operators more than others?
- (d) Would the investment that an Access Holder, Operator, Customer or owner of an unloading facility are required to make be unreasonable or disproportionate to the value of freeing up the additional train paths?

Any proposal to increase payloads will also need to consider the extent to which an Access Holder could elect to maintain any of its contracted train paths which are no longer strictly required given the higher payload. Although the purpose of requiring the increase in payload is to create additional capacity, it would be inconsistent with contracting rights to require an Access Holder to relinquish any of its contracted train paths. This is an issue which requires further consideration.

Overall, Aurizon Network's proposal ultimately fails to recognise the complexities of imposing an increase in payloads on Access Holders, Customers, Operators and owners of unloading facilities. Given these complexities, the QRC considers that any right for Aurizon Network to impose higher payloads should be subject to QCA approval and is better addressed through broad principles rather than a prescriptive regime.

2.7 Should the provisions be incorporated into the undertaking?

Aurizon Network has proposed to include the substantive relinquishment provisions in the Standard Access Agreement and Train Operations Deed. The QRC disagrees with this approach.

The relinquishment provisions have the potential to impact a broader group of stakeholders, not limited to any one Access Holder under a particular Access Agreement. The QRC recommends that the relinquishment provisions be drafted in the undertaking and incorporated by reference into the Standard Access Agreement and Train Operations Deed (as applicable). This approach would be consistent with other similar provisions such as existing relinquishments provisions and transfers.

In addition, the proposed provisions (if amended as we have recommended) will represent an improvement to the existing UT4 provisions and will assist to promote a more efficient use of the network. To achieve this purpose more broadly, Aurizon Network should commit under UT5 to make these provisions available to any Access Holder who chooses to adopt them (including under an existing Access Agreement).

2.8 Consultation with Aurizon Network

The QRC and Aurizon Network have discussed this aspect of the proposed UT5 on a number of occasions, and Aurizon Network has received a version of the QRC's proposed alternative drafting. Although Aurizon Network has indicated a willingness to accept a number of the principles which are set out in this submission, this has not yet been reflected in an agreed alternative draft. The QRC intends to continue consulting with Aurizon Network immediately following the submission of this document to the QCA.

Standard Rail Connection Agreement

1 Rail Connection Agreement

1.1 Aurizon Network's submission

Aurizon Network included in its UT5 submission a Rail Connection Agreement (**RCA**) in the same form as the UT4 Rail Connection Agreement.

1.2 QRC's position

Overview of QRC's position

The QRC has proposed a number of changes to the RCA to simplify the drafting without seeking to make any material changes to the risk allocation between Aurizon Network and the Private Infrastructure Owner.

Connecting Infrastructure

The QRC has amended the definition of Connecting Infrastructure so that it only includes the infrastructure specified in schedule 2 of the RCA. The QRC considers that all infrastructure that constitutes Connecting Infrastructure should be capable of being shown in the plan in schedule 2. The QRC has included additional examples of the type of infrastructure that may constitute Connecting Infrastructure by including references to points (including catch points) and signalling cable in the definition of Connecting Infrastructure.

In order to address potential concerns in relation to discrepancies between the plan in schedule 2 and the 'as constructed' Connecting Infrastructure, the QRC has proposed a new clause which provides that if the constructed Connecting Infrastructure is inconsistent with the plan in schedule 2, the parties must seek to agree a plan that accurately depicts the constructed Connecting Infrastructure (clause 6(b)).

Connecting Infrastructure – Aurizon Network or Private Infrastructure Owner construction

Aurizon Network's RCA specifies a process that would apply if Aurizon Network designed, project-managed, constructed and commissioned the Connecting Infrastructure and an alternative process that would apply if the Private Infrastructure Owner did so (Aurizon Network's RCA clauses 6 and 7 respectively).

In order to simplify the drafting in the body of the RCA, the QRC has amended the RCA so that the process that applies in the latter scenario is set out as an 'alternative' clause in schedule 5 of the RCA.

The QRC has also relocated the Construction Agreement terms to schedule 6.

Charges, invoicing, payment and audit

For clarity, the QRC has simplified the provisions relating to charges, invoicing, payment and audit by:

- (a) introducing defined terms for charges including the 'Annual Service Charge' and 'Decommissioning Charges'; and
- (b) seeking to clearly separate the description of the charges, the invoicing process and the audit and adjustment process.

In the definition of 'Annual Service Charge', the QRC has included an acknowledgement that if zero non-Reference Train Services use the Connecting Infrastructure during a Maintenance Year then the Annual Service Charge for the Maintenance Year is zero.

Post Commissioning Charges

Aurizon Network's RCA required the Private Infrastructure Owner to pay Aurizon Network the reasonable and prudent costs of the design, construction and commissioning of modifications to, or upgrades or replacements of, the Connecting Infrastructure, excluding costs incurred by Aurizon Network in performing its maintenance, operations or reinstatement obligations under the RCA in relation to the Connecting Infrastructure (referred to as **Post Commissioning Charges** in this submission).

The RCA expressly states that the Connecting Infrastructure must at all times be owned by Aurizon Network (Aurizon Network's RCA clause 8(a)(i)). If Aurizon Network's costs of the design, construction and commissioning of modifications to, or upgrades or replacements of, the Connecting Infrastructure are added to the Regulatory Asset Base then it is not appropriate for those costs to be charged to the Private Infrastructure Owner under the RCA by way of the Post Commissioning Charges. Furthermore, the Private Infrastructure Owner should not bear liability for any such costs that are not included in the Regulatory Asset Base because they are not prudent or efficient.

On that basis, the QRC has not included a charge for the costs of the design, construction and commissioning of modifications to, or upgrades or replacements of the Connecting Infrastructure (Aurizon Network's RCA clause 3(a)(ii)).

Termination and suspension

The QRC has amended the termination and suspension regime to expressly acknowledge that, where there is a 20 Business Day cure period for a default event, the parties may agree a cure period that is longer than 20 Business Days.

The QRC has also proposed amendments to the termination and suspension regime to include an option for a defaulting party to cure certain defaults which may not be capable of remedy. These defaults include:

- (a) a failure by the Private Infrastructure Owner or the Rail Infrastructure Manager for the Private Infrastructure to comply with the Emergency Response Plan, the Interface Risk Management Plan or the interface agreement (QRC's RCA clause 18(a)(vi));
- (b) a failure by the Private Infrastructure Owner to comply with:
 - (1) clause 9 (Accreditation Requirements); or
 - (2) clause 7(c) (which refers to the Private Infrastructure Owner's obligations in relation to the standard of operation and maintenance of Private Infrastructure and the design and construction of modifications or upgrades to Private Infrastructure) (QRC's RCA clause 18(a)(vii));
- (c) the Private Infrastructure Owner conducting activities which cause or contribute to Environmental Harm on the Connecting Infrastructure or Network (QRC's RCA clause 18(a)(viii)); and
- (d) Aurizon Network being in default of the due performance of any obligation under the RCA (QRC's RCA clause 18(c)(i)).

Where the default is not capable of remedy, the defaulting party has the option to cure the default by taking reasonable steps to prevent the reoccurrence of the default or circumstances that result in the default.

Security

Aurizon Network's RCA provides that if Aurizon Network considers the Private Infrastructure Owner does not have an acceptable credit rating, it may request security for the due and proper performance of the RCA.

The QRC does not support this trigger for requesting security on the basis that many Private Infrastructure Owners will have strong capacity to meet their financial obligations but will not have a

credit rating. On that basis, the QRC proposes that the trigger should be that Aurizon Network considers (acting reasonably) that the Private Infrastructure Owner is no longer financially sound.

The QRC has also removed the requirement for the Private Infrastructure's Owner's holding company to have a credit rating if it wishes to provide a parent company guarantee. Again, the Private Infrastructure Owner's holding company may not have a credit rating but may be financially sound.

Why should the RCA be changed in the way proposed by the QRC?

The QRC submits that the RCA should be simplified in the manner proposed by the QRC to increase the efficiency of negotiating and administering the RCA.

Glossary of terms

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

Term	Meaning
Aurizon Network	Aurizon Network Pty Ltd
Post Commissioning Charges	has the meaning given in paragraph 1.2 of the 'Standard Rail Connection Agreement' section of this submission
QRC	Queensland Resources Council
QCA	Queensland Competition Authority
QCA Act	<i>Queensland Competition Authority Act 1997</i> (Qld)
RCA	Rail Connection Agreement
section 138(2) factors	has the meaning given in paragraph 1.3(g)(2) of the 'Beyond powers' section of this submission
SUFA	Standard User Funding Agreement
UT5	Aurizon Network draft 2017 access undertaking
UT4	2016 access undertaking approved by the QCA on 11 October 2016
WIRP	Wiggins Island Rail Project

Annexure 1 – Response to Aurizon Network’s proposed amendments to UT4

Part 3: Ringfencing

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
3.14(b)	Amended Aurizon Network’s obligation in relation to the submission of the proposed structure and level of detail of the Confidential Information Register	The obligation of Aurizon Network to submit the proposed structure and level of detail of the Confidential Information Register should only apply if the QCA has not already approved the form of the Confidential Information Register under UT4.	Workability	Accept

Part 4: Negotiation Framework

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
4.5(e)(i), 4.5(e)(ii)	Removed references to clause “4.5(h)” and replaced it with references to clause “4.5(g)”.	Correcting clause references	Clarification	Accept

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
4.5(f)(i)	Removed references to clause “4.5(h)” and replaced it with references to clause “4.5(g)”. Removed references to clause 4.5(j) and replaced it with references to clause “4.5(i)”.	Correcting clause references	Clarification	Accept
4.6(f)(iii)	Removed references to clause “4.5(i)” and replaced it with references to clause “4.5(k)”.	Correcting clause references	Clarification	Accept
4.8(d)	Inclusion of the words “ <i>or where an Access Application is received by Aurizon Network in respect of Access Rights which can only be provided by an Expansion</i> ”.	Clarifies that the process in clause 4.8(d) also applies where an Access Application is received by Aurizon Network in respect of Access Rights which can only be provided by an Expansion.	Clarification	Accept
4.10.1(c)(iii)	Removed the words “ <i>under clause 4.10.1(a)</i> ” and replaced with “ <i>to take over the Customer Access Seeker’s Access Application and replace the Customer Access Seeker as the Access Seeker for that Access Application</i> ”.	Clarifies that at any time during the negotiation of Access Rights a Customer Access Seeker may nominate a Railway Operator to take over the Customer Access Seeker’s Access Application and replace the Customer Access Seeker as the Access Seeker for that Access Application.	Clarification	Accept

Part 6: Pricing Principles

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
6.13.1	Modified to align with revised definition of “Access Conditions”.	Ensure only material Access Conditions (or those the contracting Access Seeker believes to be material) are the subject of review process by QCA. Reflects the primacy of commercial agreements.	Workability	Not acceptable Refer to the QRC’s Access Conditions submission
6.13.2	Removal of requirement to prepare Access Conditions report, and inclusion of simplified approval process.	As described in Aurizon Network’s policy position in relation to Access Conditions, approval process redesigned to recognize revised definition of Access Conditions and to better reflect the range of transactions which could constitute Access Conditions. Allows for a more flexible and timely approach to approval, while retaining approval role for QCA. Aligns test to be applied by QCA, with the requirements of the QCA Act.	Power, workability	Not acceptable Refer to the QRC’s Access Conditions submission
6.13.3	Refinement of prohibited access conditions.	Removal of strict prohibition on “varied WACC” Access Conditions, as there is no basis for such prohibition, and the definition of Access Conditions now more accurately captures the transactions or variations which would require QCA consideration and approval.	Power, workability	Not acceptable Refer to the QRC’s Access Conditions submission

Part 7: Available Capacity Allocation and Management

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
7.4.2(h)(iv)	Inclusion of the word “ <i>the</i> ” before “ <i>Transferee’s nominated Access Agreement</i> ”	Correcting grammar.	Minor clarification	Accept
7.4.2(k)	Inclusion of the words “ <i>or clause Error! Reference source not found. applies</i> ”	Clarifies that, in addition to short term transfers that take place under clauses 7.4.2(f) or 7.4.2(g), where a transfer of access rights takes place in accordance with Part 4 of the Access Undertaking the Nominated Access Rights must be removed from the Access Agreement that was entered into first in time and added to the Access Agreement that was entered into last in time.	Workability	Accept
7.4.2(s)	Deletion of the words “ <i>lesser of or the remainder of the term of the relevant Access Agreement or the</i> ”	Corrected a drafting error in UT4. The Transfer Fee is calculated based on the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the aggregate TOP Charges for the relevant Train Service Types that would have been payable for the Transfer Period assuming the Nominated Access Rights were not transferred; and the Train Services were not operated for the Transferor for a reason other than Aurizon Network Cause	Workability	Accept

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
7.4.3(e)	Inclusion of the words “Subject to clause 7.4.3(k)”	Clarifies that the requirement to calculate and pay a Relinquishment Fee must be read subject to clause 7.4.3(k). This clause provides that no Relinquishment Fee is payable where Aurizon Network reduces the Nominated Monthly Train Services of an Access Holder under clauses 7.3.4(f) or clause 7.3.4(i).	Workability	Not acceptable Refer to the QRC’s payloads and relinquishments submission
7.4.3(f) - 7.3.4(k)	Inclusion of new clauses to describe the process by which Access Holders may reduce their Nominated Monthly Trains Services in certain circumstances under the Standard Access Agreement and Standard Train Operations Deed	These clauses have been included to reflect the inclusion of the proposed Relinquishment Provisions in the Standard Access Agreement and Standard Train Operations Deed whilst the standard resumption provisions that apply to all access agreements are included in Clause 7.4.3 of the Access Undertaking. The Relinquishment Provisions provide for how Train Paths in a Standard Access Agreement may be reduced for three distinct reasons: <ol style="list-style-type: none"> 1 where an Operator consistently over a 12 month period exceeds the Maximum Payload; 2 where an Access Holder requests an increase to its Maximum Payload; and 3 where an increase to Maximum Payload is the preferred option to increase capacity. 	Drafting	Not acceptable Refer to the QRC’s payloads and relinquishments submission
7.4.3(f)	Renumbered to “7.4.3(l)” after the addition of 7.4.3(f) - 7.3.4(k)	Correction section numbering	Minor	Accept

Part 7A: Capacity

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
7A.1(b)	Inclusion of the words <i>‘to a reasonable degree’</i> and <i>‘to the extent reasonable’</i>	Aurizon Network should not be required to comply with an absolute obligation to participate in Supply Chain coordination. A reasonable endeavours obligation is sufficient.	Drafting	Accept
7A.1(c)	Removed the reference to a Baseline Capacity Assessment	As the Baseline Capacity Assessment is being carried out under UT4, no Baseline Capacity Assessment will be required under UT5.	Alignment	Accept, so long as Baseline Capacity Assessment is undertaken under UT4
7A.3(a)	Inclusion of the words “to the extent it is reasonable to do so”	Amendments reflect the policy that involvement by Aurizon Network in Supply Chain coordination should not be mandatory.	Drafting	Accept
7A.3(a)(i) and 7A.3(a)(ii)	Removed “in respect of reasonable requests”	Amended due to the amendment made to clause 7A.3(a) above.	Drafting	Accept
7A.3(b)	Add “if it has capacity to do so and believes the request is reasonable” after “must”	Amendments reflect the policy that involvement by Aurizon Network in Supply Chain coordination should not be mandatory and should only occur where Aurizon Network has the capacity to do so and requests are reasonable.	Drafting	Accept

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
7A.3(c)	Removed the words “act in a way that”. Amended to clarify Aurizon Network’s obligations when dealing with Supply Chains	Clarifies Aurizon Network’s obligations in relation to Supply Chains and links to its obligations under Part 2.	Clarification	Accept
7A.3(d)	Amended drafting to reflect Aurizon Network’s policy position in relation to how requests for operational changes to create capacity will be dealt with	Removed the absolute obligation to undertake operational changes but includes the obligation to provide reasons for not implementing operational changes which have been identified by a particular Supply Chain Group, as more particularly described in section 5 of the Policy Submission.	Drafting	Not acceptable Refer to the QRC’s Supply Chain submission
7A.3(e)(ii)	Deleted the old clause 7A.3(e)(ii) and re-numbered clause accordingly.	Consequential change following the amendment to clause 7A.3(d).	Clarification	Not acceptable Refer to the QRC’s Supply Chain submission
7A.4.1	Deleted entire clause.	As the Baseline Capacity Assessment is being carried out under UT4, no Baseline Capacity Assessment will be required under UT5.	Clarification	Accept, so long as Baseline Capacity Assessment is undertaken under UT4
7A.4.2(a)(i)	Minor drafting amendments	Amended drafting to reflect that the Baseline Capacity Assessment is being carried out under UT4.	Clarification	Accept, so long as Baseline Capacity Assessment is undertaken under UT4

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
7A.4.2(b)(i) and 7A.4.2(b)(iii)	Minor drafting amendments	Amended to clarify that Aurizon Network must consider the outcomes of any consultation, not the consultation itself.	Workability	Accept
7A.4.2(b)(vi)	Deleted reference to the Baseline Capacity Assessment Report	As the Baseline Capacity Assessment is being carried out under UT4, the reference to the Baseline Capacity Assessment Report is no longer relevant.	Clarification	Accept, so long as Baseline Capacity Assessment is undertaken under UT4
7A.4.2(d)	Drafting changes to reflect policy position that the expert review will be an audit.	Please refer to section 8 of the Policy Submission in relation to the process for Capacity Review.	Drafting	Not acceptable Refer to the QRC’s capacity assessment submission
7A.4.2(d)(iii)	Deleted reference to parts of the Baseline Capacity Assessment	As the Baseline Capacity Assessment is being carried out under UT4, the reference to this is no longer relevant.	Clarification	Accept, so long as Baseline Capacity Assessment is undertaken under UT4
7A.4.2(d)(v)	Amendment in relation to the provision of the Expert’s final audit report	This amendment is consistent to the amendments made, at the QCA’s request, to various parts of the UT4 Access Undertaking where confidential information in relation to Access Holders is being provided.	Alignment	Accept

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
7A.4.2(e)	Inclusion of an obligation for Aurizon Network to respond to the reasonable recommendations of the auditor within specified timeframes.	Clarifies the process when Aurizon Network responds to the reasonable recommendations of the auditor.	Clarification; drafting	Accept, subject to AN agreeing to provide notice to Access Holders where it intends to enter into a new Access Agreement where the independent expert determined there is insufficient capacity Refer to the QRC’s capacity assessment submission
7A.4.2(f)	Inclusion of an obligation to amend the Preliminary Capacity Assessment Report to the extent required to take account of any modifications to the modelling process considered reasonable under clause 7A.4.1(e)	Clarifies the process.	Clarification; drafting	Accept, subject to the above Refer to the QRC’s capacity assessment submission

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
7A.4.2(j)	Included reference to the Approval Date of the 2016 Undertaking and fixed numbering.	To clarify that the confidentiality obligations in relation to the Condition Based Assessment are split between access holders who hold pre-UT4 access agreements and access holders who hold post UT4 access agreements.	Clarification	Accept
7A.4.3(a) and (b)	Inclusion of drafting amendments because the Baseline Capacity Assessment is being carried out under UT4 and it is necessary to clarify how a capacity deficit is appropriately determined initially and every year thereafter.	<p>Aurizon Network has clarified the process to be followed where:</p> <ol style="list-style-type: none"> 1 Aurizon Network has not published a Capacity Assessment Report under UT5, a capacity deficit has been identified under UT4 and Aurizon Network has not completed all consequent actions required prior to UT5 being approved. In that circumstance, Aurizon Network undertakes to complete the required actions under the UT5 process; and 2 the most recent Capacity Assessment Report under UT5 reveals that there is a deficit in the Capacity for that Coal System. <p>This clause also clarifies what constitutes a preliminary report in respect of the Capacity Deficit (to be provided within 20 Business Days of the Publication Date) and a detailed report in respect of the Capacity Deficit (to be provided within 6 months of the Publication Date).</p>	Workability; drafting	Accept, so long as Baseline Capacity Assessment undertaken under UT4
7A.4.3(c)	Removed “ <i>its analysis of a Capacity Deficit</i> ” and replaced it with “ <i>the report specified in clause 7A.4.3(a)(v) or 7A.4.3(b)(iii) (as applicable)</i> ”	Clarification.	Clarification	Accept

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
7A.4.3(c)(i)(A)	<p>Removed “<i>the assumptions which it utilises in the</i>”.</p> <p>Inclusion of the words “<i>practices, as set out in the assumptions used in the applicable Capacity assessment, in respect</i>”.</p> <p>Removed “<i>identify</i>” replaced it with “<i>ascertain whether</i>”.</p> <p>Removed “<i>assumptions</i>” and replaced it with “<i>practices</i>”</p>	<p>Clarified that Aurizon Network’s obligation is to undertake a review of the practices used by it, as set out in the assumptions, rather than just a review of the assumptions used in the applicable Capacity assessment.</p>	Clarification; Workability	Accept
7A.4.3(c)(i)(B) and 7A.4.3 (c)(ii)	<p>Removed “<i>Supply Chain Groups and Terminal operators</i>”</p>	<p>Amended the absolute obligation for Aurizon Network to consult with Supply Chain Groups and Terminal operators so that Aurizon Network must use reasonable endeavours to do so. An absolute obligation should only arise in relation to Access Holders, Customers and, if applicable, Train Operators.</p>	Drafting	Accept

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
7A.4.3(e)	Removed reference to affected Access Seekers in this clause.	A Deficit is only relevant to Access Holders who hold Access Rights, not an Access Seeker whose Access Application is governed by Part 4 and Part 8 (to the extent an Expansion is required).	Drafting	Not acceptable QRC proposes to reinstate UT4 wording A capacity deficit may also affect Access Seekers, for example, if the Expansion required to rectify that deficit is undertaken in conjunction with a broader Expansion. This clause is already limited to “affected” Access Seekers
7A.4.3(e)(ii)	Removed “ <i>in good faith</i> ” and replaced it with “ <i>act reasonably</i> ”. Removed “ <i>individually and as required</i> ”. Removed “ <i>(but any dispute regarding who will fund or proportion will be determined in accordance with Part 11 only if all parties agree to the Dispute being resolved in accordance with part 11)</i> ”	Aurizon Network accepts an obligation to act reasonably and negotiate with affected Access Holders. It does not accept any dispute about who will fund being resolved in accordance with Part 11 of the Access Undertaking. Please refer to our policy submission in relation to Part 11 (Disputes).	Drafting	Not acceptable QRC proposes to reinstate UT4 wording Refer to the QRC’s disputes submission

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
7A.4.3 (f)(ii)(A) and (B)	Included reference to the Approval Date of the 2016 Undertaking and fixed numbering.	To clarify that the confidentiality obligations in relation to the Condition Based Assessment are split between access holders who hold pre-UT4 access agreements and access holders who hold post UT4 access agreements.	Clarification	Accept
7A.4.4 and 7A.4.4 (a)	Drafting amendments included to remove the QCA as an Appointing Party. Drafting changes to reflect policy position that the expert review will be an audit.	This clause has been modified to reflect that there are no Baseline Capacity Assessments under UT5 and therefore only Aurizon Network engages the expert. Please refer to section 8 of the Policy Submission in relation to the process for Capacity Review.	Clarification	Accept removing QCA as Appointing Party Other amendments not acceptable Refer to the QRC’s capacity assessment submission
7A.4.4 (b)	Inclusion of a new clause providing clear direction of the scope of the audit.	Please refer to section 8 of the Policy Submission in relation to the process for Capacity Review.	Drafting	Not acceptable Refer to the QRC’s capacity assessment submission
7A.4.4(c)	Deleted the ability of the expert to develop assumptions	Due to the expert review now being an audit, the auditor can opine on the consistency of Aurizon Network’s assumptions with access agreements and relevant laws, but does not develop assumptions.	Alignment	Not acceptable Refer to the QRC’s capacity assessment submission

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
7A.4.4(d)(i)	Replace reference to “assessment” with “audit”.	This is due to the fact that the expert review is now an audit.	Alignment	Not acceptable Refer to the QRC’s capacity assessment submission
7A.4.4(d)(ii)	Delete “capacity model”, add replace with “modelling process” and delete “methodology”	This term better describes the elements of the modelling.	Clarification	Not acceptable Refer to the QRC’s capacity assessment submission
7A.5(d)	Removed reference to an Alternative Baseline Capacity Assessment Report	This clause has been modified to reflect that there are no Baseline Capacity Assessments under UT5.	Alignment	Accept, so long as Baseline Capacity Assessment undertaken under UT4

Part 8: Network Development and Expansions

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
8.2.2	Removed “or proposed Expansion Funder” and replaced with “(to the extent that such proposed Pre-feasibility Funder or proposed Feasibility Funder is an Access Seeker, Customer or Train Operator)”	Clarifies the right of parties to dispute, and aligns with clarifications to Part 11.	Workability	Not acceptable Refer to the QRC’s disputes submission
8.3.2(c)(ii)	Removed “an expert” and replaced with “QCA”.	Aligns with dispute provisions; ensures QCA role, clarity and certainty.	Workability	Accept
8.7.1(a)	Removed “ <i>Subject to this clause 8.7 and clause 8.8</i> ” and replaced with “ <i>If Aurizon Network provides notice under clause 8.7.1(c)(ii) that it is not willing to fund an Expansion, or is willing to do so only with Access Condition, then</i> ”	Provides Aurizon Network with the ability to elect to fund on regulatory terms, and provides for finite timeframe for doing so.	Power; workability	Not acceptable Refer to the QRC’s right to fund submission
8.7.1(c)-(f)	Drafting changes to reflect Aurizon Network’s obligation to issue indicative and binding funding notices	Aligns with Aurizon Network’s right to fund an expansion on regulatory terms, and sets out a clear process for Aurizon to provide clear notification of its funding choice, and of the resulting processes flowing from these notifications.	Power; workability	Not acceptable Refer to the QRC’s right to fund submission

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
8.7.1(j)	Amended “must not have regard to” to “may consider” and added “only to the extent permitted by the Act and this Undertaking”	More clearly and accurately reflects Aurizon Network obligations under QCA Act.	Power	Not acceptable Refer to the QRC’s right to fund submission
8.8.3(a) – (f) (Development and review of the SUFA)	Amendments to reflect Aurizon Network’s policy submission in relation to the development and review of the SUFA	Changes are to: <ul style="list-style-type: none"> recognise the continuing development of the SUFA in UT4; simplify the process for the lodgement, consideration and review of the UT5 SUFA; accurately reflect the provisions of the QCA Act which relate to the consideration of voluntary DAAUs and the initiation of compulsory DAAUs; and include a more workable and efficient process for the review of the SUFA, in order to ensure reviews are only conducted when and to the extent required. 	Power, drafting, workability, efficiency	Not acceptable (except for 8.8.3(a)) Refer to the QRC’s SUFA submission
8.9.3 Capacity shortfall)	Amendments to reflect Aurizon Network’s policy submission in relation to capacity shortfalls	Includes a process for consultation with affected access holders to determine the most appropriate response to the shortfall. This amendment maximizes the opportunity for a flexible and innovative approach to expansions and capacity management, and reduces incentives to “gold plate”.	Power, workability	Not acceptable Refer to the QRC’s capacity shortfall submission

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
8.9.4	Deletion of entire clause in relation to the funding of a Shortfall Expansion to reflect Aurizon Network’s policy submission in relation to capacity shortfalls	This clause is redundant as it has been replaced by the process now included in clause 8.9.3.	Power, workability	Not acceptable Refer to the QRC’s capacity shortfall submission

Part 10: Reporting, Compliance and Audits

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
10.3.2	Amended Aurizon Network’s obligation in relation to the submission of a draft format of the quarterly maintenance report.	The obligation of Aurizon Network to submit a draft format of the quarterly maintenance report should only apply if the QCA has not already approved the quarterly maintenance report under UT4.	Workability	Accept
10.3.4(k),	Amended reference to 2010 Undertaking to 2016 Undertaking.	To reflect that this is a UT5 Access Undertaking so the reference to UT3 is outdated.	Workability	Accept
10.4.3(j)(ii)	Included reference to the Approval Date of the 2016 Undertaking and fixed numbering.	To clarify that the confidentiality obligations in relation to the Condition Based Assessment are split between access holders who hold pre-UT4 access agreements and access holders who hold post UT4 access agreements.	Clarification	Accept

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
10.4.3(a)	Amended the timing of Aurizon Network’s obligation to provide a condition based assessment of the Rail Infrastructure from 31 March 2017 to 3 months prior to expiry of UT5, or as otherwise agreed with the QCA.	Clarification of timing.	Workability	Accept

Part 11: Disputes

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
11.1.1(a) and (b)	<p>Amended so that the only disputes that the dispute resolution process in Part 11 can apply to are disputes between Aurizon Network (as an Access Provider) and:</p> <ul style="list-style-type: none"> in respect of the negotiation of a Standard Access Agreement or a User Funding Agreement, an Access Seeker that is a proposed party to it; in respect of the negotiation of a Standard Train Operations Deed, the proposed Train Operator; in respect of the negotiation of any other Standard Agreement, an Access Seeker, a Customer or a Train Operator that is a proposed party to it; and in all other respects relating to the negotiation of access, an Access Seeker or a Prospective Access Seeker 	<p>Please refer to the section entitled “Dispute Resolution Process” in Aurizon Network’s Policy Submission and specifically the explanation under the heading “Parties who may commence a dispute.”</p>	Drafting	<p>Not acceptable</p> <p>Refer to the QRC’s disputes submission</p>
Old 11.1.1(d)	Deletion of entire old clause 11.1.1(d)	<p>The only disputes that the dispute resolution process in Part 11 should apply to are those set out in clause 11.1.1(a) - see above.</p>	Clarification	<p>Not acceptable</p> <p>Refer to the QRC’s disputes submission</p>

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
New 11.1.1(d)	Amended drafting to provide that the invitation to the Train Operator or the Access Seeker to join a dispute is not mandatory.	The drafting provides that either Aurizon Network or the other party to the original dispute (each an Inviting Party) may invite the Train Operator or the Access Seeker as applicable (each an Invited Party) to participate in the dispute if the Inviting Party is of the reasonable opinion that the dispute, or the outcome or consequences of the dispute, may be relevant to the Invited Party.	Drafting	Not acceptable Refer to the QRC’s disputes submission
11.1.1(f)	Inclusion of a new clause 11.1.1(f) which provides that “Section 122 of the Act will apply to all Disputes to which this Part 11 applies.”	Section 122 of the QCA Act allows the QCA to not start or at any time end an arbitration of an access dispute if it considers that the giving of the access dispute notice was vexatious, trivial, misconceived or lacking in substance, or the party who gave the access dispute notice has not engaged in negotiations for an access agreement in good faith.	Drafting	Not acceptable Refer to the QRC’s disputes submission
11.1.1(g)	Deleted entire clause requiring the QCA to be kept regularly informed of a dispute.	It is not necessary for the QCA to be kept regularly informed of a dispute, and to be provided with copies of all subsequent notices and formal correspondence in relation to a dispute. It is only where a dispute cannot be resolved between the parties that the QCA should have involvement.	Drafting	Not acceptable Refer to the QRC’s disputes submission

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
11.1.4(b)	Removal of the right of the QCA to appoint an expert where the parties cannot agree on the expert’s identity and inclusion of an appropriate process to do so.	Where the parties to a dispute cannot agree on the expert, the expert should be selected not by the QCA but rather by a recognised independent nominating authority such as the President of the Institute of Chartered Accountants in Australia (for financial matters), the President of the Resolution Institute in Australia (for technical matters) or the President of the Queensland Law Society (for all other matters). This is consistent with the expert resolution provisions which are contained in the Standard Access Agreement.	Drafting	Accept, provided that the rest of Part 11 is reinstated to UT4 Refer to the QRC’s disputes submission
11.1.4(b)(v)(F) and 11.1.4(b)(v)(G)	Included drafting to clarify that the expert’s determination must be consistent with the QCA Act, Aurizon Network’s Safety Management System, its obligations arising under the <i>Transport (Rail Safety) Act 2010</i> (Qld) and Division 5, Part 5 of the QCA Act.	Any expert who is appointed in relation to the determination of a dispute should be required to make a determination in accordance with Division 5, Part 5 of the QCA Act. That is, the expert should be subject to the same limitations and requirements as would apply to the QCA under Division 5, Part 5 of the QCA Act.	Drafting	Not acceptable Refer to the QRC’s disputes submission
11.1.4(h)	Included a right to refer the matter to the QCA for determination if a party believes that there has been fraud or manifest error or that the expert has not complied with clause 11.1.4(e) and made consequential drafting changes.	This has been included to provide a mechanism for the QCA to determine whether or not the expert has complied with clause 11.1.4(e) (independence and impartiality provision).	Clarification	Accept, provided that the rest of Part 11 is reinstated to UT4 Refer to the QRC’s disputes submission

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
11.1.5(c)	Inclusion of a new clause which provides that where a Dispute is referred to the QCA for determination under this Undertaking, then any determination of that Dispute by the QCA must occur subject to, and in accordance with, Division 5 of Part 5 of the QCA Act and the deletion of the old clauses 11.1.15(d)-(i) inclusive.	As the QCA only has power to resolve disputes to which Division 5, Part 5 of the QCA Act applies, provisions that purport to permit the QCA to determine disputes in circumstances where Division 5, Part 5 of the QCA Act does not apply are beyond power and have therefore not been included.	Drafting	Not acceptable Refer to the QRC’s disputes submission
11.1.5(d)	Included the words nothing in this Undertaking is intended to derogate from section 119 of the Act	Language has been moved from previously deleted clause above it.	Clarification	Not acceptable Refer to the QRC’s disputes submission
11.1.5(e)	Included drafting to provide that when the QCA is acting in its dispute resolution capacity, an access determination should not be inconsistent with any general safety duties, obligations or requirements under applicable rail, occupational or electrical safety legislation that apply to Aurizon Network. (including Aurizon Network’s obligations to comply with its regulator approved SMS).	This limitation on the QCA’s dispute resolution powers is required so as to ensure that Aurizon Network may continue to comply with its safety obligations under law. Please refer to the section entitled “Dispute Resolution Process” in Aurizon Network’s Policy Submission and specifically the explanation under the heading “Disputes impacting on safety.”	Drafting	Accept, provided that the rest of Part 11 is reinstated to UT4 Refer to the QRC’s disputes submission
11.1.6(a)	Minor amendments made to reflect the fact that there may be more than two parties to a dispute.	Clarification.	Clarification	Accept

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
11.1.6(b)(i)	Inclusion of the words “unless....the QCA determines that the expert’s determination is not binding under clause 11.1.4(h); or (b)” and clarification that any challenge to a determination by the QCA must be successful	Amendment is consistent with clause 11.1.4(h) so that the decision maker’s determination is final and binding upon the parties to the Dispute who must comply with the determination of the decision maker, unless (a) in the case of an expert, the QCA determines that the expert’s determination is not binding under clause 11.1.4(h); or (b) a determination by the QCA is successfully challenged on the basis of a breach of a requirement in clause 11.2.	Workability	Accept
11.1.7	Deleted entire clause relating to how Part 11 applies to Pat 8 Disputes.	Consistent with the amendments made to clause 11.1.1(a), it is clear that Part 11 deals with any disputes in respect of the negotiation of a Standard User Funding Agreement must be between Aurizon Network (as an Access Provider) and an Access Seeker that is a proposed party to it.	Clarification	Not acceptable Refer to the QRC’s disputes submission

Part 12: Definitions and Interpretation

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
12.1	New definition of 2016 Undertaking	Given that this is UT5, a definition of the UT4 Access Undertaking is required.	Clarification	Accept

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
12.1	Amended the definition of Access Conditions	Definition amended to ensure only access conditions which are of a material nature or are otherwise deemed by the contracting Access Seeker to be material, are subject to QCA approval, for the reasons set out in Aurizon Network’s policy submission.	Drafting; Workability	Not acceptable Refer to the QRC’s Access Conditions submission
12.1	Amendments to the definitions of Alternative Baseline Capacity Assessment, Alternative Baseline Capacity Assessment Report, Baseline Capacity Assessment and Baseline Capacity Assessment Report	To clarify that these documents, if any, would be published by the QCA under UT4.	Clarification	Accept, so long as undertaken under UT4
12.1	Amendments to the definition of Applicable Undertaking, Approved Undertaking and System Rules to include reference to UT4	Clarification.	Clarification	Accept
12.1	Included new definition for Approval Date of the 2016 Undertaking	To clarify that the 2016 Access Undertaking was approved on to 11 October 2016.	Clarification	Accept
12.1	Included a new definition of Approved WACC	Please refer to our Weighted Average Cost of Capital Submission for a detailed Explanation of the rationale for this.	Policy	Not acceptable Refer to the QRC’s pricing submission

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
12.1	Included a new definition of Average Annual Payload, Maximum Payload, Nominated Monthly Operational Rights, Nominated Monthly Train Services, Payload, Surplus Access Rights	These terms are used in clause 7.4.4 of Part 7 and the Standard Access Agreement and the Standard Train Operations Deed.	Clarification	Refer to the QRC’s changes in payloads submission
12.1	Amended definition of Capacity Deficit	To reflect the drafting changes to clause 7.7.3.	Clarification	Accept
12.1	Amended definition of Commencing Date to 1 July 2017	This date is the start of the UT5 regulatory period.	Clarification	Accept
12.1	Included a new definition of Publication Date	This term is used in clause 7.7.3.	Clarification	Accept
12.1	Amended the definition of Supply Chain Group	To ensure that a Supply Chain Group is one that is both set up for the purposes of Supply Chain coordination AND which has the support of sufficient Supply Chain participants to effectively perform that function.	Clarification	Part accepted and part not accepted
12.1	Amended the definition of Terminating Date	Drafting included to ensure consistency with the timeframe or continuation of any applicable declaration or replacement declaration as the declaration of the declared service will expire on 8 September 2020 (ss 248 and 250(2) of the QCA Act).	Workability	Accept
12.4	Amendments to the transitional provisions to include reference to UT4 instead of UT3.	Clarification.	Clarification	Accept

Schedule E: Regulatory Asset Base

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
1.1(a)	Deletion of the words <i>“CPI between the June Quarter of the previous Year and the June Quarter for that Year”</i> and replacing them with <i>“forecast CPI value that was used for the purpose of determining the relevant Reference Tariff for the relevant year”</i>	Amended to reflect the proposed change in the inflation rate used to inflate the RAB. This change is consistent with clause 4.3(c)(ii)(B) of Schedule F.	Workability; alignment	Not acceptable
1.1(c)	Inclusion of specific treatment for asset disposals resulting from Expansions or maintenance work	As described in policy section, to ensure the disposal provisions do not inadvertently – by removing the entire value of replaced assets from the RAB - penalize Aurizon Network from carrying out Expansions or maintenance work. The revised mechanism allows reduction of RAB only by proceeds of the sale of the removed assets. As a result, the footnote to clause 1.1 is no longer required.	Workability; clarification	Accept, subject to minor clarifications reflected in the QRC’s mark-up
1.1	Removal of the words <i>“For the purposes of this Schedule E, “Dispose” excludes any unsold asset that is replaced (in whole or in part) by an Expansion or Maintenance Work on the Rail Infrastructure.”</i>	This is no longer used as a defined term as the word has an ordinary and general meaning.	Clarification	Accept, subject to minor clarifications reflected in the QRC’s mark-up

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
1.2(b)(i)	Inclusion of minor clarification to ensure any RAB reduction can only be to the extent of any misleading or inaccurate information. Concept of inadequate information removed.	Any RAB reduction should only ever be to the extent of any overstatement of the RAB due to the provision of misleading or inaccurate information. Inadequate information is no longer required as a trigger, as Schedule E includes detailed information provision requirements and the ability for the QCA to require additional information.	Clarification	Accept
1.2(b)(ii)(B)	Inclusion of minor clarification to ensure any RAB reduction can only be to the extent necessary to address any demand-based pricing “spiral”	As the QCA recognized in its UT4 final decision, clause 1.2(b)(ii) of Schedule E is designed to operate as a “last resort” to rebalance pricing in order to avoid further demand reductions and pricing increases. However, the clause should be used only to the extent required to address this situation and not – for example – to remove the RAB entirely. To do so would be contrary to the legitimate business interests of Aurizon Network, and to the public interest in facilitating confidence in investment in long-term infrastructure like rail.	Clarification	Accept
1.2(b)(iii)(C)	Inclusion of minor clarification to ensure any RAB reduction can only be to the extent of any deterioration in the rail infrastructure	For the same reason as described above for 1.2(b)(i) – RAB reduction should not extend beyond what is necessary to address the deterioration in the asset. To do more would be contrary to the legitimate business interests of Aurizon Network, and to the public interest in facilitating confidence in investment in long-term infrastructure like rail.	Clarification	Accept

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
4.1(a)	Inclusion of minor qualification to ensure the voting process recognizes the binding nature of the voting in clause 2.1(f) of Schedule E	<p>This clarifies the interrelationship between the relevant clauses and that a positive vote should create an obligation for Aurizon Network to seek approval of capital expenditure under clause 2.1(f) of Schedule E.</p> <p>During the finalisation of UT4, the QRC requested we include this clarification in a future DAAU to amend UT4: QRC submission dated July 2016 on Aurizon Network’s Amended 2014 Draft Access Undertaking, available at:</p> <p>http://www.qca.org.au/getattachment/086f7710-e824-495a-b8aae0fbd869ae10/QRC-submission.aspx</p> <p>For consistency, we have also incorporated this change in UT5.</p>	Clarification	Accept

Schedule F: Reference Tariff

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
7.2; 8.2; 9.2; 10.2; 11.2	Reference Tariffs	Updated Reference Tariffs for the UT5 regulatory period	Alignment	Not acceptable, to be updated to reflect final approved tariffs

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
7.3; 8.3; 9.3; 10.3; 11.3	GTK Forecast and Allowable Revenues	Updated GTK Forecast and Allowable Revenues for the UT5 regulatory period	Alignment	Not acceptable, except GTK Forecast which is acceptable subject to QCA review
12	Monthly system forecast	<p>Updated GTK Forecast on a monthly basis for the Blackwater System and Newlands System, which have Access Agreements executed or renewed during the term of the 2001 Access Undertaking (UT1).</p> <p>Clause 12 does not apply in relation to the Goonyella System and the Moura System as there are no longer any Access Agreements, or New Access Agreements where the relevant Old Access Agreement was, executed or renewed during the term of UT1.</p>	Monthly GTK Forecast	Acceptable subject to QCA review

Standard Access Agreement

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
1.1 Definitions relating to the Reduction of Nominated Monthly Train Services if Maximum Payload Exceeded (<i>new Clause 10</i>)	Inclusion of the following definitions: <ul style="list-style-type: none"> • Affected Train Service Type • Assessment Date • Average Annual Payload • Defaulting Operator • Maximum Payload • New Train Service Type • Non-Defaulting Operator • Original Train Service Type • Reduction Notice • Relevant Rollingstock Configuration • Revised Maximum Payload • Revised Nominal Payload • Revised Nominated Monthly Train Services • Split Train Service Type 	These definitions have been included as they are terms used in the new clause 10 of the Access Agreement. Please refer to our comments in relation to clause 10 of the Access Agreement below.	Drafting	Refer to the QRC’s changes in payloads submission

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
1.1 Definitions relating to the Reduction of Nominated Monthly Train Services (new Clause 11)	Inclusion of the following definitions: <ul style="list-style-type: none"> • Nominated Access Rights • Notice of Enquiry • Revised Nominal Payload • Revised Nominated Monthly Train Services • Surplus Access Rights • Variation Request Notice 	These definitions have been included as they are terms used in the new clause 11 of the Access Agreement. Please refer to our comments in relation to clause 11 of the Access Agreement below.	Drafting	Refer to the QRC’s changes in payloads submission
1.1	Inclusion of a new definition of Effective Date	This term is used in clause 12.	Clarification	Refer to the QRC’s changes in payloads submission
1.1.	Deletion of the defined term “Nominated Unloading Facility”	This term is used in clause 15.2 of the Access Agreement.	Clarification	Accept
1.1	Inclusion of a definition of Relinquishment Fee.	This term is used in clause 15.2 of the Access Agreement.	Clarification	Refer to the QRC’s changes in payloads submission

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
New Clause	Inclusion of a new clause in relation to the Reduction of Nominated Monthly Train Services if Maximum Payload exceeded	<p>Please refer to section 1 of Aurizon Network’s Policy Submission in relation to Relinquishment Processes to support productivity improvements for general commentary.</p> <p>These provisions are designed to allow Aurizon Network to reduce an Access Holder’s Nominated Monthly Train Services where an Operator consistently over a 12 month period exceeds the Maximum Payload for those Train Services.</p>	Drafting	Not acceptable Refer to the QRC’s changes in payloads submission

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
New Clause 11	Inclusion of a new clause in relation to the Reduction of Nominated Monthly Train Services	<p>Please refer to section 1 of Aurizon Network’s Policy Submission in relation to Relinquishment Processes to support productivity improvements for general commentary.</p> <p>These provisions are designed to allow Access Holders to request an increase in Maximum Payload (to enable longer trains to be used as a productivity improvement) and accordingly reduce Train Paths under the Standard Access Agreement and Standard Train Operations Deed.</p> <p>The drafting in clause 11.2(a), specifically the amount of any fee that will be payable by an Access Holder when train paths are reduced, requires further consideration with stakeholders to avoid socialisation of costs among other system users. In its initial form, this mechanism contemplates that where Train Paths are relinquished under these provisions, the Access Holder will pay a fee equal to the AT2 component of access charges that would have been payable in relation to the Train Paths that have been relinquished. Once the mechanism has been fully worked through, Aurizon Network will provide additional drafting in relation to the appropriate fee that will be payable.</p>	Drafting	Not acceptable Refer to the QRC’s changes in payloads submission
New Clause 12	Inclusion of a new clause 12 in relation to the reduction of Nominated Monthly Train Services if the Nominal Payload of an Operator is increased.	<p>Please refer to section 1 of Aurizon Network’s Policy Submission in relation to Relinquishment Processes to support productivity improvements for general commentary.</p> <p>These provisions are designed to allow both Aurizon Network and Access Holders to choose to reduce Train Paths to create additional capacity in the most cost effective way.</p>	Drafting	Not acceptable Refer to the QRC’s changes in payloads submission

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
Schedule 7 – Pro Forma Access Interface Deed	Inclusion of a drafting note in clause 3 (Warranties by the Customer) which provides that <i>“Where the Customer is unable to give each of the following warranties, (because the Customer does not own the mine, does not own the coal, or is not entitled to the proceeds of sale) Aurizon Network intends to enter into individual deeds with relevant parties which can give these warranties, where each deed will include clauses from the Access Interface Deed relevant to that party.”</i>	During the finalisation of UT4, the QRC requested that we include this drafting note for clarity in a future DAAU to amend UT4 – see QRC submission dated July 2016 on Aurizon Network’s Amended 2014 Draft Access Undertaking, available at: http://www.qca.org.au/getattachment/086f7710-e824-495a-b8aae0fbd869ae10/QRC-submission.aspx For consistency, we have also incorporated this change in UT5.	Clarification	Accept

Standard Train Operations Deed

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
1.1	Inclusion of the following definitions: <ul style="list-style-type: none"> • Authorised Parking • Category 1 Reduced Operational Rights • Category 2 Reduced Operational Rights • Chargee • Chargor • Disputed Aspect • Former Interface Risk Provisions • Maximum Gross Mass • New Interface Risk Provisions • Non-Charging Party • Reference Tariff • Reference Tariff Provisions • Supplier 	These are defined terms that are used in the Train Operations Deed but had not been defined in clause 1.1.	Clarification	Accept

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
1.1 Definition relating to the Reduction of Nominated Monthly Train Services if Maximum Payload Exceeded (<i>new Clause 11</i>)	Inclusion of a definition for Average Annual Payload	This definition has been included as it is used in the new clause 11 of the Train Operations Deed. Please refer to our comments in relation to clause 11 of the Train Operations Deed below.		Refer to the QRC’s changes in payloads submission
1.1 Definitions relating to the reduction of Nominated Monthly Train Services if the Nominal Payload of an Operator is increased (<i>new clause 12</i>)	Inclusion of the following definitions: <ul style="list-style-type: none"> • Foreseeable Costs and Detriments • Notice of Intention to Increase Nominal Payload 	These definitions have been included as they are terms used in the new clause 12 of the Train Operations Deed. Please refer to our comments in relation to clause 12 of the Train Operations Deed below.		Refer to the QRC’s changes in payloads submission
1.1	Amended definition of Force Majeure Event to delete the word “reasonable” and replace it with “reasonably”.	Correcting grammatical error.	Clarification	Accept

Clause	Aurizon Network Amendment	Aurizon Network Rationale	Aurizon Network Change type	QRC Position
1.1	Amended the definition of Noise Code to refer to the <i>CQCN Noise Management Guideline</i>	The QR Code of Practice has been repealed. It is now the CQCN Noise Management Guideline.		Accept
New clause 11	Inclusion of a new clause in relation to the Reduction of Nominated Monthly Train Services if Maximum Payload exceeded	<p>Please refer to section 1 of Aurizon Network’s Policy Submission in relation to Relinquishment Processes to support productivity improvements for general commentary.</p> <p>These provisions are consistent with clause 10 of the Access Agreement and are designed to allow Aurizon Network to reduce an Access Holder’s Nominated Monthly Train Services where an Operator consistently over a 12 month period exceeds the Maximum Payload for those Train Services.</p>	Drafting	Not acceptable Refer to the QRC’s changes in payloads submission
New clause 12	Inclusion of a new clause 12 in relation to the reduction of Nominated Monthly Train Services if the Nominal Payload of an Operator is increased.	<p>Please refer to section 1 of Aurizon Network’s Policy Submission in relation to Relinquishment Processes to support productivity improvements for general commentary.</p> <p>These provisions are consistent with clause 12 of the Access Agreement and are designed to allow both Aurizon Network and Access Holders to choose to reduce Train Paths to create additional capacity in the most cost effective way.</p>	Drafting	Not acceptable Refer to the QRC’s changes in payloads submission

Annexure 2 – Mark-up of UT5

[QRC Mark-up dated 17 February 2017](#)

[\[Note: This drafting is focused on specific sections and does not seek to update all clause references \(and other consequential amendments\) throughout the undertaking beyond those sections.\]](#)

Aurizon Network Submission Draft– 30 November 2016

Aurizon Network Pty Ltd

The 2017 Undertaking

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Part 1: Preamble

1.1 Aurizon Network

Aurizon Network is a member of the Aurizon Group which operates as a leading integrated national transport provider.

1.2 Responsibilities

Aurizon Network is responsible for providing, maintaining and managing the Rail Infrastructure and for providing and managing access to it.

1.3 Access undertaking

This Undertaking governs the process by which Access will be negotiated and provided.

1.4 Approval

Aurizon Network has developed this Undertaking in accordance with section 136 of the Act. This Undertaking has been approved by the QCA in accordance with the Act.

1.5 Information

Information on obtaining Access is contained in this Undertaking. Further information can be found on the Website.

1.6 Negotiating Access

To negotiate Access please email access.services@aurizon.com.au.

Part 2: Intent and Scope

2.1 Duration

- (a) This Undertaking is effective from the Approval Date to the Terminating Date.
- (b) Following the Approval Date, Adjustment Charges will be calculated in respect of the period between the Adjustment Date and the Approval Date in accordance with Schedule F and will be payable in accordance with that Schedule. For clarity, the Adjustment Charges do not involve the retrospective application of this Undertaking, but are amounts payable under this Undertaking that have been calculated by reference to a period prior to the Approval Date.

2.2 Objective

The objective of this Undertaking is, without limitation, to:

- (a) ensure the service taken to be declared under section 250(1)(a) of the Act is provided in a manner that does not unfairly differentiate in a material way (as that term is defined in section 137(3) of the Act);
- (b) prevent Aurizon Network recovering, through the price of access to the service taken to be declared under section 250(1)(a) of the Act, any costs that are not reasonably attributable to the provision of that service;
- (c) facilitate the negotiation of access agreements by Aurizon Network and Access Seekers;
- (d) apply the provisions of the Act through:
 - (i) the establishment of processes for Access negotiations and the utilisation of Capacity that are expeditious, efficient, timely, flexible, commercial and non-discriminatory;
 - (ii) the establishment of processes and principles to provide guidance in relation to the pricing, and the terms and conditions, of Access; and
 - (iii) the establishment of processes and principles for the planning and development of Expansions and the framework for the negotiation of terms for the funding of Pre-feasibility Studies, Feasibility Studies and Expansions;
- (e) provide an efficient, effective and binding Dispute resolution process; and

- (f) provide that actions under this Undertaking are consistent with the objectives for rail under section 2(2)(d) of the TIA and that such actions and this Undertaking are also consistent with the objectives and provisions of the Act.

2.3 Behavioural obligations

In providing Access and in negotiations for Access, Aurizon Network:

- (a) must act in a manner that is consistent with the unfair differentiation obligations under sections 100(2) to (4) and section 168C of the Act.
- (b) Without limiting **clause 2.3(a)**, the steps that Aurizon Network must take to comply with this general obligation in **clause 2.3(a)** are set out in this Undertaking and include the following:
 - (i) this Undertaking must be consistently applied to Access Seekers, Access Applications, negotiations for Access, Access Holders and Railway Operators;
 - (ii) Aurizon Network must not unfairly differentiate between Access Seekers, Access Holders or Railway Operators in a way that has a material adverse effect on the ability of any of them to compete with any other of them, including in relation to:
 - (A) any decision relating to whether Aurizon Network will undertake an Expansion;
 - (B) assessing, allocating and managing Capacity;
 - (C) providing scheduling and Network Control Services in accordance with the Network Management Principles;
 - (D) any decision relating to the source of funding for an Expansion;
 - (E) assessing and selecting Access Seekers, and
 - (F) any decision relating to the provision of Access to:
 - (1) a Related Operator;
 - (2) a Related Competitor; or
 - (3) a Third Party that has commercial arrangements with a Related Operator or Related Competitor.

- (c) Aurizon Network must not engage in conduct for the purpose of preventing or hindering an Access Seeker's access to the declared service within the meaning of section 104 or 125 of the Act.
- (d) Without limiting **clause 2.2(a)**, Aurizon Network must ensure that:
 - (i) all transactions between Aurizon Network and any other party in relation to Access are conducted on an arms-length basis;
 - (ii) all Access Seekers, irrespective of whether they are an Aurizon Party or a Third Party:
 - (A) are provided with a consistent level of service; and
 - (B) given an equal opportunity to obtain Access Rights,
 subject to the express provisions of the Act and this Undertaking; and
 - (iii) all decisions made under this Undertaking are made in a manner that does not unfairly differentiate in a material way (as that term is defined in section 137(3) of the Act) between any Access Seekers and/or Access Holders;
- (e) Aurizon Network must not engage in any activity or conduct (or agree to engage in such activity or conduct), either independently or with Related Operators, which has the purpose of, results in or creates, or is likely to result in or create:
 - (i) anti-competitive cost shifting;
 - (ii) anti-competitive cross-subsidies; or
 - (iii) anti-competitive price or margin squeezing.
- (f) For clarity, none of **clauses 2.3(b)(ii), 2.3(c) or 2.3(d)(iii)** prevent Aurizon Network from engaging in conduct expressly permitted by section 100(3) of the Act (subject to section 100(4) of the Act) or section 168C of the Act (subject to section 168C(3) of the Act).
- (g) If an Access Seeker or Access Holder considers that Aurizon Network has failed to comply with **clause 2.3(a) to (e)**, it may lodge a written complaint with Aurizon Network and must provide a copy of that complaint to the QCA.
- (h) Aurizon Network must:
 - (i) advise the QCA, as soon as practicable, of any complaints it receives under **clause 2.3(g)**;
 - (ii) investigate complaints received under **clause 2.3(g)**; and

- (iii) within twenty-eight (28) days after receiving such a complaint, advise the complainant and the QCA in writing of the outcome of that investigation and Aurizon Network's proposed response, if any.
- (i) If the complainant is not satisfied with the outcome of Aurizon Network's investigation, the complainant may apply to the QCA requesting an audit of the conduct that is the subject of the complaint under **clause 2.3(g)**.
- (j) If a complainant applies to the QCA in accordance with **clause 2.3(i)**:
 - (i) the QCA may request Aurizon Network to:
 - (A) engage an auditor in accordance with **clause 10.6.3**; and
 - (B) conduct an audit in accordance with **clause 10.6.4**,
 in respect of Aurizon Network's compliance with **clause 2.3(a) to (e)** as it relates to the relevant complaint.
- (k) For clarity, the rights and obligations under clause **2.3(g) to (j)** do not replace or derogate in any way from, the QCA's powers under the Act. Nothing in this Undertaking precludes an Access Seeker or Access Holder making any complaint or submission to the QCA.

2.4 Scope

- (a) This Undertaking provides only for the negotiation and provision of Access and is not applicable to the negotiation or provision of services other than Access. For clarity, "Access" in this **clause 2.4** includes all aspects of access to the service taken to be declared under section 250(1)(a) of the Act.
- (b) Access Holders are responsible for:
 - (i) the provision of any services other than Access, including Above Rail Services, required for the operation of Train Services; and
 - (ii) the necessary approvals from the owners of the land upon which the Rail Infrastructure is situated if it is not owned by Aurizon Network and Aurizon Network does not have an existing legal right to authorise Access Holders to access that land.
- (c) Aurizon Network must promptly notify the Access Holder if Aurizon Network does not own the land upon which the Rail Infrastructure is situated or have an existing legal right to authorise the Access Holder to access that land.

- (d) Nothing in this Undertaking can require Aurizon Network to act in a way that is inconsistent with its Passenger Priority Obligations or Preserved Train Path Obligations.
- (e) Nothing in this Undertaking can require Aurizon Network or any other party to an Access Agreement, executed before the Approval Date, to vary that agreement or to act in a way that is inconsistent with the relevant agreement.
- (f) Except where expressly stated in this Undertaking to the contrary, this Undertaking will not apply to the extent that it is inconsistent with an Access Agreement or a Train Operations Deed.
- (g) Nothing in this Undertaking affects the rights of Aurizon Network or other parties under the Act.

2.5 Aurizon Holdings to execute Deed

- (a) Aurizon Network must request that its Ultimate Holding Company provides the Ultimate Holding Company Support Deed (**Deed**) in the form set out in **Schedule D**.

- (b) If:

- (i) Aurizon Network fails to obtain a Deed in the form required by **clause 2.5(a)**;
- (ii) the Deed, if obtained, is not maintained in force; or
- (iii) the requirements of the Deed are not complied with,

then Aurizon Network must, from the Approval Date (in the case of **clause 2.5(b)(i)**) or the date of non-compliance (in the case of **clauses 2.5(b)(ii)** or **(iii)**):

- (iv) every three (3) Months, conduct and complete an audit of the Confidential Information Register in accordance with **Part 10** to confirm the Confidential Information Register complies with the requirements of this Undertaking for the previous three (3) Months period; and
- (v) every six (6) Months, conduct detailed training sessions in respect of Aurizon Network's statutory obligations under the Act and under **Part 3** (including regarding the management of Confidential Information) for all High-Risk Personnel,

until either:

- (vi) if **clause 2.5(b)(i)** or **(ii)** applies, Aurizon Network obtains a current Deed from the Ultimate Holding Company; or

- (vii) if **clause 2.5(b)(iii)** applies, the failure to comply with the requirements of the Deed is rectified to the satisfaction of the QCA.

If a provision of **Part 3** is inconsistent with this provision, this provision prevails.

2.6 Electricity supply and sale

- (a) To the extent that Aurizon Network sells or supplies a Related Operator with electric energy in connection with Access, Aurizon Network cannot refuse to sell or supply electric energy to another Access Seeker or Access Holder (or, if applicable, a Nominated Railway Operator).
- (b) Despite any other provision of this Undertaking, Aurizon Network will not be obliged to sell or supply electric energy to an Access Seeker or Access Holder (or, if applicable, a Nominated Railway Operator) or to agree to do so:
 - (i) if Aurizon Network is not lawfully entitled to sell or supply electric energy to the relevant Access Seeker, Access Holder or, if applicable, Nominated Railway Operator under any Law, including the *Electricity Act 1994* (Qld) and the National Electricity Rules (as defined under the National Electricity Law set out in the schedule to the *National Electricity (South Australia) Act 1996* (SA)); or
 - (ii) on terms that would be unreasonable or uncommercial.
- (c) For clarity, if a dispute arises between an Access Holder, a Nominated Railway Operator or an Access Seeker and Aurizon Network regarding a refusal by Aurizon Network to sell or supply electric energy (or procure such a sale or supply from an Aurizon Party), or the proposed terms and conditions on which Aurizon Network (or an Aurizon Party) offers to sell or supply electric energy to the Access Holder, Nominated Railway Operator or Access Seeker, any party may require the Dispute to be resolved in accordance with **clause 11.1**.

Part 3: Ringfencing

Section A – General Provisions

3.1 Organisational structure

- (a) Aurizon Network is part of the Aurizon Group and a Subsidiary of Aurizon Holdings.
- (b) Being a Subsidiary of Aurizon Holdings, Aurizon Network's financial performance, capital expenditure program and business plan are, consistent with good corporate governance, subject to oversight by the board and senior management of Aurizon Holdings.
- (c) Aurizon Network provides a regulated access service, together with providing unregulated services in competitive markets.
- (d) Aurizon Holdings, amongst other matters, provides Above Rail Services through a Related Operator.
- (e) Within the Aurizon Group, there are functional groups that provide shared support services and core corporate functions to different functional areas and parts of the Aurizon Group that include both Related Operators and Aurizon Network.
- (f) Aurizon Network is required by the TIA to maintain an independent board of directors which supervises arm's-length dealings in respect of Access between Aurizon Network and any Related Operators.
- (g) The Act:
 - (i) requires Aurizon Network to negotiate in good faith with Access Seekers to reach an Access Agreement;
 - (ii) obliges Aurizon Network in such negotiations not to unfairly differentiate between Access Seekers in a way that materially adversely affects the ability of one or more Access Seekers to compete with other Access Seekers;
 - (iii) prohibits Aurizon Network from engaging in conduct for the purpose of preventing or hindering an Access Seeker's or Access Holder's Access; and
 - (iv) deems certain types of specified conduct where Aurizon Network provides Access to itself or a Related Operator to constitute conduct that prevents or hinders an Access Seeker's or Access Holder's Access.

3.2 Purpose

- (a) The purpose of this **Part 3** is to aid Aurizon Network's compliance with the statutory obligations referred to above and to ensure that Access provided by Aurizon Network is managed and supplied independently from other members of the Aurizon Group who compete in the upstream and downstream markets that depend on Access to the service utilising the Rail Infrastructure.

3.3 Compliance declaration

- (a) As part of the compliance report required under **clause 10.5.2**, Aurizon Network must give the QCA a compliance declaration which must either:
 - (i) include a statement with the following effect: "There have been no breaches of the ringfencing arrangements set out in **Part 3** of the Undertaking and none of the matters set out in **clause 2.5(b)(i) to (iii)** have occurred during the twelve (12) Month period commencing from the date of the last declaration given under **clause 3.3(a)** of the Undertaking ending up until the day prior to the date of this declaration"; or
 - (ii) if there have been any breaches of this **Part 3** or any of the matters set out in **clause 2.5(b)(i) to (iii)** have occurred during the period for the compliance declaration, provide the following details in relation to each breach or matter:
 - (A) the nature and circumstances of the breach or matter;
 - (B) whether the breach or matter is under investigation or has been resolved; and
 - (C) any remedial actions taken or being considered in relation to the breach or matter.
- (b) The compliance declaration given under **clause 3.3(a)** must be signed by Aurizon Network's Executive Officer and the other member of the senior management team at Aurizon Network (**Other Officer**) who is most directly responsible for ensuring compliance with the ringfencing arrangements in this **Part 3**.
- (c) Subject to **clause 3.3(d)**, giving a compliance declaration under **clause 3.3(a)** that is known to be false or misleading will constitute a breach of this Undertaking by Aurizon Network.
- (d) **Clause 10.7.3(b)** applies to any compliance declaration given under **clause 3.3(a)**, including the compliance declaration signed by the Other Officer under **Clause 3.3(b)**, in which case, **clause**

10.7.3(b) will be available to that person as if **clause 10.7.3(b)** names that person.

Section B – Aurizon Network’s Functional Responsibility

3.4 Function of Aurizon Network in the Aurizon Group for the purpose of this Undertaking

- (a) The primary function of Aurizon Network for the purpose of this Undertaking is to supply the declared services contemplated by section 250(1)(a) of the Act.
- (b) Aurizon Network intends to give effect to this function by supplying the Below Rail Services in accordance with the terms of this Undertaking.
- (c) For clarity, the supply of Below Rail Services includes:
 - (i) the primary function described in **clause 3.4(a)**;
 - (ii) negotiating Access Agreements with Access Seekers and managing Access Agreements with Access Holders;
 - (iii) negotiating and managing Train Operations Deeds with Train Operators;
 - (iv) receiving, assessing and responding to Access Applications;
 - (v) providing or procuring appropriate levels of maintenance for, and renewal of, the Rail Infrastructure to ensure that the Rail Infrastructure is provided to the standard required to meet Aurizon Network’s obligations to Access Holders and, where applicable, Train Operators, the DTMR, and its infrastructure lessors;
 - (vi) assessing, allocating and managing Capacity;
 - (vii) providing scheduling and Network Control Services for Rail Infrastructure in accordance with the Network Management Principles;
 - (viii) providing use of electric transmission infrastructure on electrified sections of the Rail Infrastructure to enable Access Holders or Train Operators to run electric Train Services and (subject to **clause 2.6**) selling or supplying electric energy for traction on electrified sections of the Track, including managing electric energy supply from other parties, where an Access Seeker, an Access Holder or Train Operator requests Aurizon Network to provide that electric energy; and

- (ix) the administration of the process for network development, planning, studies and Expansions in accordance with **Part 8**.
- (d) Aurizon Network must not:
 - (i) undertake any Above Rail Services in respect of the Rail Infrastructure; or
 - (ii) undertake the operation or marketing of Train Services on the Rail Infrastructure, unless for the purpose of providing a Below Rail Service or the provision of services in respect of Private Infrastructure.
- (e) If Aurizon Network either:
 - (i) provides any services associated with the loading of vessels at a port (including providing access to those services) or holds any direct or indirect interest in any port connected to the Rail Infrastructure, whether as owner, lessee, trust unit holder, operator, manager or otherwise and whether alone or together with others; or
 - (ii) holds any direct or indirect interest in, operates or manages any coal mine or coal-extraction project connected to the Rail Infrastructure, whether as owner, lessee, trust unit holder, operator, manager or otherwise and whether alone or together with others,

then as part of the compliance report required under **clause 10.5.2** Aurizon Network must:

- (iii) confirm that, in providing access to the service taken to be declared under section 250(1)(a) of the Act, it has not engaged in any conduct that has the purpose of unfairly differentiating in a material way (as that term is defined in section 137(3) of the Act) between Access Seekers or Access Holders; and
- (iv) provide supporting evidence if requested by the QCA.

3.5 Obligation of Aurizon Network to perform Below Rail Services

- (a) The Below Rail Services must not be transferred or delegated to, contracted out to, or otherwise undertaken, by a Related Operator or Related Competitor unless the Below Rail Service relates to:
 - (i) maintenance for or renewal of the Rail Infrastructure;
 - (ii) project delivery, engineering or rail construction services in relation to the procurement, construction or design of Rail Infrastructure;

- (iii) the safe operation of the Rail Infrastructure (including any incident investigations);
 - (iv) environmental related services (including any incident investigations); or
 - (v) normal corporate governance arrangements and management reporting, including assessing the credit risk of counterparties or otherwise assessing the implications of an arrangement on Aurizon Network's access to funds or the taxation consequences of that arrangement.
- (b) Subject to **clause 3.4(d)**, and the restrictions on Aurizon Network employees undertaking certain activities in **clause 3.6**, nothing in this Undertaking:
- (i) requires Aurizon Network to perform a function that is not associated with or in respect of the provision of Below Rail Services; or
 - (ii) prevents Aurizon Network from undertaking any function which is not associated with or in respect of the provision of Below Rail Services.
- (c) Notwithstanding **clause 3.5(a)**, Aurizon Network may contract with Related Operators for the provision of Network Control Services referred to in **clause 3.4(c)(vii)** to the extent that they comprise:
- (i) Field Incident Management; or
 - (ii) Yard Control services at yards other than Major Yards.
- (d) For clarity, notwithstanding the transfer, delegation or contracting out of Below Rail Services by Aurizon Network to a Related Operator or Related Competitor under **clause 3.5(a)**, Aurizon Network remains responsible for providing Below Rail Services in accordance with this Undertaking.

3.6 Staffing of Aurizon Network

- (a) Aurizon Network must ensure that an employee engaged to work for Aurizon Network and whose duties primarily involve the provision of Below Rail Services, will:
- (i) work only for Aurizon Network; and
 - (ii) not undertake any work at the direction of a Related Operator.
- (b) Nothing in **clause 3.6(a)** restricts or prevents:
- (i) an employee from performing functions that are required to negotiate for, or provide Access to, a

Related Operator in accordance with the terms of this Undertaking;

- (ii) secondments of employees, subject to the requirements in this Undertaking on the handling of Confidential Information;
- (iii) an employee ceasing to work for Aurizon Network and commencing to work for a Related Operator, subject to the requirements in this Undertaking on the handling of Confidential Information;
- (iv) an employee undertaking any function or activity:
 - (A) required or compelled by any Law;
 - (B) required or compelled by any order of a court;
 - (C) required or compelled by notice validly issued by any Authority;
 - (D) necessary for the conduct of any legal proceedings, dispute resolution process or audit under this Undertaking, the Act or a Standard Agreement; or
 - (E) in the course of responding to an emergency or natural disaster or for clearing an incident or emergency that is preventing or impeding the operation of Train Services on the Rail Infrastructure;
- (v) an employee undertaking work providing services that do not relate, whether directly or indirectly, to the provision of Below Rail Services; or
- (vi) an employee engaged in undertaking:
 - (A) asset construction, maintenance, renewal or repair; or
 - (B) support services and/or corporate functions,

from undertaking work for any Aurizon Group business unit or corporate functional area, subject to the requirements in this Undertaking on the handling of Confidential Information.

- (c) Subject to compliance with Aurizon Network's obligations under this **Part 3**, Aurizon Network may obtain assistance in the performance by Aurizon Network of Below Rail Services and to comply with its obligations in this Undertaking from staff employed within the Aurizon Group in the provision of shared

services and corporate functions to different functional areas and parts of the Aurizon Group.

- (d) If the activities of a project working group (whose members include staff from a Related Operator or Related Competitor) associated with the operation of a Supply Chain affect or could affect the Access of Third Party Access Holders or Third Party Access Seekers, then Aurizon Network must enter into the Confidential Information Register the details (including the change in role or circumstances and the anticipated duration of that change) of any Aurizon Network employee who works in such a working group if that employee has had access, as an employee of Aurizon Network, to any Confidential Information.
- (e) Aurizon Network may not permit any secondments or other temporary transfers of employees between Aurizon Network and an Aurizon Party if the employee has had (or will have in the new role) access to Confidential Information, unless Aurizon Network:
 - (i) has given prior notice to the QCA of the details of the secondment or transfer identifying:
 - (A) the extent to which the relevant employee has, or may have, received or accessed, Confidential Information, and the nature of such information; and
 - (B) the level of risk, in terms of Aurizon Network's compliance with this **Part 3**, posed by the proposed secondment or temporary transfer;
 - (ii) takes all reasonable measures to minimise conflicts of interest for the relevant employee and the potential for misuse of Confidential Information; and
 - (iii) enters into the Confidential Information Register the details (including the change in role or circumstances and the anticipated duration of that change) of the relevant employee.
- (f) Aurizon Network must:
 - (i) at all times directly employ a regulatory affairs advisor, who will be deemed a High-Risk Person; and
 - (ii) not (except as permitted by **Clause 3.5(a)(v)** or, unless otherwise approved in writing by the QCA) assign, transfer, delegate or contract out to any Aurizon Party any regulatory function or position related to the development, application and interpretation of this Undertaking in relation to Aurizon Network.

3.7 Accounting separation

3.7.1 Preparation of financial statements

- (a) Unless otherwise approved by the QCA, Aurizon Network must develop, on an annual basis:
 - (i) general purpose financial statements for Aurizon Network in accordance with relevant legislation and applicable Australian accounting standards; and
 - (ii) a supplementary set of financial statements which:
 - (A) separately identifies Aurizon Network's business in respect of the supply of the declared services contemplated by section 250(1)(a) of the Act from other business conducted by Aurizon Group;
 - (B) identifies costs common to both Aurizon Network and Aurizon Group and the way in which such costs are allocated; and
 - (C) are otherwise developed in accordance with the methodology and format set out in the Costing Manual.
- (b) The QCA may request Aurizon Network to prepare (or Aurizon Network may prepare) a Costing Manual. The processes set out in section 159 of the Act apply to that Costing Manual.
- (c) The financial statements must:
 - (i) include the information referred to in **clause 3.7.2**;
 - (ii) be certified by Aurizon Network's Executive Officer as being in accordance with this Undertaking; and
 - (iii) audited in accordance with **clause 10.6.4**.

3.7.2 Self Insurance

- (a) The financial statements referred to in **clause 3.7.1(a)(ii)** must include details of Self-Insurance including at least the following:
 - (i) Aurizon Network's level of Self-Insurance as at the end of the relevant Year;
 - (ii) the number and type of claims (and quantum of each claim) made on the Self-Insurance in the relevant Year; and

- (iii) the number of claims made on Self-Insurance successfully resolved in the relevant Year (and quantum of each payment).
- (b) Claims made on Self-Insurance for an amount that is equal to or less than \$50,000 may be reported on an aggregated basis.

3.7.3 Audit of financial statements

- (a) An audit of the financial statements referred to in **clause 3.7.1** will be conducted:
 - (i) within six (6) Months of the end of the Year to which the financial statements relate, or such longer time as agreed by the QCA; and
 - (ii) subject to this **clause 3.7.3**, in accordance with **clause 10.6.4**.
- (b) Aurizon Network acknowledges that, in order to facilitate finalisation of the audit within the required timeframe, certain aspects of the audit may be undertaken by the Auditor at different times throughout the relevant Year.
- (c) The Auditor will:
 - (i) examine whether the financial statements referred to in **clause 3.7.1** have been developed in all material respects in accordance with this Undertaking and consistent with the format specified in the Costing Manual; and
 - (ii) prepare an audit report that specifies:
 - (A) the scope of the audit;
 - (B) the level of access that the Auditor was provided to Aurizon Network's financial information, including the relevant information systems;
 - (C) whether or not the financial statements have been developed in all material respects in accordance with this Undertaking and consistent with the format specified in the Costing Manual; and
 - (D) if the Auditor identifies that the financial statements have not been developed in all material respects in accordance with this

Undertaking and processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual, information regarding the relevant non-compliance or inconsistency.

Section C – Management of Aurizon Network

3.8 Independence of senior management

- (a) Aurizon Network must:
- (i) ensure that Aurizon Network is managed independently from:
 - (A) Related Operators; and
 - (B) Related Competitors; and
 - (ii) take whatever steps it can reasonably take to ensure that Related Operators and Related Competitors do not participate in the process for the appointment or supervision of the executive management of Aurizon Network.
- (b) Aurizon Network must ensure that the executive management of Aurizon Network does not have any management responsibility for:
- (i) a Related Operator; or
 - (ii) any Related Competitor.
- (c) Aurizon Network must not act on directions from a Related Operator in respect of the grant or exercise of Access Rights to, by or for the benefit of:
- (i) any Related Operator; or
 - (ii) a Third Party Access Seeker, Third Party Access Holder or Third Party Train Operator, otherwise than with the consent of the Third Party,

provided that nothing prevents a Related Operator exercising a right or requiring Aurizon Network to comply with an obligation under an Access Agreement between Aurizon Network and that Related Operator, or under this Undertaking or the Act, as applicable.

Section D – Confidential Information

Section D1 – General provisions

3.9 No waiver or exclusion of Undertaking by voluntary agreement

- (a) Aurizon Network must not request or require any Access Seeker, Access Holder or Train Operator to waive or agree to waive any requirement or obligation on Aurizon Network under this **Part 3**.
- (b) Any purported waiver of, or agreement to waive, any requirement or obligation on Aurizon Network under this **Part 3** has no effect.
- (c) If Aurizon Network and a Third Party Access Seeker or Third Party Access Holder enter into a confidentiality agreement or deed or an Access Agreement containing confidentiality obligations in relation to the negotiation or provision of Access Rights, that agreement or deed does not reduce or derogate in any way from any requirement or obligation imposed on Aurizon Network under this **Part 3** except that if the agreement or deed prescribes an obligation or standard for performance of an act that is higher or more stringent than under this **Part 3**, the higher or more stringent standard or obligation in that agreement or deed must be met by Aurizon Network.

3.10 Request for Aurizon Network to enter confidentiality agreement

At any time prior to or during the Negotiation Period:

- (a) an Access Seeker, Third Party Access Seeker or Train Operator (as applicable) may require Aurizon Network; or
- (b) Aurizon Network may require an Access Seeker, Third Party Access Seeker or Train Operator (as applicable),

to enter into a confidentiality agreement in relation to the Confidential Information, in which case Aurizon Network and the Access Seeker, Third Party Access Seeker or Train Operator (as applicable) must enter into a confidentiality agreement which must be in the form set out in **Schedule I** unless otherwise agreed by the parties.

3.11 Overarching commitment to information security

- (a) Notwithstanding any other provision in this Undertaking, Aurizon Network must:
 - (i) except as otherwise permitted by this Undertaking, keep Confidential Information confidential and secure;
 - (ii) not disclose Confidential Information, unless in accordance with this Undertaking; and
 - (iii) use or disclose Confidential Information only in connection with the supply of Below Rail Services, as

permitted in accordance with this Undertaking but only to the extent necessary for that purpose.

- (b) Notwithstanding any other provision in this Undertaking, Aurizon Network must not use or disclose Confidential Information in a way that constitutes a breach of Aurizon Network's obligations under sections 100, 104, 125 or 168C of the Act.

Section D2 - Control framework for Confidential Information

3.12 Process for permitted disclosure of Confidential Information

- (a) Subject to **clause 3.13**, if access to, or disclosure of, Confidential Information is to be made to a Recipient, whether the Recipient is within Aurizon Network, another Aurizon Party or a Third Party, Aurizon Network must ensure that:
 - (i) the access or disclosure is permitted under this Undertaking;
 - (ii) access to that Confidential Information is limited so that disclosure to the Recipient is only to the extent necessary;
 - (iii) the Recipient is advised that the information is Confidential Information and the information is clearly identified as Confidential Information;
 - (iv) if required by **clause 3.13**, prior to the access or disclosure being granted, all information relevant to that access or disclosure is recorded in the Confidential Information Register;
 - (v) if required by **clause 3.13**, the Recipient has signed a declaration confirming its awareness and understanding of the Aurizon Group's obligations regarding Confidential Information;
 - (vi) if required by **clause 3.13** and if the Recipient is not within Aurizon Network, Aurizon Network enters into a legally enforceable agreement with the Recipient (with the same effect as the confidentiality agreement in the form set out in **Schedule I**) and on terms that are enforceable by the owner of the Confidential Information and Aurizon Network, requiring the Recipient (and any of its employees) to keep the Confidential Information confidential, and to only use it for the purpose for which it was disclosed;
 - (vii) if required by **clause 3.13** and if the Recipient is not within Aurizon Network and ongoing access to Confidential Information is to be provided, a review date is recorded in the Confidential Information Register at which access or disclosure under

clause 3.13 expires, such review date to be determined by Aurizon Network, but not to be greater than twelve (12) Months from the date of the record in the Confidential Information Register; and

(viii) if required by **clause 3.13**, the prior written consent of the owner of the Confidential Information is provided for the access or disclosure to the Recipient for the nominated purpose.

(b) If for the purposes of this Section D and in particular **Clause 3.12, 3.13 and 3.14**:

(i) the Confidential Information can reasonably be grouped together in a single category because the Confidential Information relates to the same or substantially similar subject matter; or

(ii) there is a need for multiple instances of access to or disclosure of Confidential Information, and those instances can reasonably be grouped together in a single category because they relate to the same or similar subject matter or to a recipient whose role requires repeated access to Confidential Information,

then, that Confidential Information is deemed to be one item of Confidential Information for the purpose of **clause 3.12(a), 3.13 and 3.14**.

(c) If consent is sought under **clause 3.12(a)(viii)**:

(i) such consent must not be unreasonably delayed or refused;

(ii) during the Negotiation Period while responding to an Access Application or negotiating an Access Agreement and the owner of the Confidential Information:

(A) fails to respond to Aurizon Network's request for consent within five (5) Business Days of its receipt of Aurizon Network's written request (referred to as the **Consent Response Date**), then all relevant timeframes applicable to Aurizon Network under **Part 4** will be extended by the same number of days as the day on which the response is given exceeds the Consent Response Date; or

(B) unreasonably refuses its consent to the disclosure of that Confidential Information, or fails to respond to Aurizon Network's request for consent within twenty (20) Business Days of its receipt of Aurizon Network's written request, then Aurizon Network may give a

Negotiation Cessation Notice to the Access Seeker, in accordance with **clause 4.13**; or

- (iii) during the process of administering an Access Agreement or a Train Operations Deed, if the owner of the Confidential Information fails to respond to Aurizon Network's request for consent within twenty (20) Business Days of its receipt of Aurizon Network's written request, then consent is deemed to be given.
- (d) For the purpose of disclosing Confidential Information under **clause 3.13** or recording information in the Confidential Information Register under **clause 3.14(e)**:
 - (i) if disclosure of Confidential Information is to an entity, then:
 - (A) only the entity (and not any of its directors or employees) is required to enter into any undertaking referred to in **clause 3.12(a)(vi)**; and
 - (B) the name of the entity (and not any of its directors or employees) needs to be recorded in the Confidential Information Register as the Recipient; or
 - (ii) if the disclosure of the Confidential Information is only to an individual or individuals, then:
 - (A) those individuals must enter into any declaration or undertaking referred to in **clause 3.12(a)(vi)**; and
 - (B) only the name of each individual needs to be recorded in the Confidential Information Register as the Recipient.

3.13 Disclosure of Confidential Information

- (a) If **clauses 3.13(b), 3.13(c), 3.13(d), 3.13(e) or 3.13(f)** do not apply, then subject to the restrictions in **clause 3.13(g)** Aurizon Network must comply with **clause 3.12(a)** to disclose Confidential Information to any Recipient.
- (b) If Aurizon Network complies with **clauses 3.12(a)(ii) and (iii)**, disclosure of Confidential Information by Aurizon Network to a Recipient is permitted when the disclosure is:
 - (i) required or compelled by any Law;
 - (ii) required or compelled by any order of a court;

- (iii) required or compelled by notice validly issued by any Authority;
 - (iv) necessary for the conduct of any legal proceedings, including dispute resolution or audit processes under this Undertaking, the Act, a Standard Agreement or other agreement;
 - (v) if the process in **clause 3.13(f)** is observed, required under any stock exchange listing requirement or rule (including disclosure to any Aurizon Group company so as to allow compliance with any such listing requirement or rule);
 - (vi) for the purpose of facilitating Network Control directions where the disclosure of information is by Aurizon Network in the usual course of undertaking Network Control Services;
 - (vii) necessary for the effective response to an emergency or natural disaster or for clearing an incident or emergency that is preventing the operation of Train Services on the Rail Infrastructure;
 - (viii) to the Safety Regulator; or
 - (ix) to Aurizon Network Personnel to the extent necessary to perform their duties.
- (c) If Aurizon Network complies with **clauses 3.12(a)(ii)** and **(iii)**, then disclosure of Confidential Information by Aurizon Network to a Recipient is permitted when the disclosure is:
- (i) to a Railway Manager, but only to the extent required for the purpose of negotiating or providing Access or for managing interfaces between the railways (including scheduling and other interface issues), provided that the Railway Manager has undertaken in a legally binding way (with the same effect as the confidentiality agreement in the form set out in **Schedule I**), to keep the Confidential Information disclosed to it by Aurizon Network confidential; or
 - (ii) to an infrastructure provider for infrastructure forming part of the Supply Chain for the purpose of facilitating the coordination of the capacity allocation process, provided that the infrastructure provider has undertaken, in a legally binding way (with the same effect as the confidentiality agreement in the form set out in **Schedule I**), to keep the information disclosed to it by Aurizon Network confidential and to only use that information for the purpose for which it was disclosed,

and Aurizon Network will use its best endeavours to enforce the confidentiality undertakings referred to in **clauses 3.13(c)(i) and (ii)** against the relevant third party if requested by the owner of the information.

- (d) If Aurizon Network complies with **clauses 3.12(a)(ii) and (iii)** and the information to be accessed or disclosed and a review date at which access or disclosure of that information expires is recorded in the Confidential Information Register in accordance with **clause 3.12(a)(iv) and 3.12(a)(vii)**, then disclosure of Confidential Information by Aurizon Network to a Recipient is permitted when the disclosure is to either an external legal, accounting or financial adviser or consultant (**Advisor**) or a banker, financier or other financial institution (**Financier**), and:
- (i) the Advisor's or Financier's role in advising or providing services to Aurizon Network requires the disclosure to be made;
 - (ii) the Advisor or Financier is under an obligation of confidentiality to Aurizon Network; and
 - (iii) the Advisor or Financier has been advised of the Aurizon Group's obligations under this Undertaking regarding Confidential Information.
- (e) If:
- (i) Aurizon Network complies with **clauses 3.12(a)(ii) and (iii)**;
 - (ii) the information to be accessed or disclosed and, if the Recipient is not within Aurizon Network and ongoing access to Confidential Information is to be provided, a review date at which access or disclosure of that information expires is recorded in the Confidential Information Register in accordance with **clause 3.12(a)(iv) and clause 3.12(a)(vii)**;
 - (iii) to the extent that the Recipient is within Aurizon Network, the Recipient has signed a declaration confirming its awareness and understanding of the Aurizon Group's obligations regarding Confidential Information; and
 - (iv) to the extent that the Recipient is not within Aurizon Network, Aurizon Network has entered into a legally enforceable agreement with the Recipient (with the same effect as the confidentiality agreement in the form set out in **Schedule I**) and on terms that are enforceable by the owner of the Confidential Information and Aurizon Network, requiring the

Recipient (and any of its employees) to keep the Confidential Information confidential and to only use it for the purpose for which it was disclosed,

then Disclosure of Confidential Information by Aurizon Network to a Recipient is permitted if:

- (v) the disclosure has been authorised by the owner of the Confidential Information providing its prior written consent to such disclosure or alternative use; or
- (vi) subject to the restrictions in **clause 3.13(g)**, the disclosure is to an employee of a Related Operator or Related Competitor solely for the purpose of undertaking Below Rail Services, to the extent permitted by this Undertaking, and that employee is not involved in the marketing or negotiation of Above Rail Services;
- (vii) subject to the restrictions in **clause 3.13(g)**, the disclosure is to:
 - (A) the Aurizon Holdings board of directors;
 - (B) the Aurizon Network board of directors;
 - (C) the Chief Executive Officer of the Aurizon Group;
 - (D) the Chief Financial Officer of the Aurizon Group;
 - (E) the Company Secretary of Aurizon Network or the Aurizon Group or any assistant Company Secretary;
 - (F) the General Counsel of the Aurizon Group;
 - (G) the Chief Internal Auditor of the Aurizon Group;
 - (H) the Chief Information Officer of the Aurizon Group; and
 - (I) any person providing clerical or administrative assistance to the individuals or business units identified in **clauses 3.13(e)(vii)(A) to 3.13(e)(vii)(H)**.
- (f) Subject to **clause 3.13(g)**, prior to any disclosure to satisfy a stock exchange listing requirement or rule under **clause 3.13(b)(v)**, Aurizon Network must:

- (i) consult with the owner of the Confidential Information as to the nature and extent of the disclosure of the Confidential Information;
 - (ii) consider (and, to the extent reasonably possible, comply with) any requests made by the owner of the Confidential Information (acting reasonably) to limit the disclosure of the Confidential Information; and
 - (iii) to the extent reasonably possible, coordinate the disclosure of the Confidential Information with any similar disclosure by the owner of the Confidential Information that is required under any relevant stock exchange listing requirement or rule.
- (g) If the disclosure that is required under any stock exchange listing requirement is urgent or requires immediate disclosure under those stock exchange listing rules, then Aurizon Network must use all reasonable endeavours to take the steps set out in **clause 3.13(f)**.
- (h) Aurizon Network may not disclose Confidential Information to a Recipient that is a Related Operator or an employee of a Related Operator (other than a Recipient performing the activities set out at **clause 3.5(a)(v)**) for the purpose of obtaining advice regarding:
- (i) the amendment of this Undertaking or any Standard Agreement; or
 - (ii) the interpretation of this Undertaking or any Standard Agreement.

Section D3 – Compliance monitoring and safeguards

3.14 Confidential Information Register

- (a) Aurizon Network must establish and maintain a Confidential Information Register.
- (b) Aurizon Network must, provided it has not already done so under the 2016 Undertaking, develop and, within four (4) Months after the Approval Date, provide the QCA with its proposed:
 - (i) structure of; and
 - (ii) level of detail of information to be included in,

the Confidential Information Register. The QCA must approve Aurizon Network’s proposal unless the QCA considers that the proposal is not sufficiently detailed or does not provide sufficient transparency, in which case, the QCA may determine, and Aurizon Network must vary accordingly, the format for the Confidential Information Register to ensure it satisfies the requirements of **clause 3.14(c)**. The format (including content) of the Confidential Information

Register may be varied from time to time by agreement between Aurizon Network and the QCA or, failing agreement, as required by the QCA.

- (c) The Confidential Information Register will contain, as a minimum:
- (i) the identity of persons or entities who have access to Confidential Information;
 - (ii) in respect of each Recipient:
 - (A) the identity of the Recipient who has been approved in accordance with **clause 3.13(e)** to have access to the Confidential Information, and the identity of the Aurizon Network Personnel who approved that access;
 - (B) a review date at which access to that Confidential Information expires;
 - (C) the defined category of Confidential Information to which the Recipient has access (with sufficient details to enable the Confidential Information to be accurately identified);
 - (D) the purpose for which the Confidential Information is to be used by the Recipient; and
 - (E) confirmation that the Recipient has signed a declaration signifying its awareness and understanding of Aurizon Network's obligations regarding Confidential Information under this Undertaking;
 - (iii) a record of any confidentiality agreement, or confidentiality provisions contained in another arrangement, entered into by Aurizon Network in respect of Confidential Information;
 - (iv) a record of persons and entities that have signed a declaration signifying their awareness and understanding of Aurizon Network's obligations regarding Confidential Information in accordance with **clause 3.12(a)(v)**;

- (v) a record of the signing of an exit certificate by Aurizon Network Personnel working within Aurizon Network and with access to Confidential Information at the time that Aurizon Network Personnel leaves the employment of, or engagement with, Aurizon Network (whether to another business unit within the Aurizon Group on a temporary or permanent basis or a Third Party); and
 - (vi) details of any compliance issues in relation to Confidential Information where an investigation revealed a breach of Aurizon Network's obligations under this Undertaking.
- (d) An Access Seeker, Access Holder or Train Operator may, upon request, view information in the Confidential Information Register which relates to Confidential Information that it has disclosed to Aurizon Network.
- (e) Aurizon Network must provide the QCA with access to the Confidential Information Register:
- (i) each twelve (12) Months on and from the Approval Date; and
 - (ii) upon the QCA's request,
- to view the Confidential Information Register.
- (f) The QCA may require the Confidential Information Register to be subject to an audit:
- (i) in accordance with **Part 10** to confirm the Confidential Information Register complies with the requirements of this Undertaking; and
 - (ii) to confirm the processes and procedures underpinning the collection of information for the Confidential Information Register is fit for purpose, being complied with and is used in a consistent manner.

3.15 Mandatory Confidential Information training

- (a) Aurizon Network must ensure that:
- (i) all Aurizon Network Personnel; and
 - (ii) all Aurizon Group employees,
- receiving, or having access to, Confidential Information in the course of performing their duties are made fully aware of the Aurizon Group's obligations relating to the management of Confidential Information, and complete training for this purpose as contemplated in **clauses 3.15(b) and 3.17(a)**.

- (b) Aurizon Network must create, maintain and conduct, as a minimum, the following training sessions in order to promote awareness of Aurizon Network's obligations under this **Part 3**:
- (i) a briefing session which outlines Aurizon Network's statutory obligations under the Act and Aurizon Network's obligations under this **Part 3**:
 - (A) for current employees, who perform tasks relating to Below Rail Services, of an Aurizon Group entity whose role requires access to Confidential Information, within three (3) Months of the commencement of this Undertaking;
 - (B) for all new employees, who perform tasks relating to Below Rail Services, of Aurizon Group entities whose role requires access to Confidential Information, within one (1) Month after employment commences; and
 - (C) for an employee of an Aurizon Group entity whose role has changed and, as a result of the change, now performs tasks relating to Below Rail Services and requires access to Confidential Information, within one (1) Month after the change of role;
 - (ii) detailed training sessions in respect of Aurizon Network's statutory obligations under the Act, Aurizon Network's obligations under this **Part 3** (including regarding the management of Confidential Information) and Aurizon Holdings' obligations under the Ultimate Holding Company Support Deed:
 - (A) for persons who are High-Risk Personnel at the commencement of this Undertaking, within three (3) Months of the commencement of this Undertaking;
 - (B) for all persons who are added to the High-Risk Personnel Register

following the commencement of this Undertaking, within one (1) Month after they are added to the High-Risk Personnel Register; and

- (C) notwithstanding **clause 3.15(b)(ii)(A)** and **3.15(b)(ii)(B)**, for all High-Risk Personnel, at least once in every two (2) Years of continuous status as a High-Risk Person.
- (c) Aurizon Network must ensure that the Compliance Officer establishes and maintains a record of training attendances (as a yearly percentage of Aurizon Group employees) for publication in the annual compliance report prepared under **Part 10**.

3.16 High-Risk Persons

- (a) Aurizon Network must establish and maintain a High-Risk Personnel Register.
- (b) The High-Risk Personnel Register must contain:
 - (i) the identity of persons who have access to Confidential Information and either:
 - (A) is in a position to use that Confidential Information for purposes other than the supply of Below Rail Services; or
 - (B) has the capacity to determine the outcome of, or participate in, decisions of any Aurizon Group company that is not Aurizon Network,

such persons being “High-Risk Persons” or “High-Risk Personnel”;
 - (ii) the position the High-Risk Person holds; and
 - (iii) the reason why that person is listed as a High-Risk Person.
- (c) The following persons are deemed to be High-Risk Personnel for the purposes of this **clause 3.16**:
 - (i) all directors of Aurizon Network;
 - (ii) Aurizon Network’s Executive Officer and Chief Financial Officer;

- (iii) any employee of a Related Operator or Related Competitor accessing Confidential Information for the purpose of undertaking Below Rail Services, to the extent permitted by this Undertaking;
- (iv) Aurizon Network Personnel who manage the:
 - (A) negotiation and maintenance of Access Agreements and Train Operations Deeds;
 - (B) receiving, assessing and responding to Access Applications; and
 - (C) assessing, allocating and managing Capacity; and
- (v) any person referred to in **clause 3.6(f)**.
- (d) On the Approval Date and at any time requested by the QCA, Aurizon Network must provide the QCA with a copy of the High-Risk Personnel Register.
- (e) The QCA may, from time to time, declare by notice to Aurizon Network that additional persons are High-Risk Personnel, and in doing so, the QCA must provide Aurizon Network with an explanation of why each of those persons are High-Risk Personnel.

3.17 Exit certificates

- (a) Where an Aurizon Network Personnel that has had access to Confidential Information:
 - (i) leaves Aurizon Network to work for another Aurizon Group business unit, including for temporary secondments; or
 - (ii) leaves Aurizon Network to work for another employer outside the Aurizon Group,

Aurizon Network must use its best endeavours to:

 - (iii) have that Aurizon Network Personnel undergo a debriefing session provided by Aurizon Network to remind the employee (or other person) of Aurizon Network's and its own obligations relating to the management of Confidential Information; and
 - (iv) obtain an exit certificate (that includes an acknowledgement of having undergone such a debriefing process) signed by that person.
- (b) The Confidential Information Register must include a record of signed exit certificates and persons who are requested to but do not sign an exit certificate.

3.18 Security measures

- (a) Aurizon Network must use all reasonable steps to ensure that adequate security measures (physical, electronic and otherwise) are in place to ensure that only persons permitted by this Undertaking have access to Confidential Information in Aurizon Network's possession or control (whether in electronic or tangible form) and the access is only to the extent permitted for that person by this Undertaking.
- (b) Aurizon Network must ensure that all Aurizon Network Personnel are clearly identified as Aurizon Network Personnel in their dealings with Third Parties.
- (c) Aurizon Network must use all reasonable endeavours to ensure that its premises have in place adequate security measures to ensure that persons who are not Aurizon Network Personnel are unable to access the Aurizon Network offices where Confidential Information is located or stored, unless:
 - (i) access to those Aurizon Network offices is authorised by an Aurizon Network employee whose level of authority includes the right to authorise access to Aurizon Network's premises; and
 - (ii) the person is accompanied by an Aurizon Network employee at all reasonable times while in those premises.
- (d) Aurizon Network must use all reasonable endeavours to maintain a record, including reasonable details, of all persons (other than Aurizon Network Personnel) who have accessed each premise where Confidential Information is located or stored.
- (e) For the purposes of this **clause 3.18**, at any time an employee of Aurizon Network is on secondment to an Aurizon Party, that person will be considered to be staff of the Aurizon Party.
- (f) **Clause 3.18(c)** does not require that Aurizon Network be located in a different building to a Related Operator.

3.19 Decision making

- (a) Subject to **clause 3.19(b)**, Aurizon Network must comply with the following decision making process when making a decision under this Undertaking that will, or has the potential to, materially and adversely affect an Access Seeker's or Access Holder's rights under this Undertaking or an Access Holder's Access:
 - (i) the decision is made by an identified decision maker responsible for the relevant type of decision;
 - (ii) the decision is made in a manner that does not unfairly differentiate in a material way (as that term is defined

in section 137(3) of the Act) between Access Seekers and/or Access Holders in a way that has a material adverse effect on the ability of one or more of the Access Seekers or Access Holders to compete with other Access Seekers or Access Holders; and

- (iii) either:
 - (A) the decision is required in order to comply with:
 - (1) a Law;
 - (2) this Undertaking;
 - (3) the Access Agreements of adversely affected Access Holders; or
 - (4) an access code made under the Act; or
 - (B) the decision is made in accordance with Aurizon Network's documented policies and procedures; or
 - (C) the reasons for the decision are documented by Aurizon Network.
- (b) Decisions made in relation to or to prevent an emergency are exempt from the decision making process prescribed by **clause 3.19(a)**.

Section E – Complaints and Waiver

3.20 Complaint handling

- (a) If an Access Seeker, Access Holder, Train Operator or Third Party Access Seeker (**Complainant**) considers that:
 - (i) Aurizon Network has breached one or more of its obligations under this **Part 3**;
 - (ii) the Ultimate Holding Company has breached the Ultimate Holding Company Support Deed; or
 - (iii) any of:
 - (A) Aurizon Network Personnel; or
 - (B) an Aurizon Party or an employee, officer, agent or contractor of an Aurizon Party,

has breached a confidentiality deed or confidentiality provisions contained in another arrangement with Aurizon

Network under which Confidential Information was disclosed to it,

the Complainant may lodge a written complaint with Aurizon Network or the QCA or both of them and may provide a copy of any complaint lodged with Aurizon Network to the QCA.

- (b) Aurizon Network will not unreasonably prevent or hinder a Complainant from providing information or documents for the purposes of its complaint to the QCA, including by invoking any rights in relation to confidentiality that would otherwise prevent the disclosure of such information or documents.
- (c) Aurizon Network must advise the QCA, as soon as practicable, of any complaints it receives pursuant to **clause 3.20(a)**.
- (d) Aurizon Network must:
 - (i) promptly investigate complaints received under **3.20(a)**; and
 - (ii) advise the Complainant and the QCA in writing of the outcome of that investigation and Aurizon Network's proposed response, if any, no later than twenty (20) Business Days after receiving such a complaint.
- (e) Where the Complainant is not satisfied with the outcome of Aurizon Network's investigation, the Complainant may apply to the QCA seeking an audit of the relevant subject of the complaint. The QCA will consider such a request and determine whether to request Aurizon Network to conduct an audit in accordance with **clause 10.6.3**.
- (f) Aurizon Network must ensure that the Compliance Officer establishes and maintains a record of Aurizon Network's Complaint handling times under this **clause 3.20** for publication in the annual compliance report prepared under **Part 10** of this Undertaking.

Section F – Responsibility for Rail Infrastructure

3.21 Line Diagrams

- (a) The Line Diagrams indicate those parts of the Queensland rail network that are Rail Infrastructure.
- (b) During the Term, Aurizon Network must, as necessary but at intervals of no greater than six (6) Months:
 - (i) review and amend the Line Diagrams to reflect changes that have been made to the configuration or ownership of the Rail Infrastructure; and

- (ii) publish on Aurizon Network's Website:
 - (A) the current version of the Line Diagrams; and
 - (B) a description of the changes made since the immediately preceding version of the Line Diagrams.
- (c) If Aurizon Network:
 - (i) assigns or transfers ownership of existing or new Rail Infrastructure from Aurizon Network to an Aurizon Party; or
 - (ii) removes existing Rail Infrastructure (except where such Rail Infrastructure is already identified in the Line Diagrams for future removal) or amends the Line Diagrams to identify any existing Rail Infrastructure for future removal, except where the change:
 - (A) is minor or administrative in nature; or
 - (B) does not reflect a permanent reduction in Existing Capacity that would affect an Access Holder's Access other than in accordance with an Access Agreement or this Undertaking (for example, where level crossings are removed or reconfigurations of Track are undertaken),

this Undertaking ceases to apply to that Rail Infrastructure, and Aurizon Network must immediately notify the QCA with details of the assignment, transfer, removal or amendment under this **clause 3.21(c)**.

- (d) If the QCA or an Access Seeker or Access Holder is reasonably of the opinion that Line Diagrams prepared and published in accordance with **clause 3.21(b)**:
 - (i) do not indicate those parts of the Queensland rail network that are Rail Infrastructure; or
 - (ii) do not reflect that the Rail Infrastructure does not apply to this Undertaking in accordance with **clause 3.21(c)**,

the QCA or that Access Seeker or Access Holder may request in writing that Aurizon Network review and, if necessary, amend the Line Diagrams in accordance with **clause 3.21(b)**.

- (e) If Aurizon Network receives a request under **clause 3.21(d)**, Aurizon Network must:
- (i) if the QCA made the request, within thirty (30) days after receiving that request, make any necessary amendments to the Line Diagrams; and
 - (ii) if an Access Seeker or Access Holder made the request:
 - (A) promptly notify the QCA of that request;
 - (B) review the Line Diagrams;
 - (C) within thirty (30) days after receiving the request, give the QCA and the Access Seeker or Access Holder notice of whether Aurizon Network accepts the matters set out in the request and, if so, the action that Aurizon Network proposes to take; and
 - (D) make any required amendments to the Line Diagrams within fourteen (14) days after:
 - (1) where Aurizon Network has accepted the matters set out in the request, the giving of the notice under **clause 3.21(e)(ii)(C)**; or
 - (2) if there is a Dispute, the resolution of the Dispute in favour of the Access Seeker or Access Holder.
- (f) An Access Seeker or Access Holder may only refer a matter in relation to the Line Diagrams to be resolved under **Part 11**:
- (i) after Aurizon Network has notified that party in accordance with **clause 3.21(e)(ii)(C)**; or
 - (ii) if Aurizon Network fails to comply with **clause 3.21(e)(ii)**.

Part 4: Negotiation framework

4.1 Overview

- (a) The granting of Access will be underpinned by an Access Agreement that will be developed and finalised as part of the negotiation framework.
- (b) **Part 4** addresses the process by which a person may apply for, negotiate and develop an Access Agreement. In particular, under **Part 4**:
 - (i) A Prospective Access Seeker may obtain Preliminary Information prior to submitting an application for Access from the Website or, if Capacity Information is required, by lodging a request with Aurizon Network (**clause 4.2**).
 - (ii) An Access Application by an Access Seeker must be provided in the appropriate form. By submitting an Access Application, the Access Seeker agrees to be bound by this Undertaking. Aurizon Network will provide notice of any incorrectly completed sections or missing information and may request additional evidence regarding the use of Access Rights and to assess Capacity allocation (**clause 4.3**).
 - (iii) Aurizon Network will provide an Acknowledgement Notice and confirm preparation of an IAP once additional information or a properly completed Access Application is received. In specified circumstances, the negotiation process may be suspended (**clause 4.4**).
 - (iv) Aurizon Network will develop an appropriate IAP for the Access Rights sought. The Access Seeker may notify Aurizon Network regarding concerns about the IAP (**clause 4.6**).
 - (v) An Access Seeker must notify Aurizon Network if it intends to progress its Access Application based on the arrangements within the IAP (**clause 4.7**).
 - (vi) Where Access Rights cannot be provided in the absence of an Expansion, **clause 4.8** provides a process for the separation of Access Applications and suspension of the negotiation process for Access (**clause 4.8**).
 - (vii) Where multiple Access Applications for the same Access Rights are made, **clause 4.9** provides a mechanism for determining who must be treated as the Access Seeker. In these circumstances, Aurizon

Network may disclose certain information without breaching its confidentiality obligations (**clause 4.9**).

- (viii) The Negotiation Period commences once the notification of intent to progress an Access Application is provided by the Access Seeker. Specific issues are to be addressed during the Negotiation Period. Aurizon Network may provide Additional Information to the Access Seeker (**clause 4.11**).
- (ix) Aurizon Network may issue a Negotiation Cessation Notice to an Access Seeker in certain circumstances (**clause 4.13**).
- (c) A diagrammatic representation of the negotiation framework is set out in **Schedule H**.
- (d) **Part 4** must be read in conjunction with the processes outlined in **Part 7** and **Part 8**.
- (e) Any Dispute regarding a decision made, or notice given, by Aurizon Network under this **Part 4** must be notified to the QCA and Aurizon Network within ten (10) Business Days after the Prospective Access Seeker, Access Seeker, Customer, Railway Operator or Train Operator (as applicable) receives notice of Aurizon Network's decision or notice and that Dispute must be dealt with under **clause 11.1**.

4.2 Initial enquiries

- (a) Prior to submitting an Access Application, a Prospective Access Seeker may meet with Aurizon Network to discuss the Access Application process and to seek clarification of the process as outlined in this Undertaking.
- (b) Aurizon Network must promptly provide Prospective Access Seekers with information regarding the Access Application process. All Preliminary Information and the application form(s) for Access Applications must be displayed on the Website.
- (c) A Prospective Access Seeker may lodge a request for Capacity Information with Aurizon Network and Aurizon Network must provide that Capacity Information within ten (10) Business Days after receiving that request.
- (d) Aurizon Network must keep the Preliminary Information and the Capacity Information current and accurate.

4.3 Access Application

- (a) Requests for Access must be submitted to Aurizon Network in the form of an Access Application.

- (b) By submitting an Access Application, the Prospective Access Seeker agrees to be bound by all the provisions of this Undertaking as they relate to Access Seekers.
- (c) If applicable, Aurizon Network must, within ten (10) Business Days after receipt of a purported Access Application, notify the Prospective Access Seeker that:
 - (i) the purported Access Application has not been properly completed, including specifying the information required to make the application complete and compliant; or
 - (ii) Aurizon Network requests more evidence or information, to the extent reasonably required:
 - (A) regarding the Prospective Access Seeker's or Access Seeker's ability to utilise the requested Access Rights (on the basis of the factors listed in **clause 4.13(c)**);
 - (B) to satisfy Aurizon Network that the Non-availability Circumstances exist; or
 - (C) to assess the allocation of Capacity in accordance with **Part 7** and, if applicable, **Part 8**.
- (d) A person receiving a notice under **clauses 4.3(c)(i) or 4.3(c)(ii)** must provide:
 - (i) the revised Access Application; or
 - (ii) the requested evidence or information,

within twenty (20) Business Days of Aurizon Network's notice or request, as applicable, or such other period as may be agreed.
- (e) If **clause 4.3(d)** is not complied with in any respect, Aurizon Network may notify the relevant person that Aurizon Network will take no further action in relation to the request for Access and that the request for Access is deemed to be withdrawn. A notice under this **clause 4.3(e)** does not prevent a person from submitting a new request for Access.
- (f) Without otherwise affecting Aurizon Network's discretion to give a notice under **clause 4.3(e)**, Aurizon Network must provide notice to the relevant person that it will not take any further action in relation to a request for Access if that request for Access relates to a Transfer and the evidence referred to in **clause 6 of Schedule B** has not been provided.
- (g) If a Dispute arises in relation to this **Part 4** within a timeframe prescribed under this **clause 4.3**, including:

- (i) the ten (10) Business Day time period outlined in **clause 4.3(c)**; or
- (ii) the twenty (20) Business Day time period outlined in **clause 4.3(d)**,

such timeframe will be extended by the time between the issuing of a Dispute Notice and the date of resolution of the Dispute (or such longer time as may be determined by the QCA in the resolution of the Dispute and having regard to the time reasonably required to implement the steps and matters needed to give effect to the resolution).

4.4 Acknowledgement of Access Application

- (a) Within ten (10) Business Days of receiving:
 - (i) a properly completed Access Application; or
 - (ii) any further evidence or information requested under **clause 4.3(c)**,

whichever is the later, Aurizon Network will give the relevant Prospective Access Seeker a notice (**Acknowledgement Notice**):

- (iii) acknowledging receipt of the Access Application;
- (iv) confirming that Aurizon Network will prepare an IAP for the requested Access; and
- (v) confirming the date Aurizon Network received the later of:
 - (A) the properly completed Access Application; or
 - (B) any further evidence or information requested under **clause 4.3(c)**,

as applicable.

- (b) The Prospective Access Seeker's Access Application will be deemed to have been received for the purposes of this Undertaking on the later of the date the Prospective Access Seeker:
 - (i) submits a properly completed Access Application; or
 - (ii) provides to Aurizon Network any further evidence or information requested under **clause 4.3(c)**.
- (c) Subject to the Access Seeker providing a notification of intent in accordance with **clause 4.7(a)**, if relevant, the Access Seeker will be deemed to have joined the Queue in respect of the Access Rights sought on the later of the date the Access Seeker:
 - (i) submits a properly completed Access Application; or

- (ii) provides to Aurizon Network any further evidence or information requested under **clause 4.3(c)**.
- (d) Subject to **clause 4.8**, if Aurizon Network receives an Access Application for Access Rights which commence on a date more than five (5) years after the date on which the relevant Access Application would be deemed to have been received by Aurizon Network under **clause 4.4(b)**, then Aurizon Network may reject the Access Application. Rejection of the Access Application does not restrict the relevant Access Seeker from submitting a new Access Application for the same Access Rights at a later date.
- (e) Where Aurizon Network notifies an Access Seeker that Aurizon Network rejects the Access Seeker's Access Application under **clause 4.4(c) (Rejection Notice)**:
 - (i) the rejection will take effect ten (10) Business Days after Aurizon Network gives the Rejection Notice; and
 - (ii) the Access Application is deemed to be withdrawn from the date the rejection takes effect under **clause 4.4(d)(i)**.

4.5 Revisions to an Access Application

- (a) An Access Seeker may, by written request to Aurizon Network (acting reasonably), vary its Access Application at any time after receipt of an Acknowledgement Notice in accordance with this **clause 4.5**.
- (b) If the requested variation to the Access Application is not a Material Variation, then the Access Application is varied as requested by the Access Seeker and the process under this Undertaking for the Access Application will continue provided that:
 - (i) if a variation under **clause 4.5(a)** is received prior to Aurizon Network giving an IAP to the relevant Access Seeker; and
 - (ii) Aurizon Network has already commenced preparing the IAP,

Aurizon Network may, by notice to the Access Seeker, extend the date by which it must give the IAP to the Access Seeker by a period of no more than ten (10) Business Days.

- (c) If Aurizon Network considers a requested variation is a Material Variation, then Aurizon Network must, within ten (10) Business Days of receipt of the proposed variation under **clause 4.5(a)**, notify the Access Seeker of:
 - (i) its reasons for considering the variation is a Material Variation;

- (ii) the extent to which it is possible to separate the Access Application (as varied) so that one Access Application may proceed without containing a Material Variation;
 - (iii) the extent to which the Material Variation causes or contributes to the Access Application relating to Access Rights which cannot be provided in the absence of an Expansion;
 - (iv) the extent that Available Capacity exists which can satisfy part of the Access Rights sought by the Access Application with the proposed Material Variation; and
 - (v) the date by when Aurizon Network (acting reasonably) estimates that it will issue an IAP or revised IAP (as applicable) to accommodate the Material Variation.
- (d) If, within five (5) Business Days after receipt of a notice under **clause 4.5(c)**, the Access Seeker:
- (i) notifies Aurizon Network that it wishes to continue with the Material Variation, subject to **clause 4.5(e)**, Aurizon Network will use reasonable endeavours to accommodate the Material Variation including by issuing an IAP or a revised IAP (as applicable) in accordance with this **clause 4.5** within a reasonable time following receipt of any information requested under **clause 4.5(f)(ii)** and having regard to all relevant circumstances including:
 - (A) the nature and extent of the Material Variation; and
 - (B) the effect that the Material Variation has, or would have had, on any processes already carried out, or to be carried out, by Aurizon Network or the Access Seeker in accordance with this **Part 4** (including the extent of inconsistency with any parameters or other information upon which a relevant Capacity Analysis has been based) or any other provision of this Undertaking,
 - (ii) notifies Aurizon Network that it requires the Access Application to be separated (so that one Access Application may proceed without a Material Variation), then:

(A) in respect of the Access Rights that can be provided without a Material Variation, the Access Application will be taken to be varied to that extent and the process under this Undertaking for that varied Access Application will continue in accordance with **clause 4.5(b)**; and

(B) in respect of the Access Rights that cannot be provided without a Material Variation:

(1) those Access Rights will be deemed to be the subject of a separate Access Application; and

(2) that separate Access Application will be deemed to be received on the date that Aurizon Network was given the notice under this **clause 4.6(c)**; and

(3) the process set out in **clause 4.5(d)(i)** will apply in respect of that separate Access Application; or

(iii) either:

(A) notifies Aurizon Network that it does not wish to continue with any variation to the Access Application; or

(B) does not give Aurizon Network a notice under this **clause 4.5(d)**,

then the variation (including the Material Variation) is deemed to be withdrawn and negotiations for Access Rights outlined in this **Part 4** will proceed without the variation.

(e) If a Material Variation causes or contributes to the Access Application relating to Access Rights which cannot be provided in the absence of an Expansion (based on an Initial Capacity Assessment) and the Access Seeker notifies Aurizon Network under **clauses 4.5(d)(i)** or **4.5(d)(ii)(B)**, then:

(i) to the extent that Available Capacity exists which can satisfy part of the Access Rights sought by the Access Application with the proposed Material Variation, the IAP or revised IAP (as applicable) to be prepared under **clause 4.5(d)(i)** or **clause 4.5(d)(ii)(B)** (as applicable) will be prepared only in relation to that portion of the Access Rights that can be provided in the absence of an Expansion and **clause 4.5(i)** will

- apply to that portion of the Access Rights sought which cannot be provided in the absence of an Expansion; or
- (ii) if Aurizon Network cannot satisfy any part of the Access Rights sought by the Access Seeker without an Expansion, **clause 4.5(i)** will apply.
- (f) If an IAP or revised IAP (as applicable) must be prepared by Aurizon Network under this **clause 4.5**, then:
- (i) it must be accompanied by or include a statement drawing to the Access Seeker's attention the requirements under **clause 4.5(g)** and the potential consequence under **clause 4.5(i)**;
 - (ii) Aurizon Network may request the Access Seeker to provide more evidence or information, to the extent reasonably required:
 - (A) regarding the Access Seeker's ability to utilise the requested Access Rights (on the basis of the factors listed in **clause 4.13(c)**); or
 - (B) to assess the allocation of Capacity in accordance with **Part 7** and, if applicable, **Part 8**;
 - (iii) the Access Seeker must provide any requested evidence or information (except to the extent the Non-availability Circumstances exist) as soon as reasonably practicable (but within no more than twenty (20) Business Days of Aurizon Network's request for that evidence or information or such other period as may be agreed); and
 - (iv) if the evidence or information required to be provided by the Access Seeker under **clause 4.5(f)(iii)** is not provided to Aurizon Network within the required time period under **clause 4.5(f)(iii)**, then:
 - (A) Aurizon Network's obligations in relation to preparing the IAP or the revised IAP (as applicable) in response to the Material Variation cease;
 - (B) the Material Variation is deemed to be withdrawn; and
 - (C) negotiations for Access Rights outlined in this **Part 4** will

proceed without the Material Variation.

- (g) The Access Seeker must, within ten (10) Business Days after being given the IAP or revised IAP (as applicable) issued by Aurizon Network under this **clause 4.5** in response to a Material Variation, notify Aurizon Network that it intends to continue to negotiate for Access Rights in accordance with this Undertaking either:
 - (i) on the basis of the IAP or the revised IAP (as applicable) issued by Aurizon Network under this **clause 4.5** in response to a Material Variation; or
 - (ii) without the Material Variation to the Access Application.
- (h) If an Access Seeker notifies Aurizon Network in accordance with **clause 4.5(g)(ii)**, the Material Variation is deemed to be withdrawn and the process under this **Part 4** will continue without the Material Variation.
- (i) If:
 - (i) a request to vary an Access Application was made after the relevant Access Seeker has given Aurizon Network a notification of intent under **clause 4.7** in respect of that Access Application and Aurizon Network notifies the Access Seeker under **clause 4.5(c)** that it considers all or a portion of the requested variation is a Material Variation;
 - (ii) Aurizon Network has received a notice under **clause 4.5(g)(i)** and there was a portion of the Material Variation that could not be provided in the absence of an Expansion (based on an Initial Capacity Assessment) under **clause 4.5(e)(i)**;
 - (iii) **clause 4.5(e)(ii)** applies; or
 - (iv) the Access Seeker does not notify Aurizon Network in accordance with **clause 4.5(g)**,

then the following apply:

- (v) where **clause 4.5(i)(i)** applies:
 - (A) the Material Variation is deemed to be withdrawn by the Access Seeker and, for clarity, the process under this **Part 4** will cease in respect of that Material Variation; and

- (B) the process under this **Part 4** will continue for the Access Application;
 - (vi) the relevant Access Application (including the Material Variation) or, in the case of **clause 4.5(i)(ii)**, the relevant portion of the Access Application (including the relevant portion of the Material Variation), is deemed to be withdrawn by the Access Seeker and, for clarity, the negotiation process under this **Part 4** will cease in respect of that Access Application or, in the case of **clause 4.5(i)(ii)**, the relevant portion of the Access Application; and
 - (vii) except where that Access Seeker has notified Aurizon Network to the contrary, a new request for Access in respect of the whole or any part of the Material Variation or Access Application (as applicable) withdrawn under **clause 4.5(i)(v)** or **(vi)** is deemed submitted to Aurizon Network on the date of Aurizon Network's notice given under **clause 4.5(c)**, and the negotiation process for that new request for Access will start at the beginning of the process under this **Part 4**.
- (j) If a change described in **clause 4.10.1(c)(ii)** or **4.10.1(c)(iii)** constitutes a Material Variation, references in this **clause 4.5** to Access Seeker will be taken to refer to the incoming Access Seeker from the date when the incoming Access Seeker replaces the existing Access Seeker in accordance with **clause 4.10.1(c)(ii)** or **4.10.1(c)(iii)** as applicable.
- (k) Subject to **clause 4.5(i)**, the negotiation process under this **Part 4** is suspended for the period:
- (i) from (and including) the time that the Access Seeker requested the Material Variation; and
 - (ii) until (and including) the time when:
 - (A) the request for Material Variation is deemed to be withdrawn under **clauses 4.5(d)(iii), 4.5(f)(iv)(B) or 4.5(h)**; or
 - (B) following the issue of an IAP or revised IAP in response to the Material Variation under this **clause 4.5**, Aurizon Network is notified under **clause 4.5(i)**,

(Suspension Period).

4.6 Indicative Access Proposal

- (a) Aurizon Network will review the information received and assess the Access Application to develop an IAP for the type of Access Rights being sought and having regard to the appropriate form of Access Agreement referred to in **clause 5.1(c)**.
- (b) If an Access Application is received by Aurizon Network and Aurizon Network considers (acting reasonably) that the Capacity is constrained, as soon as practicable or in any case no later than the date of the provision of the IAP or revised IAP, Aurizon Network must advise the Access Seeker of this and, to the extent that the relevant information is available at the relevant time, provide reasons why such constraint cannot be mitigated except through an Expansion.
- (c) The IAP will outline:
 - (i) the Rollingstock and Rollingstock Configuration;
 - (ii) the relevant operating characteristics;
 - (iii) an Initial Capacity Assessment (which is subject to confirmation by a Capacity Analysis prepared in accordance with **clause 4.11.2(a)(v)**) together with Aurizon Network's assumptions regarding Rollingstock, section run times and loading and unloading times used in preparing that assessment (but, for clarity and efficiency, Aurizon Network may use all or part of any pre-existing Capacity assessment to the extent that it is appropriate to do so);
 - (iv) whether any other requests for Access exist that, if approved, would affect Aurizon Network's ability to grant the Access Rights sought by the Access Seeker;
 - (v) an initial estimate of the Access Charge applicable to the Train Service proposed and details of how the initial estimate has been calculated, including where **clauses 6.2.2, 6.2.3 or 6.2.4** apply details of how those clauses have been applied in calculating the initial estimate;
 - (vi) details of any further information reasonably required from the Access Seeker in preparation for the negotiation stage; and
 - (vii) where the grant of Access Rights will require the construction of an Expansion, information identifying the likely need for an Expansion and identifying the Expansion, including likely timeframes, to the extent that this information exists and is reasonably available to, and can lawfully be provided by, Aurizon Network.

- (d) The IAP contains indicative arrangements only and does not oblige Aurizon Network to provide Access.
- (e) Subject to any suspension of the negotiation process under **clauses 4.5(l)** or **4.8(d)** occurring before the IAP is provided to the Access Seeker, or an extension of the relevant date under **clause 4.5(b)**, Aurizon Network will provide the IAP to the Access Seeker within twenty (20) Business Days of the date of the Acknowledgement Notice. However, where, due to the complexity of the Access Application or other extenuating circumstances, it is not reasonable to provide an IAP within that period, Aurizon Network may, by notice to the Access Seeker (to be given as soon as practicable and in any case no later than fifteen (15) Business Days after the Acknowledgement Notice), extend the period for the giving of an IAP by up to a further twenty (20) Business Days. This period may be further extended by agreement between Aurizon Network and the Access Seeker.
- (f) Unless otherwise agreed by Aurizon Network and the Access Seeker, the IAP expires sixty (60) Business Days after the later of:
 - (i) the date of its provision to the Access Seeker; and
 - (ii) the date of issue of a revised IAP (if any) under **clause 4.6(h)**,

provided that where:

- (iii) the negotiation process has been suspended under **clause 4.5(k)** or **clause 4.8(a)**; and
- (iv) Aurizon Network provided the IAP to the Access Seeker prior to that suspension commencing,

the expiry date is extended by the period during which the negotiation process was suspended.

- (g) If the Access Seeker believes, acting reasonably, that the IAP has not been prepared in accordance with this Undertaking and would therefore not be an appropriate basis for continuing with the negotiation process under this Undertaking, the Access Seeker will notify Aurizon Network of its concerns within twenty (20) Business Days of being provided with the IAP, or such other timeframe as Aurizon Network and the Access Seeker agree.
- (h) Aurizon Network will respond to the concerns of any Access Seeker notified under **clause 4.6(g)** including, where appropriate, by making revisions to the IAP:
 - (i) within ten (10) Business Days after being notified under **clause 4.6(g)**; or
 - (ii) if due to the complexity of the concerns or other extenuating circumstances it is not reasonable to

provide a response within that ten (10) Business Day period, a reasonable period notified by Aurizon Network to the Access Seeker within five (5) Business Days after the Access Seeker's notice to Aurizon Network under **clause 4.6(g)**.

- (i) If a Dispute arises in relation to this **Part 4** within a timeframe prescribed under this **clause 4.6**, including (but not limited to):
 - (i) the twenty (20) Business Day time period outlined in **clause 4.6(e)** (or, if extended in accordance with that clause, such extended timeframe); and
 - (ii) the sixty (60) Business Day time period outlined in **clause 4.6(f)** (or, if extended in accordance with that clause, such extended timeframe),

such timeframe will be extended by the time between the issuing of a Dispute Notice and the date of resolution of the Dispute (or such longer time as may be determined by the QCA in the resolution of the Dispute and having regard to the time reasonably required to implement the steps and matters needed to give effect to the resolution). Aurizon Network has no obligation to produce an IAP for an Access Seeker that notifies Aurizon Network that the Access Seeker no longer wishes to proceed with its Access Application.

4.7 Notification of intent

- (a) If an Access Seeker intends to progress its Access Application on the basis of the arrangements outlined in the IAP, the Access Seeker must notify Aurizon Network of its intention prior to the expiry of the IAP in accordance with **clause 4.6(f)**. Notification must be in the form set out in the IAP.
- (b) Where an Access Seeker does not notify Aurizon Network under **clause 4.7(a)**, the Access Application and the IAP are deemed to be withdrawn on the IAP's expiry date.

4.8 Access Applications that require Expansions

- (a) If an Access Application is received by Aurizon Network which is, in part, for Access Rights which cannot be provided in the absence of an Expansion, Aurizon Network must notify the Access Seeker of the portion of the Access Rights being sought which can be provided without an Expansion as soon as practicable or in any case no later than the date of the provision of the IAP under **clause 4.6(e)**.
- (b) Within five (5) Business Days of receipt of notice from Aurizon Network under **clause 4.8(a)**, the Access Seeker must notify Aurizon Network whether or not it requires the Access Application to be separated as contemplated by this clause.

- (c) If the Access Seeker elects for the Access Application to be separated:
- (i) the Access Rights that can be provided without an Expansion will:
 - (A) be deemed to be the subject of one Access Application made on the date the Access Seeker's original Access Application was deemed to be received under **clause 4.4(b)**; and
 - (B) proceed in accordance with the process under this **Part 4**;
 - (ii) the Access Rights that can be provided only with an Expansion will be deemed to be the subject of a second Access Application made on the date the Access Seeker's original Access Application was deemed to be received under **clause 4.4(b)**; and
 - (iii) the separation of the Access Application into two Access Applications will occur without having to follow the process under **clause 4.5**.
- (d) The following provisions will apply where the Access Seeker elects that the Access Application will not be separated and in respect of the second Access Application referred to in **clause 4.8(c)(ii)** or where an Access Application is received by Aurizon Network in respect of Access Rights which can only be provided with an Expansion:
- (i) **clauses 8.2 to 8.9** will apply;
 - (ii) the negotiation process for Access may be suspended (before or after the provision of an IAP) by either Aurizon Network or the relevant Access Seeker giving notice to the other (provided that a notice given under this clause must give reasons for the suspension); and
 - (iii) a suspension of the negotiation process under **clause 4.8(d)(ii)** continues until the date that:
 - (A) Aurizon Network and the Access Seeker enter into an agreement as to how an Expansion is to be funded in accordance with **clause 8.2.1(c)(ii)**;
 - (B) a determination of a relevant Dispute specifies, subject to the terms of this Undertaking what Expansion is required and how

- that Expansion is to be funded;
or
- (C) Aurizon Network and the Access Seeker agree to restart or continue negotiations for Access in parallel with any negotiations over funding of the required Expansion.
- (e) When the negotiation process is suspended in accordance with **clause 4.8(d)(ii)**, Aurizon Network:
- (i) may request at intervals not more than every six (6) Months that the Access Seeker confirm, in writing:
- (A) the Access Seeker's ongoing requirement for the Access Rights;
- (B) the reasonable likelihood that the Access Seeker will be able to utilise the requested Access Rights at the proposed date of commencement of those Access Rights (on the basis of the factors listed in **clause 4.13(c)**) and provide any relevant information or evidence requested by Aurizon Network (acting reasonably); and
- (C) any material change to the information contained in their Access Application or provided in respect of the matters referred to in **clause 4.3(d)**; and
- (ii) must, as soon as practicable, notify the Access Seeker of any changes to an Expansion that will impact the proposed timing or provision of Access relevant to the Access Seeker's Access Application.
- (f) If the document or information referred to in **clause 4.8(e)(i)** is not provided to Aurizon Network within the period that is twenty (20) Business Days after Aurizon Network's request, Aurizon Network may notify the relevant person that Aurizon Network will take no further action in relation to the request for Access and that the request for Access is deemed to be withdrawn. A notice under this **clause 4.8(f)** does not prevent a person from submitting a new request for Access.

- (g) Where a Provisional Capacity Allocation (as defined under **clause 8.5(b)(ii)**) has been granted to an Access Seeker, Aurizon Network may, acting reasonably and in good faith, suspend negotiations with other Access Seekers for Access Rights which, if the holder of the Provisional Capacity Allocation executes an Access Agreement in respect of the Provisional Capacity Allocation, cannot be provided in the absence of an Expansion, pending the outcome of negotiations with the holder of the Provisional Capacity Allocation.

4.9 Multiple applications for the same Access

- (a) If more than one party has submitted an Access Application for the same Access Rights and:
 - (i) one of the parties that has applied for Access is the Customer Access Seeker:
 - (A) this Undertaking and Aurizon Network will treat the Customer Access Seeker as the sole Access Seeker and the other relevant Access Seekers' Access Applications for the same Access Rights as having been withdrawn; and
 - (B) Aurizon Network must negotiate solely with that Customer Access Seeker; or
 - (ii) the only parties that applied for Access are Railway Operators then, to the extent that each Railway Operator is either:
 - (A) currently engaged in negotiations with a Customer in respect of a potential haulage agreement in respect of the Access Rights being sought; or
 - (B) a party to an existing haulage agreement with the Customer in respect of the Access Rights being sought;
- then:
- (C) this Undertaking and Aurizon Network will treat the Railway Operators as Access Seekers; and

- (D) Aurizon Network will negotiate with each of those Railway Operators until an alternative Railway Operator is (or Railway Operators are) nominated in writing by the Customer to Aurizon Network.
- (b) Notwithstanding any other provision in this **Part 4**, if **clause 4.9(a)(ii)** applies, Aurizon Network is not obliged to enter into an Access Agreement with a Railway Operator until a nomination for a Railway Operator is received from the relevant Customer.
- (c) Aurizon Network may, for the purpose of **clause 4.9(a)**, disclose to the Customer that an Access Application by an Access Seeker in respect of that Customer has been received (that disclosure will not constitute a breach of the confidentiality obligations owed by Aurizon Network under **Part 3**).
- (d) Access Applications that constitute:
 - (i) Mutually Exclusive Access Applications will be dealt with in accordance with **clause 7.5**; and
 - (ii) Competing Applications will be dealt with in accordance with **clause 7.5.2(c)**.

4.10 Requirements for Customers, Customer Access Seekers and Train Operators

4.10.1 Customers and Customer Access Seekers

- (a) A Customer Access Seeker may (in its absolute discretion) give notice to Aurizon Network nominating a Railway Operator (**Nominee Operator**) to act on its behalf for the purpose of assisting the Customer Access Seeker with its Access Application including in negotiations with Aurizon Network for the requested Access. Unless the Customer Access Seeker's nomination expressly indicates otherwise or the nomination is revoked by notice to Aurizon Network:
 - (i) the Nominee Operator will, for the purpose of this Undertaking, be taken to be the Customer Access Seeker's agent in relation to the Access Application including for the giving of any notices that may or are required to be given under this Undertaking (but not for the execution of any Access Agreement or other agreement); and
 - (ii) despite any other provision to the contrary in this Undertaking, any information disclosed to the Nominee Operator by Aurizon Network or disclosed to Aurizon

Network by the Nominee Operator will be treated as though it was disclosed to or by the Customer Access Seeker, as applicable.

- (b) If Aurizon Network receives notices from both the Nominee Operator and the Customer Access Seeker in respect of the same requirement under this Undertaking or the same subject matter, the Nominee Operator's notice is of no effect and will be disregarded by Aurizon Network.
- (c) At any time during negotiations under this **Part 4**:
 - (i) a Customer Access Seeker may withdraw any nomination made under **clause 4.10.1(a)** or replace that nomination by nominating a different Railway Operator to act on its behalf;
 - (ii) a person may take over an Access Seeker's Access Application where that person is the Customer for that Access Seeker; or
 - (iii) a Customer Access Seeker may nominate a Railway Operator to take over the Customer Access Seeker's Access Application and replace the Customer Access Seeker as the Access Seeker for that Access Application,

by notice to Aurizon Network and to the relevant Railway Operator or Access Seeker (as applicable).

- (d) From the date on which Aurizon Network is given a notice under:
 - (i) **clause 4.10.1(c)(i)** withdrawing a nomination, the relevant Railway Operator will cease to be a Nominee Operator for the purpose of **clause 4.10.1(a)** and Aurizon Network must immediately cease providing the Railway Operator with any information in respect of the relevant Access Application;
 - (ii) **clause 4.10.1(c)(i)** nominating a different Railway Operator, that Railway Operator will become the Nominee Operator (replacing the Railway Operator who was previously nominated) for the purpose of **clause 4.10.1(a)** and Aurizon Network must immediately cease providing the exiting Railway Operator with any information in respect of the relevant Access Application;
 - (iii) **clause 4.10.1(c)(ii)**, the Customer will become the Access Seeker (replacing the existing Access Seeker) for the relevant Access Application; or
 - (iv) **clause 4.10.1(c)(iii)** and a notice from the relevant Railway Operator accepting the Customer Access

Seeker's nomination, the Railway Operator will become the Access Seeker (replacing the existing Customer Access Seeker) for the relevant Access Application.

- (e) If a person becomes the Access Seeker for an Access Application (replacing the existing Access Seeker) under **clause 4.10.1(d)(iii)** or **(iv)** (as applicable), that person by doing so agrees to be bound by all the provisions of this Undertaking as they relate to Access Seekers.
- (f) If a transfer of an Access Application occurs in accordance with **clause 4.10.1(d)(iii)** or **(iv)**, then:
 - (i) Aurizon Network must provide the incoming Access Seeker with a copy of:
 - (A) the Access Application;
 - (B) notices and other documents (including any IAP) given to or by the outgoing Access Seeker by or to Aurizon Network as expressly required to be given in accordance with this Undertaking; and
 - (C) any other documents exchanged between Aurizon Network and the outgoing Access Seeker that are material to the Access Application and any related negotiations,except to the extent that providing that information would:
 - (D) be in breach of Aurizon Network's confidentiality obligations under **Part 3**; or
 - (E) disclose information to the incoming Access Seeker that is commercially sensitive to the outgoing Access Seeker or that is not required to be disclosed to the incoming Access Seeker in order to progress the Access Application (or both); and
 - (ii) on Aurizon Network's written request, the incoming Access Seeker must provide to Aurizon Network or procure for Aurizon Network:

- (A) appropriate replacement information to the extent reasonably required; or
- (B) authority from the outgoing Access Seeker that Aurizon Network may continue to use the relevant information provided by the outgoing Access Seeker in relation to the Access Application and any related negotiations.

4.10.2 Train Operators

- (a) A request by a prospective Train Operator for Aurizon Network to enter into a Train Operations Deed must be provided in writing and:
 - (i) identify the relevant Access Holder (or Access Seeker) and, if that Access Holder (or Access Seeker) is the Train Operator, also identify the relevant Customer; and
 - (ii) contain the information required by an Access Application and any other information reasonably required by Aurizon Network to assess the request and complete the Train Operations Deed.
- (b) A negotiation process will apply to the prospective Train Operator as specified in **clause 4.11**.
- (c) By submitting a request under **clause 4.10.2(a)**, the prospective Train Operator agrees to be bound by all the provisions of this Undertaking as they relate to Train Operators.

4.11 Negotiation process

4.11.1 Negotiation Period

- (a) A Negotiation Period in respect of:
 - (i) an Access Seeker's Access (including negotiation of the terms and conditions of the relevant Access Agreement in accordance with **Part 5**) commences on the date on which the Access Seeker notifies Aurizon Network in accordance with **clause 4.7**; and
 - (ii) a Train Operator's Train Operations Deed commences on the date that Train Operator has provided to Aurizon Network all of the relevant information referred to in **clause 4.10.2**.
- (b) Once the Negotiation Period has commenced, the Access Seeker or Train Operator, as applicable, and Aurizon Network will

begin negotiations as soon as reasonably possible in relation to an Access Agreement or Train Operations Deed (as applicable).

- (c) If the Access Seeker or Train Operator, as applicable, and Aurizon Network are required to comply with **clause 6.13 (Access Conditions)**, the negotiation process under this **Part 4** will be suspended with effect on and from the date of submission of a report by Aurizon Network to the QCA in accordance with **clause Error! Reference source not found.** until the date of receipt of a decision by the QCA, in accordance with **clause 6.13.2**, to either approve or refuse to approve the proposed Access Conditions.

(d) An Access Seeker's Negotiation Period ceases on:

- (i) the execution of an Access Agreement in respect of the Access sought by the Access Seeker;
- (ii) Aurizon Network receiving notification by the Access Seeker that it no longer wishes to proceed with its Access Application;
- (iii) Aurizon Network issuing a Negotiation Cessation Notice to the Access Seeker under **clause 4.13(a)**;
- (iv) the date:
 - (A) nine (9) Months after the commencement of the Negotiation Period except where **clause 4.11.1(c)(iv)(B)** applies; or
 - (B) where the negotiation process has been suspended in accordance with **clause 4.5(k)** or **clause 4.11.1(c)**, nine (9) Months, plus the number of days of the Suspension Period, after the commencement of the Negotiation Period,

unless:

- (C) both parties agree to extend the Negotiation Period, in which case the Negotiation Period will continue until the expiry of the agreed extended period; or
- (D) a Dispute arises between the parties in relation to this **Part 4** within the Negotiation Period, in which case, the Negotiation

Period will, subject to **clause 4.13**, be extended by the time between the issuing of a Dispute Notice and the date of the resolution of the Dispute (or such longer time as may be determined by the QCA in the resolution of the Dispute and having regard to the time reasonably required to implement the steps and matters needed to give effect to the resolution); or

(v) subject to **clause 4.11.1(d)**, Aurizon Network no longer being able to offer Access to the Access Seeker under the terms of the IAP, either because of:

(A) Available Capacity being reduced; or

(B) Infrastructure Enhancements subsequently committed to adversely impacting the ability to develop Infrastructure Enhancements contemplated by the IAP; or

(vi) as otherwise provided in accordance with this Undertaking.

(e) If:

(i) Aurizon Network can no longer offer Access to the Access Seeker under the terms of the relevant IAP because of a reason set out in **clause 4.11.1(c)(v)(A)** or **4.11.1(c)(v)(B)**; and

(ii) either the remaining Available Capacity can satisfy part of the Access Rights sought by the Access Seeker or the contemplated Infrastructure Enhancements can be altered to provide all or part of the Access Rights sought,

Aurizon Network will notify the Access Seeker of that event and the portion of the Access Rights being sought which can be provided and:

(iii) in that notice, to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed, provide the Access Seeker with an objective, evidence-based explanation as to why Available Capacity is being reduced or Infrastructure Enhancements subsequently committed to adversely impacting the ability to develop Infrastructure Enhancements contemplated by the IAP;

- (iv) if requested by the Access Seeker within ten (10) Business Days after the Access Seeker is given such a notice, prepare and issue to the Access Seeker a revised IAP in accordance with **clause 4.6** in relation to that portion of the Access Rights that can be provided; and
- (v) if, within ten (10) Business Days after being given the revised IAP, the Access Seeker notifies Aurizon Network that it intends to continue to negotiate for Access Rights on the basis of the revised IAP, the negotiation process outlined in this **Part 4** will recommence from that point.

Aurizon Network's obligation under this **clause 4.11.1(d)**, to the extent that it relates to Infrastructure Enhancements, is subject to Aurizon Network's obligations under **Part 8** and Aurizon Network is not required to do anything in accordance with this **clause 4.11.1(d)** that would cause or contribute to it failing to comply with **Part 8**.

- (f) For clarity:
 - (i) to the extent that all or part of the Access Rights sought by the Access Seeker cannot be provided due to there being insufficient remaining Available Capacity or the contemplated Infrastructure Enhancements cannot be sufficiently altered as contemplated by **clause 4.11.1(d)(ii)**; or
 - (ii) the negotiation process is not recommenced under **clause 4.11.1(d)(v)** in respect of all or part of the Access Rights sought by the Access Seeker,

then the Negotiation Period in respect of those relevant Access Rights will have ceased and any future request by the Access Seeker in respect of those Access Rights will be treated as a new Access Application.

- (g) A Train Operator's Negotiation Period ceases on:
 - (i) the execution of the Train Operations Deed;
 - (ii) Aurizon Network receiving notification by the Train Operator that it no longer wishes to negotiate or enter into the Train Operations Deed;
 - (iii) Aurizon Network issuing a Negotiation Cessation Notice to the Train Operator under **clause 4.13**;
 - (iv) the expiration of nine (9) Months from the date that the Train Operator is nominated by the relevant Access Holder or Access Seeker, as the case may be, unless:
 - (A) both parties agree to extend the Negotiation Period, in which case

- the Negotiation Period will continue until the expiry of the agreed extended period; or
- (B) a Dispute arises between the parties in relation to this **Part 4** within the Negotiation Period, in which case, the Negotiation Period will, subject to **clause 4.13**, be extended by the time between the issuing of a Dispute Notice and the date of the finding (or such longer time as may be determined by the QCA in the resolution of the Dispute);
- (v) the Access Seeker being given a Negotiation Cessation Notice in respect of its Access Application and that Negotiation Cessation Notice has taken effect in accordance with **clause 4.13**; or
- (vi) a notice is given by Aurizon Network under **clause 4.12(d)**.

4.11.2 Issues to be addressed during negotiation

- (a) During the Negotiation Period, Aurizon Network and the Access Seeker or Train Operator, as applicable, will negotiate and endeavour to agree on the elements comprising, for an Access Seeker, the relevant form of Access Agreement referred to in **clause 5.1(c)** for the type of Access Rights being sought or, for a Train Operator, the matters to be completed in the relevant Train Operations Deed. In order to facilitate this process:
 - (i) an Access Seeker must (if it has not done so already) nominate its Train Operator by notice to Aurizon Network;
 - (ii) Aurizon Network must provide to the Access Seeker Additional Information (together with any requested Capacity Information) relevant to the rail corridor applicable to the Access Seeker's Access Application and that information must be the most current available to Aurizon Network and be provided within a reasonable timeframe;
 - (iii) the Access Seeker (or its nominated Train Operator) must prepare an Operating Plan;
 - (iv) Aurizon Network must provide an Access Charge, determined in accordance with the pricing principles set out in **Part 6**, including advice as to whether

Aurizon Network has applied **clause 6.3** or **clause 6.4** in determining the Access Charge and if so:

- (A) the factor associated with the Access Seeker's proposed Access that results in a different cost or risk to Aurizon Network;
 - (B) the impact that the factor has on the Access Charge; and
 - (C) how that impact on the Access Charge was determined;
- (v) Aurizon Network must undertake a Capacity Analysis and an investigation of operational impacts and any Expansions necessary to accommodate Access by the Access Seeker are to be advised by Aurizon Network except to the extent that Aurizon Network considers that such matters are not required;
 - (vi) Aurizon Network must provide the definition of the relevant Train Service Entitlement and, where applicable, the initial timetable for the proposed Train Services; and
 - (vii) the Access Seeker (or its nominated Train Operator) must demonstrate that the Rollingstock and Rollingstock Configurations for which the Access Rights are applicable are subject to certificates of compliance or a Compliance Statement (as that term is defined in the Train Operations Deed), as applicable, with the Rollingstock Interface Standards.
- (b) Without limiting the matters that an Access Seeker or a Train Operator and Aurizon Network may address during the Negotiation Period, Aurizon Network (jointly with the Access Seeker or Train Operator) will, or will commence to, conduct an Interface Risk Assessment and prepare an IRMP during the Negotiation Period in accordance with the provisions set out in a Standard Access Agreement or a Standard Train Operations Deed (as applicable) in respect of such matters:
 - (i) if requested by the Access Seeker or Train Operator; and
 - (ii) it is reasonably necessary to do so prior to the Access Seeker or Train Operator and Aurizon Network executing an Access Agreement or Train Operations Deed, as applicable.
 - (c) It would be reasonably necessary to conduct an Interface Risk Assessment for the purposes of **clause 4.11.2(b)** in the following circumstances:

- (i) the relevant Access relates to the transportation of coal from a new mine or load out facility;
- (ii) the Access Seeker (or, the relevant Train Operator) is seeking to operate new Rollingstock, is not an Access Holder or is not currently operating Rollingstock on the Rail Infrastructure; or
- (iii) the proposed operation, movement, provisioning or other operational aspects of the Train Services or proposed Rollingstock relating to the requested Access Rights will differ from existing Train Services operated on the Rail Infrastructure by the Access Seeker (or the relevant Train Operator) including where:
 - (A) there are reversing or special shunting movements that will be necessary for the proposed Train Services;
 - (B) there is a different driver methodology that applies to, or number of train drivers for, the Trains for the proposed Train Services;
 - (C) the Trains for the proposed Train Services will have a different operating direction (including loading or unloading direction) from that which the relevant Rail Infrastructure, loading or unloading facility or other relevant infrastructure was designed for (for example, entering a balloon loop in the opposite direction to what the balloon loop was designed for);
 - (D) the Trains for the proposed Train Services are proposed to operate at a speed greater than any speed limit or speed restriction that applies at any point on the Rail Infrastructure to be used by the Train Services;
 - (E) the proposed Train Services will not be able to meet nominated section running times for the relevant Reference Train Service

- or, if there is no relevant Reference Train Service, the section running times that typically apply to the relevant Rail Infrastructure;
- (F) the Rail Infrastructure is required to be extended, enhanced, expanded, augmented, duplicated or replaced in order for the relevant Access Rights to be used – for example, the installation of open door sensors; and
 - (G) there has been a change in the Access Seeker's (or relevant Train Operator's) or Aurizon Network's accreditation or Safety Management System under the Rail Safety Act.
- (d) During the Negotiation Period, Aurizon Network may seek further information that is reasonably required to address any matters referred to in this **clause 4.11.2** or information or evidence of the Access Seeker's ability to utilise the requested Access Rights (on the basis of the factors listed in **clause 4.13(c)**) and from other providers of infrastructure to be used as an entry or exit point to the Rail Infrastructure, such as owners or operators of unloading facilities. The Access Seeker must provide the information and evidence requested within twenty (20) Business Days of the request (or such other period as may be agreed with Aurizon Network) and facilitate the provision of such information from Third Parties, as applicable.
- (e) The Access Seeker does not fail to comply with a request by Aurizon Network under **clause 4.11.2(d)** where the Non-availability Circumstances are satisfied.
- (f) In respect of the details required to be developed by the parties in accordance with **clauses 4.11.2(a)** and **4.11.2(b)**, the parties may agree, for example:
- (i) to finalise certain aspects after the execution of the Access Agreement or the Train Operations Deed, as applicable;
 - (ii) to make the commencement of Train Services under the Access Agreement or the Train Operations Deed, as applicable, subject to the satisfaction of conditions (including, for example, the completion of schedules to the Access Agreement or the securing of access rights

- to an unloading facility or the securing of access to adjoining infrastructure); or
- (iii) to include mechanisms in the Access Agreement or the Train Operations Deed, as applicable, to address any subsequent cost or operating impacts arising in connection with the matters referred to in **clauses 4.11.2(f)(i) and 4.11.2(f)(ii)** that have not been expressly addressed either as part of the relevant Reference Train Service or in the negotiation of the relevant Access Agreement or Train Operations Deed.

4.12 Negotiation of Access Agreements and Train Operations Deeds

- (a) Each Access Holder or Access Seeker:
 - (i) may be present and participate in any negotiation between Aurizon Network and a Train Operator for a Train Operations Deed (and Operating Plan) in respect of the Access Holder's Access Rights (or Access Seeker's proposed Access Rights);
 - (ii) may not participate in negotiations between Aurizon Network and a Train Operator that relate to Access Rights for a different Access Holder or Access Seeker; and
 - (iii) may require Aurizon Network to permit its Train Operator to be present at, and participate in, all negotiations between Aurizon Network and the Access Holder or Access Seeker for Access Rights proposed to be wholly or partially utilised by that Train Operator.
- (b) In negotiating an Access Agreement and for the purposes of this **Part 4**, if the Access Holder or Access Seeker does not provide required information regarding Rollingstock and Rollingstock Configurations for the required Train Services, Aurizon Network may assume:
 - (i) a Reference Train Service in respect of the Rollingstock and Rollingstock Configurations; and
 - (ii) such other Above Rail operational matters as are reasonably necessary (having regard to any existing standard manner of conducting Above Rail Services on the relevant parts of the Rail Infrastructure).
- (c) If one or more Train Operations Deeds are negotiated between Aurizon Network and the relevant Train Operator(s), the Train Operations Deed(s) must not (alone, or in aggregate if there is more than one) grant rights to utilise the Rail Infrastructure that

exceed the corresponding Access Rights granted, or to be granted, to the relevant Access Holder or Access Seeker.

- (d) If, for whatever reason (except by reason of execution of the Access Agreement):
 - (i) negotiations in respect of the Access Agreement expire or are terminated;
 - (ii) the Access Seeker ceases to be an Access Seeker in respect of the Access Rights that relate to the relevant Train Operations Deed; or
 - (iii) where the Access Holder has already executed an Access Agreement, the Access Holder ceases to be an Access Holder in respect of the Access Rights that relate to the relevant Train Operations Deed,

then Aurizon Network will, by notice to the Train Operator, terminate its negotiations in respect of the corresponding Train Operations Deed.

4.13 Cessation of negotiations

- (a) At any time during a Negotiation Period, Aurizon Network (acting reasonably):
 - (i) may give a Negotiation Cessation Notice to an Access Seeker or a Train Operator, as applicable, if:
 - (A) the Access Seeker or Train Operator, as applicable, fails to comply (after being issued with any notices required under this Undertaking) with the relevant obligations and processes contained in this Undertaking, and such non-compliance is material;
 - (B) there is no reasonable likelihood that the Access Seeker or the Train Operator will comply with the terms and conditions of an Access Agreement or Train Operations Deed, as applicable, in a material way;
 - (C) the Access Seeker or its Train Operator, as applicable, fails to comply with **clause 4.8(e)**;
 - (D) the Access Seeker or Train Operator, as applicable, has no

- genuine intention of obtaining Access Rights or has no reasonable likelihood of utilising Access at the level sought;
 - (E) subject to **clause 11.1.4(f)**, the Access Seeker or Train Operator, as applicable, does not comply with a determination of an expert in accordance with **clause 11.1.4**; or
 - (F) the Access Seeker or the Train Operator, as applicable, does not comply with a determination of the QCA under **clause 11.1.5** in relation to a Dispute, and
- (ii) must give a Negotiation Cessation Notice to an Access Seeker where:
- (A) the Access Seeker's Customer notifies Aurizon Network that they no longer agree to the Access Seeker negotiating an Access Agreement based on the transport of their coal; or
 - (B) if the relevant Access Application relates to a Transfer, either the Customer of the Access Holder that holds the Transferred Access Rights (if any) or the Transferee's Customer (if any) notifies Aurizon Network that they no longer agree to the Transfer.

For clarity, an Access Holder's or Access Seeker's negotiations of an Access Agreement are not affected if negotiations of a Train Operations Deed between Aurizon Network and a Train Operator nominated by the Access Holder or Access Seeker under **clause 4.9(a)(ii)(D)** cease.

- (b) Without limitation to **clause 4.13(a)(i)(B)**, **clause 4.13(a)(i)(B)** is deemed satisfied, if:
- (i) the Access Seeker or the Train Operator, as applicable, is subject to an Insolvency Event; or
 - (ii) the Access Seeker or the Train Operator, as applicable, or a Related Party of the Access Seeker or

Train Operator, is currently, or has in the previous two years been, in Material Default of:

- (A) any Access Agreement or Train Operations Deed, as applicable; or
- (B) any other agreement where its performance under that other agreement is relevant to its likely performance under any proposed Access Agreement or Train Operations Deed, as applicable.

(c) Without limitation to **clause 4.13(a)(i)(D)**:

(i) **clause 4.13(a)(i)(D)** is deemed satisfied in relation to an Access Seeker or Train Operator (as applicable) in relation to coal carrying Train Services, where:

(A) for an Access Seeker in respect of the negotiation of an Access Agreement, the Access Seeker:

(1) is seeking Access Rights that will be used for a person other than the Access Seeker (that is, a person who will be a Customer); and

(2) has no reasonable likelihood of having a Customer for those Access Rights (provided that any consideration of reasonable likelihood must disregard the effect of granting the Access Rights to the Access Seeker on the Access Seeker's ability to attract a Customer in the future); or

(B) for a Train Operator in respect of the negotiation of a Train Operations Deed, the Train Operator ceases to be a Train Operator for the relevant Access Seeker or Access Holder; or

(ii) where **clause 4.13(c)(i)** does not apply, the following factors must be considered in relation to whether **clause 4.13(a)(i)(D)** is satisfied:

(A) whether the Access Seeker (or its Customer) has secured, or is reasonably likely to secure, Supply Chain Rights;

(B) whether the Access Seeker, if not a Railway Operator, has

- secured, or is reasonably likely to secure, a rail haulage agreement for the operation of the Train Services the subject of the Access Application or if a Railway Operator has entered into, or is reasonably likely to enter into, a rail haulage agreement with a Customer for the use of Access Rights sought (provided that any consideration of the reasonable likelihood must disregard the effect of granting the Access Rights to the Railway Operator on the Railway Operator's ability to attract a Customer in the future);
- (C) whether the Access Seeker or a Railway Operator is reasonably likely to have facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Services to utilise the Access Rights sought;
- (D) whether the Train Operator no longer meets the criteria outlined in **clauses 4.9(a)(ii)(A)** and **4.9(a)(ii)(B)**; and
- (E) where the Access Rights are sought to transport the output of a mine, whether the anticipated output of the mine is reasonably likely to support utilisation of the Access Rights sought and all relevant existing Access Rights relevant to that mine.
- (d) Despite any other provision, where:
- (i) Aurizon Network gives a Negotiation Cessation Notice under this **clause 4.13**; and
- (ii) the person to whom it was given wishes to commence a Dispute in respect of the giving of that Negotiation Cessation Notice,

the person must give a Dispute Notice in accordance with **clause 11.1.1(a)** within ten (10) Business Days after that Negotiation Cessation Notice is given.

- (e) Where Aurizon Network gives a Negotiation Cessation Notice, that Negotiation Cessation Notice has no effect until:
 - (i) the expiry of the period under **clause 4.13(d)** without a relevant Dispute Notice being given to Aurizon Network; or
 - (ii) where a Dispute Notice is given to Aurizon Network within that period, the Dispute is resolved in favour of Aurizon Network.

Part 5: Access Agreements

5.1 Development of Access Agreement

- (a) The granting of Access will be underpinned by an Access Agreement that will be developed and finalised under **Part 4** of this Undertaking (**Negotiation Process**).
- (b) The parties to the Access Agreement will be Aurizon Network and the Access Holder. The Access Holder need not be the Railway Operator for the relevant Train Services.
- (c) The terms of an Access Agreement must be:
 - (i) for coal carrying services, the Standard Access Agreement; and
 - (ii) for non-coal carrying services, an Access Agreement consistent with the Standard Access Agreement amended to reflect the fact that the Access is for non-coal carrying services.
- (d) Despite **clause 5.1(c)**, the Access Seeker may agree with Aurizon Network during the Negotiation Process to vary the terms of the Standard Access Agreement and any provision of this Undertaking incorporated by reference into the Standard Access Agreement (including **clauses 7.4.2** (Transfers), **7.4.3** (Relinquishments) and **7.6** (Capacity resumption)), in which case, any amendments proposed to those terms must be negotiated by both Aurizon Network and the Access Seeker acting reasonably and in good faith.
- (e) Where the terms of an Access Agreement cannot be agreed within the time set out in **clause 4.11.1(c)(iv)**, and the matter is referred for dispute resolution under **Part 11**, any Dispute will be resolved by the QCA or an expert, as applicable, by completion of:
 - (i) where Access is required for coal carrying services, the Standard Access Agreement; and
 - (ii) where Access is required for non-coal carrying services, an Access Agreement which is consistent with the Standard Access Agreement, amended to reflect the fact that the Access is for non-coal carrying services.
- (f) Aurizon Network must not agree to include in an Access Agreement a term that limits its ability to require the Access Holder to disclose to Aurizon Network all information required by Aurizon Network (acting reasonably) to prepare and publish the MTP.

- (g) Once the Access Seeker notifies Aurizon Network that it is satisfied with the terms and conditions of the Access Agreement provided to it, Aurizon Network must, as soon as reasonably practicable, provide the Access Agreement (or, where appropriate, an amendment to an existing Access Agreement) in final form, which reflects the agreement reached between Aurizon Network and the Access Seeker, to the Access Seeker for execution.
- (h) The parties must execute the final form of the Access Agreement:
 - (i) produced by the QCA or an expert in resolving a Dispute referred to in **clause 5.1(e)**; or
 - (ii) accepted by the Access Seeker under **clause 5.1(g)**,
 as soon as reasonably practicable after resolution of the Dispute or Aurizon Network delivers it to the Access Seeker (as applicable).
- (i) Aurizon Network must execute an Access Agreement with an Access Seeker up to two (2) years prior to the commencement of Train Services under the Access Agreement or such longer period as may be agreed.
- (j) Where an Access Seeker is seeking Access Rights that are additional rights to, or a variation of, an existing Access Agreement to which the Access Seeker is a party, nothing in this Undertaking obliges Aurizon Network to agree to terms in respect of those Access Rights that are consistent with that existing Access Agreement.

5.2 Access Charges under Access Agreements

- (a) An Access Holder's Train Service Entitlement may be comprised of various different types of Train Services described by reference to the characteristics set out in Part A, Schedule 2 of the Standard Access Agreement. The Standard Access Agreements refer to each type of Train Service as a "Train Service Type".
- (b) In the circumstances described in **clause 5.2(a)**, the Access Charges may be calculated by reference to each type of Train Service.

5.3 Development of Train Operations Deed

- (a) To use the Access Rights granted under an Access Agreement, the Access Holder must procure a Train Operations Deed is negotiated as part of the Negotiation Process.
- (b) The parties to the Train Operations Deed will be Aurizon Network and the Train Operator for the relevant Train Services.
- (c) The terms of the Train Operations Deed must be the Standard Train Operations Deed.

- (d) Despite **clause 5.3(c)**, the Train Operator may agree to vary the terms of the Train Operations Deed, in which case any amendments proposed to those terms must be negotiated by both Aurizon Network and the Train Operator acting reasonably and in good faith.
- (e) Where the terms of a Train Operations Deed cannot be agreed, and the matter is referred for dispute resolution under **Part 11** any Dispute will be resolved by the QCA or an expert, as applicable, by completion of (and incorporating amendments agreed by Aurizon Network and the Train Operator and not in dispute in respect of) a Standard Train Operations Deed.
- (f) Once the Train Operator and, if different, the Access Holder, has notified Aurizon Network that it is satisfied with the terms and conditions of the Train Operations Deed provided to it, Aurizon Network will, as soon as reasonably practicable, provide the Train Operations Deed (or, where appropriate, an amendment to an existing Train Operations Deed) in final form, which reflects the agreement between Aurizon Network and the Train Operator (and, if different, the Access Holder), to the Train Operator for execution.
- (g) The parties must execute the final form of the Train Operations Deed:
 - (i) produced by the QCA or an expert in resolving a Dispute referred to in **clause 5.3(e)**; or
 - (ii) accepted by the Access Seeker under **clause 5.3(f)**,as soon as reasonably practicable after resolution of the Dispute or Aurizon Network delivers it to the Train Operator (as applicable).
- (h) Aurizon Network must execute a Train Operations Deed with a Train Operator at any time after the related Access Agreement has been entered into but, in any event, prior to the commencement by that Train Operator of relevant Train Services under the related Access Agreement. For clarity, this **clause 5.3(h)** does not restrict the execution of subsequent Train Operations Deeds that relate to different Train Services or the execution of subsequent Train Operations Deeds with different Railway Operators that relate to the same Train Services.

Part 6: Pricing principles

6.1 Application of pricing principles

- (a) Aurizon Network will apply the pricing principles set out in this **Part 6** in developing Access Charges and Reference Tariffs.
- (b) To the extent that any of those pricing principles conflict, Aurizon Network will apply the pricing principles in the order of precedence identified below (from highest to lowest):
 - (i) **clause 6.2** to **clause 6.5** (price differentiation and new Reference Tariffs);
 - (ii) **clause 6.6** (pricing limits);
 - (iii) **clause 6.7** (Rail Infrastructure utilisation);
 - (iv) **clause 6.8** (revenue adequacy); and
 - (v) all remaining provisions of **Part 6**.
- (c) In this **Part 6**, where Access Rights have been, or are to be, granted under an Access Agreement, the relevant Access Holder and all of that Access Holder's Train Operators will be treated as a single entity so that a reference to:
 - (i) an Access Seeker is a reference to the Access Seeker and its Train Operators collectively; and
 - (ii) an Access Holder is a reference to the Access Holder and its Train Operators collectively.
- (d) For clarity, all references in this Undertaking to Access Seekers and Access Holders include Related Operators (where applicable).

6.2 Price differentiation

6.2.1 *Limitations on price differentiation*

- (a) Aurizon Network will not differentiate Access Charges between any combination of Access Seekers and Access Holders (including combinations involving only Access Seekers or only Access Holders) except as permitted by this **Part 6**.
- (b) Except as permitted by this **Part 6**, Aurizon Network will not set charges that discriminate in favour of any:
 - (i) Related Operator; or
 - (ii) Related Party,and must ensure that its Access Charges for any Related Operator or Related Party:
 - (iii) comply with this **Part 6**;

- (iv) are equivalent to its Access Charges for other Access Seekers or Access Holders (as applicable) in similar circumstances; and
- (v) do not have the purpose of preventing or hindering an Access Seeker's or Access Holder's Access in a way that would contravene Aurizon Network's obligations under sections 104 or 125 of the Act.

6.2.2 *Default application of Reference Tariff*

Subject to **clause 6.2.3**, where there is an applicable Reference Tariff, the Access Charge formulated by Aurizon Network for an Access Seeker will be calculated in accordance with the Reference Tariff.

6.2.3 *Price differentiation where a Reference Tariff applies*

- (a) Subject to **clause 6.13** (Access Conditions), Aurizon Network may seek to commercially negotiate and agree a reasonable Access Charge with an Access Seeker at any time that varies from the applicable Reference Tariff to recognise a difference in cost or risk associated with the provision of Access to a Train Service that has different characteristics to the Reference Train Service. However, the applicable Reference Tariff will apply unless and until any such Access Charge has been approved by the QCA.
- (b) If, after the Commencing Date, Aurizon Network enters into an agreement separate from the Access Agreement for a Customer Specific Branch Line which provides for Aurizon Network to earn revenue that is in addition to the ongoing Access Charge (for example, an upfront contribution or Access Facilitation Charge), Aurizon Network must exclude the cost components separately funded through the additional revenue (for example, the value of any relevant Customer Specific Branch Line to the extent supported by the additional revenue) from the cost base (including the asset base) used to determine:
 - (i) that ongoing Access Charge for Train Services using that Customer Specific Branch Line; and
 - (ii) the applicable Reference Tariff.
- (c) The rtp for a Train Service will be calculated in accordance with the following principles:
 - (i) rtp is deemed to equal one where:
 - (A) the maximum number of proposed Train Services at full utilisation exceeds the maximum number of Reference Train Services at full utilisation; and

(B) the scheduled section running times of the proposed Train Service are the same as the nominated section running times for the Reference Train Service; and

(ii) where **clause 6.2.3(c)(i)** does not apply, the number of reference Train Paths used by the proposed Train Service will be determined as follows:

$$rtp = \max[(A/B), (B/A)]$$

where:

A is the maximum number of Reference Train Services at full utilisation; and

B is the maximum number of the proposed Train Services at full utilisation;

(iii) the maximum number of Train Paths available for a Reference Train Service and for the proposed Train Service will be determined using a readily available simulation package; and

(iv) for the purpose of **clauses 4.6(c)(v)** and **4.11.2(a)(iv)** (as applicable), Aurizon Network will advise the Access Seeker how it has determined the value of rtp,

unless the QCA approves an alternative methodology, on the request of Aurizon Network, for the purpose of this clause, in which case rtp will be calculated in accordance with that approved alternative methodology.

6.2.4 Price differentiation where no Reference Tariff applies

If there is no applicable Reference Tariff (for example, because the relevant Train Service is a non-coal carrying Train Service), the Access Charge formulated by Aurizon Network for an Access Seeker may vary from the Access Charges for other Access Seekers or Access Holders. However, such variation may only be in respect of other Train Services that provide the same type of transport service (for example, transporting passengers (where the relevant Access Seeker's proposed Train Services transport passengers) or transporting the same commodity (where the relevant Access Seeker's proposed Train Services transport a commodity)) in the same geographical area as that Access Seeker's proposed Train Services, on a unit rate basis to reasonably reflect, over time:

- (a) changes or differences in the cost or risk relevant to Aurizon Network providing Access; or
- (b) Changes in Market Circumstances; or

- (c) limitations on Available Capacity in accordance with **clause 6.7.1(b)**.

6.2.5 Consequences if contravention of Part 6

- (a) If an Access Holder (**Aggrieved Access Holder**) suspects that after entering into an Access Agreement with Aurizon Network, Aurizon Network has subsequently entered into an Access Agreement with another Access Holder for a like Train Service (where a like Train Service is one that transports the same specified commodity in the same specified geographic area), and the subsequent Access Agreement contains an Access Charge in contravention of **Part 6**, the Aggrieved Access Holder may notify a Dispute by giving a Dispute Notice under **Part 11**.
- (b) In the event a Dispute is notified under **Part 11** in accordance with **clause 6.2.5(a)**, the QCA may give one or more notices to Aurizon Network under section 150AA of the Act to find out whether Aurizon Network is complying with this Undertaking.
- (c) In respect of any dispute notified under **clause 6.2.5(a)**:
 - (i) the Dispute must be resolved by the QCA under **clause 11.1.5**, disregarding **clauses 11.1.2 to 11.1.4**;
 - (ii) the QCA must resolve the Dispute by identifying whether it considers that a contravention of **Part 6** has occurred, based on the information before the QCA at the time and reasonable inferences from that information (including any information sought under **clause 6.2.5(a)**);
 - (iii) if a contravention is identified to have occurred under **clause 6.2.5(c)(ii)**, the QCA may give directions to Aurizon Network to resolve the Dispute, which may include a specific direction that Aurizon Network offer the Aggrieved Access Holder either:
 - (A) an Access Charge calculated on the same basis as the relevant like Train Service; or
 - (B) if the QCA considers appropriate, a particular Access Charge that in the QCA's view neutralises the effect of the contravention; and
 - (iv) on receiving any such specific direction, Aurizon Network must within five (5) days make a legally binding offer to the Aggrieved Access Holder to give effect to that direction.

6.3 Access Charges for new coal carrying Train Services

6.3.1 Determination of Access Charges

- (a) Where an Access Seeker or Access Holder seeks Access Rights for new or additional coal carrying Train Services, this **clause 6.3** (subject to **clause 6.4**) applies to determine the Access Charges payable by the Access Seeker or Access Holder.
- (b) The Access Charges applicable for a new coal carrying Train Service will be calculated under **clause 6.3.1(c)** separately for non-electric Access Charges (tariffs AT₁ to AT₄ collectively) and electric Access Charges (tariff AT₅).
- (c) The Access Charges applicable for a new coal carrying Train Service will be the higher of (on a \$/ntk basis):
 - (i) the relevant Reference Tariff (including any Reference Tariff determined in accordance with **clause 6.4**) applied to that Train Service, less the annual maximum allowable revenue (calculated in the same manner as for the relevant Reference Tariff) derived from the Approved PIC (if any); and
 - (ii) the Minimum Revenue Contribution, calculated as the sum of the Incremental Costs of using any Rail Infrastructure specifically for the new coal carrying Train Service and the higher of:
 - (A) any applicable Expansion Costs (as determined in accordance with **clause 6.4**); and
 - (B) as applicable:
 - (1) for non-electric Access Charges, the sum of:
 - the relevant AT₂ component of the relevant Reference Tariff (adjusted for any variation that will be made in accordance with **Schedule F** for that Train Service for a Cross System Train Service); and
 - fifty percentage points (50%) of the AT₃ component of the relevant Reference Tariff (adjusted for any variation that will be made in accordance with **Schedule F** for that Train Service for a Cross System Train Service) for the distance that the

Train Service will travel on the mainline of that Coal System; or

(2) for electric Access Charges, zero.

- (d) Where an Access Charge is determined in accordance with **clause 6.3.1(c)**:
- (i) the requirements under **clause 6.3.1(c)** must be reapplied to review and reset the Access Charge whenever there is a change to the relevant Reference Tariff or the Approved PIC;
 - (ii) an Access Agreement may include provisions to ensure that the effect of **clause 6.3.1(d)(i)** is reflected in the Access Agreement;
 - (iii) despite **clause 6.3.1(d)(ii)**:
 - (A) the application and reapplication of **clause 6.3.1(c)** is deemed to form part of the Reference Tariff that is applicable to the relevant Train Service; and
 - (B) where the reapplication of **clause 6.3.1(c)** results in a different Access Charge that different Access Charge is deemed to be a change to the relevant Reference Tariff including for the purpose of **clause 6.5.2(a)(i)**.
- (e) Where an Access Seeker has requested Access Rights (other than as a Renewal) that do not require an Expansion and two or more Reference Tariffs are expressed to apply in relation to the Access Rights in the relevant Coal System, then the Reference Tariff used to formulate the relevant Access Charges is that Reference Tariff which is the highest on a \$/ntk basis. For clarity:
- (i) for a Cross System Train Service, this clause would be applied separately in relation to each relevant Coal System; and
 - (ii) for a Renewal, the relevant Reference Tariff will be the Reference Tariff that applied or would have applied in relation to the Access Seeker's existing Access Agreement.

6.3.2 QCA approval of Private Incremental Costs

- (a) Without limitation and following consultation with Aurizon Network, the QCA may approve the prudent and efficient value of Private Incremental Costs associated with Private Infrastructure, on request from an Access Seeker ("**Approved PIC**"), to the extent that the QCA is satisfied that this expenditure is for the prudent and efficient value of the assets that are used to provide the relevant Train Services over Private Infrastructure.

- (b) In determining prudence and efficiency of Private Incremental Costs under **clause 6.3.2(a)**, the QCA may have regard to the following (without limitation and in the QCA's absolute discretion):
- (i) the scope of works for a capital expenditure project (including whether the requirement for the works is prudent and efficient);
 - (ii) the standard of works for a capital expenditure project (including whether the standard could be expected to deliver the requirements for that capital expenditure project without it being overdesigned or likely to deliver a capital works project which is beyond the requirements of its scope); and
 - (iii) whether the costs of the capital expenditure project are prudent and efficient, having regard to the scope and standard of work undertaken or to be undertaken for the capital expenditure project.
- (c) If the QCA is requested to determine the prudence and efficiency of Private Incremental Costs under **clause 6.3.2(a)**, before the Private Incremental Costs are incurred, the QCA may include as conditions of its approval for any Private Incremental Costs:
- (i) the assumptions relevant to its approval including:
 - (A) cost to construct;
 - (B) time for completion of; and
 - (C) estimated capacity to be delivered by,
 the Private Incremental Costs;
 - (ii) other matters considered by the QCA to be material to its approval; and
 - (iii) the period of time in which the approval has effect (and if the project is not completed within the nominated time, the QCA may decide the approval ceases to have effect).
- (d) If the QCA is requested to determine the prudence and efficiency of Private Incremental Costs under **clause 6.3.2(a)** after the Private Incremental Costs are incurred:
- (i) the Access Seeker may request the QCA to take into account only information and analysis that the Access Seeker could reasonably be expected to have considered or undertaken at the time that the relevant Private Incremental Costs were incurred; and
 - (ii) the QCA will consider this request as part of its determination.

- (e) For clarity:
 - (i) when considering the Private Incremental Costs, the QCA may refuse to approve an Access Seeker's proposal and instead approve a lesser amount as the Approved PIC; and
 - (ii) the Approved PIC is zero unless and until the QCA approves the relevant Private Incremental Costs under this **clause 6.3.2**.
- (f) The value of the Approved PIC is to be maintained in the same way as the Regulatory Asset Base is maintained in accordance with **Schedule E**.
- (g) When determining the amount of the Approved PIC, the QCA may make such adjustments to the Private Incremental Costs as it considers appropriate to be satisfied under **clause 6.3.2(a)**.

6.4 Access Charges for coal carrying Train Services that require an Expansion

6.4.1 Expansion pricing principles

- (a) Where an Access Seeker or Access Holder seeks Access Rights for coal carrying Train Services that require an Expansion (**Expanding User**), this **clause 6.4** applies to identify the appropriate Access Charges payable by the Expanding User.
- (b) This **clause 6.4** is intended to be read in conjunction with **Part 8** of this Undertaking and is subject to **clause 6.3** (use of Private Infrastructure).
- (c) The methodology set out in this **clause 6.4** will apply on an individual Coal System basis.
- (d) The remainder of this **clause 6.4** articulates the following principles (applying the definitions set out below), known as the "**Expansion Pricing Principles**":
 - (i) Expanding Users should generally pay an Access Charge that reflects at least the full incremental costs (capital and operating) of providing additional Capacity;
 - (ii) subject to **clause 6.4.1(d)(iv)**, Non-Expanding Users should not experience a material increase in Reference Tariffs due to an Expansion triggered by Expanding Users;
 - (iii) if Expanding Users face a higher cost than Non-Expanding Users, a zero contribution to Aurizon Network's Common Costs from Expanding Users is generally acceptable; and

- (iv) an allocation of the Expansion Costs to Non-Expanding Users may be appropriate where an Expansion has clear benefits to those Non-Expanding Users.
- (e) For the purposes of this **clause 6.4**:
 - (i) “**Consensus**” means all Expansion Stakeholders have notified Aurizon Network that they consider that a particular draft Pricing Proposal from Aurizon Network for an Expansion represents an acceptable distribution of Expansion Costs and apportionment of Volume Risk that is consistent with the Expansion Pricing Principles;
 - (ii) “**Consensus Expansion**” means an Expansion for which Consensus has been achieved by Aurizon Network as anticipated in **clause 6.4.2**;
 - (iii) “**Customised Expansion**” means an Expansion that is not a Consensus Expansion or an Endorsed Expansion where the indicative Reference Tariff for the Pricing Proposal is a bespoke solution determined by applying **clause 6.4.3(d)** and the Expansion Pricing Principles in **clause 6.4.1**, taking into account the extent of any agreement between Expansion Stakeholders;
 - (iv) “**Endorsed Expansion**” means an Expansion that is not a Consensus Expansion where the indicative Reference Tariff for the Pricing Proposal is a formulaic solution determined by applying **clause 6.4.5**;
 - (v) “**Expansion Cost**” has the meaning given by **clause 6.4.4(a)(ii)**;
 - (vi) “**Expansion Stakeholders**” means all Expanding Users and all Non-Expanding Users for an Expansion;
 - (vii) “**Non-Expanding Users**” means Access Seekers and Access Holders within a Coal System that are not Expanding Users for an Expansion to that Coal System;
 - (viii) “**Socialisation**” means the full or partial aggregation of the Expansion Costs of a new Expansion with the costs associated with one or more existing Reference Tariffs for the same Coal System in order to determine a common Reference Tariff; and
 - (ix) “**Substitutable Train Service Entitlements**” or “**Substitutable TSEs**” means that an Access Holder has one or more existing Train Service Entitlements in a Coal System that can be used as an alternative to

the one or more Train Service Entitlements with the same origin created by the Expansion.

6.4.2 Consensus Expansion

- (a) Before Aurizon Network submits a Pricing Proposal to the QCA under **clause 6.4.4**, Aurizon Network must approach Expansion Stakeholders in good faith to seek to facilitate a Consensus on a Pricing Proposal. Aurizon Network must provide reasonable information as requested by each Expansion Stakeholder to facilitate a Consensus. The QCA may participate in any consultation processes undertaken by Aurizon Network with Expansion Stakeholders at the QCA's absolute discretion.
- (b) Aurizon Network must keep the QCA informed of progress in facilitating a Consensus by providing updates to the QCA on any significant developments or otherwise as requested by the QCA.
- (c) If a Consensus has not been reached by the date for the completion of the Feasibility Study, or Aurizon Network or any Expansion Stakeholder can otherwise provide evidence to the QCA that a Consensus will not be achieved by that date, or any further time period has lapsed under **clause 6.4.2(d)**, then:
 - (i) Aurizon Network (or the Expansion Stakeholder, if applicable, copying Aurizon Network) will consult with the QCA whether further time should be allocated to facilitate a Consensus; and
 - (ii) unless the QCA responds to Aurizon Network within ten (10) Business Days requesting further time to be allocated, the Expansion must be treated by Aurizon Network as either a Customised Expansion or Endorsed Expansion (as applicable).
- (d) If the QCA requires an extension of time under **clause 6.4.2(c)(ii)**, then Aurizon Network must continue to seek a Consensus until that time has lapsed, at which point Aurizon Network will consult with the QCA again under **clause 6.4.2(c)**. For clarity, the QCA may require multiple extensions of time to occur.

6.4.3 Other Expansions

- (a) Unless otherwise agreed by the QCA, an Expansion with no Substitutable TSEs and that is not a Consensus Expansion will be treated as an Endorsed Expansion.
- (b) An Expansion that is not a Consensus Expansion or an Endorsed Expansion will be treated as a Customised Expansion.
- (c) For an Endorsed Expansion, the indicative Reference Tariff for the Pricing Proposal that is submitted by Aurizon Network under

clause 6.4.4 will have multi-part pricing and price discrimination to aid efficiency in which:

- (i) Expanding Users will pay the Expansion Tariff that is calculated in accordance with this **clause 6.4.5**; and
 - (ii) Non-Expanding Users will pay the System Reference Tariff on a basis consistent with the cost allocation principles approved by the QCA under clause 6.4.4(e)(i) and adjusted in accordance with **clause 6.4.5(f)**.
- (d) For a Customised Expansion, the indicative Reference Tariff must give effect to the Expansion Pricing Principles set out in **clause 6.4.1**, taking into account the extent of any agreement between Expansion Stakeholders, and the factors set out in section 138(2) of the Act.

6.4.4 Pricing Proposal

- (a) If an Expanding User seeks Access Rights for coal carrying Train Services that require an Expansion, Aurizon Network will, as part of its Feasibility Study for that Expansion, submit to the QCA a proposal with the following elements:
- (i) a determination whether the Expansion involves any Substitutable TSEs;
 - (ii) a proposed allocation of costs arising from the Expansion (including a detailed breakdown of the estimated capital, maintenance and operating costs for the Expansion) (**Expansion Costs**) between the Expansion Stakeholders (including on a Coal System basis if the Expansion relates to more than one Coal System);
 - (iii) any proposed allocation of future renewal costs for the relevant Coal System between Expansion Stakeholders;
 - (iv) a proposed apportionment of volume risk arising from the Expansion (e.g. arising from differences between forecast and actual railings) (**Volume Risk**) between the Expansion Stakeholders (including on a Coal System basis if the Expansion relates to more than one Coal System) if applicable;
 - (v) all calculations made in applying this **clause 6.4.4**;
 - (vi) if the Expansion is an Endorsed Expansion, a determination as to which of the following clauses will apply:

- (A) **clause 6.4.5(c)** – the Coal System has no existing Expansion Tariff;
 - (B) **clause 6.4.5(e)(ii)** – the Coal System has an Expansion Tariff, but no Socialisation will occur;
 - (C) **clause 6.4.5(e)(vi)** – the Coal System has one or more existing Expansion Tariffs and Socialisation will occur to the extent determined under **clause 6.4.5(e)**;
- (vii) if the Expansion is not a Consensus Expansion, an identification of the extent to which consultation by Aurizon Network with Expansion Stakeholders has occurred;
 - (viii) if the Expansion is a Consensus Expansion, all relevant details of the Consensus and copies of all correspondence with Expansion Stakeholders confirming the Consensus and evidencing the Consensus and terms of the Consensus,

and the resulting indicative Reference Tariffs that are proposed by Aurizon Network for the Expansion (**Pricing Proposal**).

- (b) Aurizon Network must provide to the QCA:
 - (i) information explaining the manner in which the Pricing Proposal is consistent with the Expansion Pricing Principles in **clause 6.4.1** and the factors set out in section 138(2) of the Act (including the conditions for any Socialisation);
 - (ii) such other supporting information for the QCA’s consideration to justify or explain Aurizon Network’s approach; and
 - (iii) such further information as is requested by the QCA to enable the QCA to consider the Pricing Proposal.
- (c) The QCA must:
 - (i) publish the Pricing Proposal;
 - (ii) invite persons (including all Expansion Stakeholders) to make submissions on the Pricing Proposal within a reasonable time period specified by the QCA; and
 - (iii) provide Aurizon Network and Expansion Stakeholders with a draft decision and a reasonable opportunity to respond to that draft decision.

- (d) The parties agree that any Pricing Proposal that is submitted to the QCA under this Undertaking should be made in the form of an application for a ruling under Division 7A of Part 5 of the Act, unless the QCA requests otherwise. If an application is made for a ruling under Division 7A of Part 5 of the Act, **clauses 6.4.4(e) to 6.4.4(h)** are subject to the application of Division 7A of Part 5 of the Act.
- (e) The QCA may:
 - (i) approve the Pricing Proposal; or
 - (ii) refuse to approve the Pricing Proposal, with reasons provided to Aurizon Network.
- (f) If the QCA approves the Pricing Proposal, the QCA may state in its ruling that it will no longer apply if there is a material change in circumstances. In such circumstances, the QCA may invite Aurizon Network to submit an updated Pricing Proposal (and application under Division 7A of Part 5 of the Act, if applicable).
- (g) If the QCA refuses to approve a Pricing Proposal or invites Aurizon Network to submit an updated Pricing Proposal, Aurizon Network will, if applicable, submit a replacement Pricing Proposal to the QCA (and application under Division 7A of Part 5 of the Act, if applicable).
- (h) Aurizon Network must notify the QCA immediately upon becoming aware that a change in circumstances has arisen in relation to the Pricing Proposal, including any calculations or information used in the course of preparing the Pricing Proposal.

6.4.5 Calculation of indicative Reference Tariff for Endorsed Expansions

- (a) This **clause 6.4.5** applies only to an Endorsed Expansion.
- (b) Socialisation of an Endorsed Expansion involves the aggregation of the Expansion Costs of a new Expansion (**New Expansion**) with the costs associated with one or more existing Expansion Tariffs for the same Coal System in order to identify common Expansion Tariffs. For an Endorsed Expansion, Socialisation is assessed for tariffs AT₁ to AT₄ (collectively) independently from Socialisation for tariff AT₅. The iterative methodology set out in the remainder of this **clause 6.4.5** must be applied to both sets of tariffs independently.
- (c) If a Coal System has no existing Expansion Tariff, an Expansion Tariff for the Expansion, applicable to the Expanding User, will be calculated in accordance with **clause 6.4.6(a)**, subject to adjustment under **clause 6.4.5(e)**.
- (d) If a Coal System has one or more existing Expansion Tariffs, an Expansion Tariff for the Expansion will be calculated in accordance with the iterative methodology for socialising

Expansions set out in **clause 6.4.5(e)**. Aurizon Network must apply this methodology and include its associated calculations in the Pricing Proposal under **clause 6.4.4(a)** based on:

- (i) the Expansion Costs after adjustment in accordance with the proposed cost allocation principles;
 - (ii) forecast volumes arising as a result of the Expansion as set out in the Feasibility Study; and
 - (iii) the analysis being undertaken on a forward-looking basis, looking at the effect:
 - (A) at the end of each Quarter after the earliest contracted commencement of Access by Access Holders whose Access Agreements were conditional on the relevant Expansion (**Initial Access Holders**); until and including
 - (B) the peak point for contracted Access by the Initial Access Holders.
- (e) Iterative methodology for socialising Expansions:
- (i) **Step One:** Aurizon Network must calculate:
 - (A) which of the existing Expansion Tariffs applicable to the relevant Coal System is the highest on a \$/ntk basis after being adjusted in a manner consistent with the proposed cost allocation principles based on the Expansion's Projected Cost (**Highest Expansion Tariff**); and
 - (B) whether the Highest Expansion Tariff would, on a \$/ntk basis, decrease if the Highest Expansion Tariff and the Expansion Costs of the New Expansion were socialised (**Tariff Decrease**).
 - (ii) **Step Two:** If under Step One, a Tariff Decrease would not occur, then the Highest Expansion Tariff will not be socialised with the Expansion Costs of the New Expansion unless otherwise agreed by the QCA. A new Expansion Tariff, applicable to the New

- Expansion, will be established in accordance with **clause 6.4.6(a)**.
- (iii) **Step Three:** If under Step One, a Tariff Decrease would occur, then the Highest Expansion Tariff will be socialised with the Expansion Costs of the New Expansion to determine a common Expansion Tariff (**Socialised Tariff**).
 - (iv) **Step Four:** Aurizon Network must calculate whether the remaining next Highest Expansion Tariff for the relevant Coal System would, on a \$/ntk basis, decrease if that next Highest Expansion Tariff and the Socialised Tariff as referred to in Step Three were socialised (also, a **Tariff Decrease**).
 - (v) **Step Five:** Aurizon Network will repeat Steps Three to Five until either there is no further Tariff Decrease or all Expansion Tariffs have been socialised. Where Socialisation occurs in a previous iteration of Steps Three to Five, references to Expansion Costs of the New Expansion in Step Three will be taken to be references to the costs associated with the Socialised Tariff from the last iteration.
 - (vi) **Step Six:** Once the iteration in Steps Three to Five has been completed, the common Expansion Tariff for the New Expansion and the other socialised Expansions will be the Socialised Tariff from the last iteration, subject to adjustment under **clause 6.4.5(f)**.
- (f) If, following the application of **clauses 6.4.5(c) or 6.4.5(e)**, the new or varied Expansion Tariff is lower than the System Reference Tariff for the Coal System on a \$/ntk basis, Aurizon Network must include a positive contribution to its Common Costs in the Expansion Tariff that has the effect of increasing the Expansion Tariff and reducing the System Reference Tariff so that these Reference Tariffs are equivalent on a \$/ntk basis. The contribution to Aurizon Network's Common Costs will be calculated based on contracted volumes. The contribution to Aurizon Network's Common Cost will be assessed for Tariffs AT₁ to AT₄ (collectively) independently from Tariff AT₅.

6.4.6 Reference Tariffs

- (a) Every Expansion Tariff must have a separate:
 - (i) relevant Allowable Revenue (adjusted to recognise all revenue that Aurizon Network receives from all sources that enables it recover the costs of the Expansion); and
 - (ii) Gtk Forecast based on 100% contracted volumes,

that can be used to calculate that Expansion Tariff under **Schedule F**. For clarity, an Expansion Tariff will be calculated based on contracted volumes and, when a Take or Pay applies to the Expansion, it will be calculated in accordance with **clause 3.3(n) of Schedule F**.

- (b) If two (2) or more Expansion Tariffs continue to exist for any Coal System, Aurizon Network must undertake a review in consultation with the QCA at least once every twelve (12) Months, whether Socialisation of any of those Expansion Tariffs should occur.
- (c) The indicative Reference Tariff identified in the Pricing Proposal under **clauses 6.4.4 to 6.4.6** should be proposed to apply instead of the System Reference Tariff for the Coal System.

6.4.7 Formalisation of Pricing Proposal

- (a) For Aurizon Network to formalise the indicative Reference Tariff determined under **clause 6.4.4**, it should prepare and submit to the QCA a draft amending access undertaking to vary this Undertaking consistent with, and to give effect to, any Pricing Proposal that has been approved by the QCA under **clause 6.4.4**.
- (b) Aurizon Network acknowledges that in the absence of a draft amending access undertaking approved by the QCA under Part 5 of the Act:
 - (i) the Pricing Proposal pursuant to **clause 6.4.4** may be the subject of a dispute notified under section 112 of the Act; and
 - (ii) the QCA may give a direction under section 139 of the Act, if the QCA considers it appropriate to do so.

6.4.8 Allocation of Asset Replacement and Renewal Expenditure

- (a) Subject to **clause 6.4.6(a)**, all Asset Replacement and Renewal Expenditure in respect of capital expenditure projects relating to a Coal System must only be included in the capital costs relevant to the calculation of the System Reference Tariff.
- (b) To the extent that Asset Replacement and Renewal Expenditure is necessary for an Expansion to which an Expansion Tariff applies or will apply, then that Asset Replacement and Renewal Expenditure will be treated as part of the cost of that Expansion subject to any applicable Cost Allocation Proposal accepted by the QCA under **clause 6.4.3**.

6.4.9 Indicative Access Charge

- (a) Where **clause 6.4** applies in respect of an Expansion and the applicable Reference Tariff has not yet been determined, this does not affect Aurizon Network's obligations to negotiate Access and enter into an Access Agreement provided that Aurizon

Network may enter into an Access Agreement with the relevant Access Seeker on the basis of an indicative Access Charge (taking into account any applicable Pricing Proposal accepted by the QCA under **clause 6.4.4**) subject to the Access Agreement including provisions which provide that after the applicable Reference Tariff is determined:

- (i) the Access Agreement will be amended to include an Access Charge based on that Reference Tariff; and
- (ii) the Access Seeker and Aurizon Network will account to each other for any under or over recovery of Access Charges during the period when the indicative Access Charge was applied.

6.4.10 *Interaction with Access Charges for new or additional coal carrying Train Services that involve the use of Private Infrastructure*

- (a) Where a new or additional coal carrying Train Service involves the use of Private Infrastructure, **clause 6.4** and **clause 6.3.1(c)** must be applied concurrently for the purposes of setting an Access Charge.

6.5 Process for acceptance of new Reference Tariff

6.5.1 *Process*

- (a) Where Aurizon Network is negotiating Access Charges for Access Rights and a new Reference Tariff is to be applied under **clause 6.4** in respect of those Access Charges, Aurizon Network will submit a proposed new Reference Tariff to the QCA. The QCA will:
 - (i) publish the proposed Reference Tariff;
 - (ii) invite persons to make submissions on the proposed Reference Tariff to the QCA within a reasonable period of time specified by the QCA; and
 - (iii) consider any submission it receives within that period of time.
- (b) The QCA may approve a proposed Reference Tariff for a new Reference Train Service only if the QCA:
 - (i) is satisfied that the proposed Reference Tariff is consistent with this Undertaking;
 - (ii) considers it appropriate to do so having regard to the factors listed in section 138(2) of the Act; and
 - (iii) for a resubmitted proposed Reference Tariff, is satisfied that Aurizon Network has in all material respects addressed the matters referred to in the relevant notice by the QCA under **clause 6.5.1(f)**.

- (c) If the QCA approves the proposed Reference Tariff:
- (i) it will apply from the earlier of:
 - (A) the date of the QCA's decision; and
 - (B) if Aurizon Network and the Access Seeker have entered into an Access Agreement under **clause 6.4.9**, the date of that Access Agreement,except where the QCA specifies a later date in its decision, in which case the proposed Reference Tariff will apply from that date;
 - (ii) the QCA will give Aurizon Network a notice stating the reasons for its decision at the time of publishing its decision; and
 - (iii) Aurizon Network must:
 - (A) publish a new version of **Schedule F** which includes the new Reference Tariff; and
 - (B) advise Access Holders and Access Seekers, in respect of the Train Services to which the new Reference Tariff applies, that the new Reference Tariff has been approved.
- (d) If the QCA is considering refusing to approve the proposed Reference Tariff:
- (i) it must give Aurizon Network a draft of its decision (including a statement of both its reasons and the way in which it considers the proposed Reference Tariff should be amended);
 - (ii) Aurizon Network may, within twenty (20) Business Days after being given that draft decision (or such longer period as agreed by the QCA), revise the proposed Reference Tariff and/or provide additional information supporting its view that the proposed Reference Tariff should be approved; and
 - (iii) the QCA must consider that revision and/or additional information when deciding whether to approve or refuse to approve the proposed Reference Tariff.
- (e) If the QCA refuses to approve the proposed Reference Tariff, the QCA must give Aurizon Network a notice of the QCA's decision

(including a statement of both its reasons and the way in which it considers the proposed Reference Tariff should be amended).

- (f) If the QCA refuses to approve the proposed Reference Tariff, Aurizon Network may resubmit the proposed Reference Tariff with amendments and **clauses 6.5.1(a) to (e)** apply to that resubmitted Reference Tariff.
- (g) For the purposes of this **clause 6.5.1**:
 - (i) a proposed Reference Tariff submitted by Aurizon Network must include a new or reviewed Allowable Revenue and Gtk Forecast to the extent applicable to that proposed Reference Tariff; and
 - (ii) the QCA in approving a proposed Reference Tariff must also approve the new or reviewed Allowable Revenue and Gtk Forecast.

6.5.2 Access Charge review provisions

- (a) Without limitation to **clause 6.4.9**, Aurizon Network or an Access Seeker may seek to agree review provisions in an Access Agreement that is being negotiated to enable the Access Charge to be adjusted from time to time in order for those Access Charges to be consistent with changes in:
 - (i) (if a Reference Tariff applies to the Train Service) the applicable Reference Tariff (including any matters under **Schedule F**); and
 - (ii) (if no Reference Tariff applies to the Train Service) the Access Charges agreed with other Access Seekers in respect of Train Services transporting the same commodity within the same geographical area as that Access Seeker's proposed Train Service.
- (b) A Standard Access Agreement must contain review provisions in compliance with this **clause 6.5.2**.

6.6 Pricing limits

6.6.1 Application of pricing limits

- (a) Aurizon Network will, in setting the Access Charges for an Access Seeker's proposed Train Services, establish and observe upper and lower limits for the Access Charge(s):
 - (i) for individual Train Services; and
 - (ii) for combinations of Train Services comprised of the proposed Train Services and other Train Services to the extent that they use the same Rail Infrastructure as that which would be used by the proposed Train Services,

at levels:

- (iii) which ensure there is no Cross Subsidy between individual Train Services or combinations of Train Services (as applicable); and
 - (iv) determined in accordance with **clause 6.6.2**.
- (b) Subject to the approval of the QCA, Aurizon Network may:
- (i) establish a new Reference Tariff; or
 - (ii) vary an existing Reference Tariff in a way,

that is inconsistent with **clause 6.6.2(a)(ii)**, for the primary purpose of promoting efficient investment by either Aurizon Network or another person in the relevant Supply Chain.

6.6.2 *Setting price limits*

- (a) In setting the Access Charges for an Access Seeker's proposed Train Services, Aurizon Network will do so such that, over the Evaluation Period, the Expected Access Revenue for any one of those Train Services and any combination of Train Services comprised of the proposed Train Services and other Train Services to the extent that they use the same Rail Infrastructure as that which would be used by the proposed Train Services is:
- (i) no less than the level that will recover the expected Incremental Cost of providing Access for that Train Service or that combination of Train Services (as applicable); and
 - (ii) no more than the level that will recover the expected Stand Alone Cost of providing Access for that Train Service or that combination of Train Services (as applicable).

6.6.3 *Application of Maximum Allowable Revenue*

- (a) Without limitation to **clause 6.6.2(a)**, where it is necessary to calculate the price limit referred to in **clause 6.6.2(a)(ii)** for the purposes of setting or reviewing a Reference Tariff, the Stand Alone Cost for the Evaluation Period for the Train Services to which the Reference Tariff relates will be the Maximum Allowable Revenue.
- (b) The Maximum Allowable Revenue means the aggregate of the maximum amount of Expected Access Revenue attributable to a section of Rail Infrastructure for the relevant Train Services using that section of Rail Infrastructure over the Evaluation Period.
- (c) The Maximum Allowable Revenue will be measured such that the net present value of the cashflows associated with providing Access for the relevant Train Services over the Evaluation Period is zero. This measurement can be expressed as:

$$0 = -AV_0 + \sum_{t=1}^n \frac{(MAR_t - C_t - M_t - T_t)}{(1 + ROA)^t} + \frac{AV_n}{(1 + ROA)^n}$$

where:

- AV_0 is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Services, assessed in accordance with **clause 6.6.3(e)**, at the commencement of the Evaluation Period;
- n is the number of years in the Evaluation Period;
- t is each year within the Evaluation Period from 1 to n ;
- MAR_t is the Maximum Allowable Revenue for the Train Services expressed as revenue that may be earned in each year of the Evaluation Period;
- C_t is the capital expenditure for assets reasonably expected to be required for the Stand Alone provision of Access for the Train Services in each year of the Evaluation Period;
- M_t is the Efficient Cost, including operating and maintenance costs, business and corporate overheads and QCA Levy, reasonably expected to be incurred for the Stand Alone provision of Access for the Train Services in each year of the Evaluation Period;
- ROA is the relevant rate of return commensurate with the commercial and regulatory risks involved in nominal post tax terms (with the cost of debt expressed on a before tax basis), as agreed by Aurizon Network and the QCA or, failing such agreement, as determined by the QCA;
- T is the tax expense assessed through the application of the statutory tax rate for corporations to the taxable income reasonably expected to be earned through the Stand Alone provision of Access for the Train Services in each year of the Evaluation Period, where such tax expense is reduced in each year by the application of the gamma factor, reflecting the market value of dividend imputation, as agreed by Aurizon Network and the QCA or, failing such agreement, as determined by the QCA; and
- AV_n is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Services, assessed in accordance with **clause 6.6.3(e)**, at the end of the Evaluation Period.
- (d) For the purpose of determining the variables under **clause 6.6.3(c)**, the assumed traffic task resulting from the Train Services over the Evaluation Period is the forecast, as reasonably determined by Aurizon Network, for the traffic task

resulting from the Train Services over the Evaluation Period (including making allowance for any changes in traffic task that are expected to result from the commencement of projects that impact significantly on the traffic task).

- (e) The value of assets used in **clause 6.6.3(c)** will be determined by reference to:
 - (i) the Regulatory Asset Base, as maintained in accordance with **Schedule E**; or
 - (ii) if a value cannot be determined under **clause 6.6.3(e)(i)**, the Depreciated Optimised Replacement Cost methodology.

6.7 Pricing objectives

6.7.1 Rail Infrastructure utilisation

- (a) Aurizon Network may establish different Access Charges for non-coal carrying Train Services serving different markets or commodities to maximise the commercially viable use of Capacity while meeting, in aggregate, the Common Costs.
- (b) Subject to **clause 6.7.1(c)**, if Aurizon Network can evidence to the QCA that:
 - (i) the Available Capacity is insufficient to satisfy the requests for Access Rights of all current and likely Access Seekers; and
 - (ii) an Expansion to provide additional Capacity is not commercially feasible in the circumstances,

then:

- (iii) Aurizon Network may determine the highest Access Charge for a Train Service that it is likely to achieve from the current or likely Access Seekers based on the characteristics of the relevant Reference Train Service for the applicable Coal System (including the terms of the relevant Standard Access Agreement) (**Maximum Access Charge**);
- (iv) the Maximum Access Charge may be quoted to all Access Seekers in respect of the Available Capacity irrespective of:
 - (A) any Access Seeker's ability to contribute to the Common Costs; or
 - (B) the Access Charges payable in existing Access Agreements for similar Train Services; and

- (v) if Aurizon Network:
 - (A) has received Mutually Exclusive Access Applications;
 - (B) chooses to allocate Available Capacity to one of those Access Seekers for an Access Charge less than the Maximum Access Charge; and
 - (C) another of those Access Seekers is willing to pay an Access Charge equal to the Maximum Access Charge,

then, when determining the Maximum Allowable Revenue in accordance with **clause 6.6.3** for Train Services using that constrained section of Rail Infrastructure, the Access Charge for the Access Seeker will be assumed to be the Maximum Access Charge. For the purpose of **clause 6.7.1(b)(iv)(B)**, Aurizon Network does not make a choice to allocate Available Capacity in a particular way where Aurizon Network's allocation is necessary for compliance with any Law (including any Passenger Priority Obligation or Preserved Train Path Obligation).

- (c) **Clause 6.7.1(b)** does not apply in respect of setting Access Charges in relation to Train Services for which a Reference Tariff applies. For clarity, as Reference Tariffs are intended to apply to all coal carrying Train Services, **clause 6.7.1(b)** will not apply in respect of coal carrying Train Services.

6.8 Revenue adequacy

Aurizon Network is entitled to earn revenue from the provision of Access that is at least enough to:

- (a) meet the Efficient Costs of providing Access; and
- (b) provide a rate of return on the value of assets commensurate with the regulatory and commercial risks involved.

6.9 Reference Tariffs

6.9.1 *Application of Reference Tariffs*

- (a) A Reference Tariff is one means by which Aurizon Network provides Access Seekers with information about the matters listed in sections 101(2)(a) to (c) of the Act, but is not intended to fully discharge Aurizon Network's obligations under those sections.
- (b) Unless otherwise approved by the QCA or unless otherwise required by the QCA under the Act, Aurizon Network must

calculate the Access Charges for all coal carrying Train Services to which a Reference Tariff applies on a basis that comprises all of the following elements:

- (i) an incremental maintenance component that is levied on a gtk basis – referred to as AT₁;
- (ii) an incremental capacity component that is levied on a Train Path basis – referred to as AT₂;
- (iii) a component that is levied on a ntk basis – referred to as AT₃;
- (iv) a component that is levied on a nt basis – referred to as AT₄;
- (v) an electric access tariff that is levied on an egtk basis (if appropriate) – referred to as AT₅;
- (vi) an electric energy charge that is levied on an egtk basis (if appropriate) – referred to as EC; and
- (vii) the QCA Levy levied on a nt basis,

and including any other amount that may be included in an Access Charge in accordance with this Undertaking.

6.9.2 *Review of Reference Tariffs*

Schedule F will specify the period for which a Reference Tariff is effective and how the Reference Tariff may be reviewed during that period.

6.9.3 *Publishing updated Schedule F*

Where any matters in **clauses 7 to 12** of **Schedule F** are amended or varied from time to time, including where the QCA approves any revisions or other adjustments to Allowable Revenues, Gtk Forecasts or Reference Tariffs in accordance with this Undertaking, Aurizon Network must publish a new version of those **clauses 7 to 12** of **Schedule F** which includes that amendment, variation, revision or adjustment.

6.10 Structure of non-Reference Tariff Access Charges

Where there is no Reference Tariff applicable for a Train Service (for example, a passenger or non-coal freight Train Service), the structure of Access Charges for that Train Service will be negotiated with the relevant Access Seeker depending on their particular requirements and, without limiting Aurizon Network's and the relevant Access Seeker's discretion to agree a structure, may include any one or more of the following:

- (a) an initial upfront component as a condition to being granted Access Rights;
- (b) an ongoing periodic fixed component independent of the level of usage of the Rail Infrastructure; and

- (c) one or more ongoing variable components based on usage of the Rail Infrastructure.

6.11 QCA Levy

Access Charges for any Train Service may include a QCA Levy component to be collected for the QCA by Aurizon Network. This component of Access Charges will, where applicable, be determined from year to year based on the QCA Levy levied by the QCA to Aurizon Network and allocated amongst Train Services in a manner approved by the QCA.

6.12 Regulatory Asset Base

Aurizon Network will maintain the Regulatory Asset Base in accordance with Schedule E.

6.13 Access Conditions

6.13.1 *Negotiation of Access Conditions*

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

6.13.2 *Approval of Access Conditions*

- (a) If Aurizon Network intends to commence negotiating Access Conditions (or continue doing so where negotiations for the provision of Access were already underway at the Approval Date) it must issue to all relevant Access Seekers, Customers and the QCA a report which details ~~Where clause 6.13.1 applies, after the Access Conditions are agreed between Aurizon Network and the Access Seeker, but before they become binding, Aurizon Network and the Access Seeker must seek the approval of the Access Conditions by the QCA and the QCA must approve the Access Conditions, unless the QCA is satisfied that:~~
 - (i) the Access Conditions that Aurizon Network is seeking from any Access Seeker;
 - (ii) quantification of the additional costs or risks Aurizon Network is exposed to (the **Additional Risks**), which it is seeking to mitigate through the Access Conditions;
 - (iii) why Aurizon Network's exposure to the Additional Risks would not be:

- (A) reasonably mitigated by an Access Agreement which permits Aurizon Network to charge Access Charge(s) calculated in accordance with a Reference Tariff based on the Approved WACC and 100% Take or Pay commitments; or
 - (B) more efficiently mitigated through insurance or other financial instruments;
 - (iv) to the extent that the Access Conditions being sought indicate Access Charges or any other monetary consideration (whether under an Access Agreement or other agreement) being payable, evidence that:
 - (A) there are risks not mitigated by the other Access Conditions being sought, and the adjustments are reflective of the possible outcomes and probabilities of the outcomes as a consequence of such risks; and/or
 - (B) there is either a materially different risk-free rate or debt margin, the cost of funding in anyway or that, as a result of the Aurizon Network funding a capital expenditure project, Aurizon Network would have a materially different gearing ratio or credit rating, from that which was assessed at the time the Approved WACC was determined by the QCA; and
 - (v) confirmation that Aurizon Network considers the proposed Access Conditions would not contravene a provision of this Undertaking or the Act.
 - (b) If the QCA has reason to believe that Aurizon Network has commenced negotiating Access Conditions in respect of the provision of Access prior to providing a report as required by **clause 6.13.2(a)**, it may require Aurizon Network to:
 - (i) produce a report in accordance with **clause 6.13.2(a)** within ten (10) Business Days; and
 - (ii) cease negotiating Access Conditions until such a report has been provided.
 - (c) Aurizon Network and the Access Seekers may, after Aurizon Network has provided the report required by **clause 6.13.2(a)**, negotiate for sixty (60) days on the terms of those Access Conditions, provided that:
 - (i) either Aurizon Network or any Access Seeker may apply to the QCA for an extension to the negotiation period (subject to the period not being extended to

more than one hundred and twenty (120) days unless a majority of Access Seekers request such an extension); and

(ii) an Access Seeker may refer the proposed Access Conditions to the QCA for a determination at any time during the negotiation period (although the QCA may decline to make a determination until the negotiation period has expired where it considers a prior referral is vexatious or the referring party has not engaged in the negotiation of Access Conditions in good faith).

(d) Following receipt of the report required by **clause 6.13.2(a)**, the QCA will invite and consider comments from relevant stakeholders regarding the proposed Access Conditions.

(e) To the extent that all Access Seekers agree to the Access Conditions sought by Aurizon Network during the period in **clause 6.13.2(c)**, the QCA will approve the proposed Access Conditions, unless the QCA is satisfied:

(i) it would be contrary to the public interest, including the public interest in having competition in markets;

(ii) it is reasonably expected to disadvantage Access Seekers, Access Holders, or other stakeholders which will not be parties to the Access Agreements containing the Access Conditions;

(iii) Aurizon Network has failed to provide Access Seekers with the report required by **clause 6.13.2(a)**; or

(iv) it would contravene a provision of this Undertaking or the Act.

(f) To the extent that only some or none of the Access Seekers agree to the Access Conditions sought by Aurizon Network during the period in **clause 6.13.2(c)**, the QCA may approve the proposed Access Conditions if it is satisfied that:

(i) the Access Conditions are reasonably required in order to mitigate Aurizon Network's exposure to the Additional Risks associated with providing Access;

(ii) Aurizon Network's exposure to the Additional Risks would not be:

(A) reasonably mitigated by an Access Agreement which permits Aurizon Network to charge Access Charge calculated in accordance with a Reference Tariff based on the Approved WACC and 100% Take or Pay commitment; or

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

6.13.3 *Prohibited Access Conditions*

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

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

Part 7: Available Capacity allocation and management

7.1 Application

- (a) This **Part 7** addresses the allocation and management of Capacity, including in circumstances where there is insufficient Available Capacity to satisfy all of the Access Applications submitted to Aurizon Network. In particular, under its provisions:
- (i) Aurizon Network may refuse to grant Access Rights if the relevant Access Seeker has not demonstrated to Aurizon Network's satisfaction (acting reasonably and in good faith) that it can utilise those Access Rights (**clause 7.2.1**).
 - (ii) Aurizon Network must maintain a Capacity Notification Register and a Committed Capacity Register (**clause 7.2.2** and **clause 7.2.3**).
 - (iii) Aurizon Network will be obliged to give priority to the granting of Access Rights to a Renewing Access Seeker in respect of a Renewal in certain circumstances (**clause 7.3**).
 - (iv) Standard Access Agreements permit an Access Holder or an Access Holder's Customer to Transfer Access Rights in accordance with this Undertaking. Aurizon Network has obligations in relation to the allocation of Capacity to facilitate a Transfer (**clause 7.4.2**).
 - (v) Short Term Transfers will be required to meet specified requirements (**clause 0**).
 - (vi) Standard Access Agreements permit an Access Holder to relinquish Access Rights in accordance with this Undertaking. Aurizon Network has obligations in relation to the management of that relinquishment (**clause 7.4.3**).
 - (vii) Aurizon Network will notify Access Seekers if their Access Applications are Mutually Exclusive Access Applications and assist them to modify their Access Applications to seek to avoid them being Mutually Exclusive Access Applications (**clause 7.5.1**).
 - (viii) Where Aurizon Network has received Mutually Exclusive Access Applications, Aurizon Network will form a queue to determine which Access Seeker will be allocated Available Capacity (**clause 7.5.2**).

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

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

7.2 Capacity allocation and registers

7.2.1 *General requirement for allocation*

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

- (a) whether the Access Seeker:
 - (i) (or its Customer) has secured, or is reasonably likely to secure, Supply Chain Rights;

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

7.2.2 Capacity Notification Register

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

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

7.2.3 Committed Capacity Register

- (a) Aurizon Network must maintain a Committed Capacity Register that identifies:
 - (i) each Access Holder with Access Rights under an Access Agreement;
 - (ii) DTMR in respect of its Committed Capacity;
 - (iii) any other party that has an interest in existing Access Rights and wishes to be included in the Committed

Capacity Register and has notified Aurizon Network of that interest, in which case, the register must include:

- (A) the Committed Capacity or Access Rights in which they have an interest; and
 - (B) the nature of that interest.
- (b) Where an Access Seeker requests Access which will:
- (i) commence within two (2) Years after the expiration of an existing Access Right (other than an Access Right in respect of coal carrying Train Services); and
 - (ii) utilise Capacity that will only become available following the expiration of that Access Right,

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

7.3 Renewals

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

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

- (b) For the purpose of **clause 7.3(a)**, Aurizon Network will disregard any change to the origin or destination of the relevant Train Services in considering whether the relevant Access Rights are equivalent Access Rights so long as the Train Services for the Renewal:
- (i) continue to have substantially the same Train Paths as the existing Train Services. For clarity, the Train Services for the Renewal may include a longer haul than the existing Train Services;

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

(c) For clarity:

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

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

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

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

- (iii) the relevant Access Holder, where the Access Holder has no Customer, or otherwise the relevant Access Holder's Customer, has notified Aurizon Network that the Access Holder does not intend to seek a Renewal; or
- (iv) the Renewing Access Seeker has not (other than because of a delay by or breach of this Undertaking by Aurizon Network) executed an Access Agreement for that Capacity with Aurizon Network under this

clause 7.3 at least twelve (12) Months prior to the expiry of the Access Rights (or such later date as agreed between Aurizon Network and the Renewing Access Seeker).

(e) Aurizon Network may refuse to negotiate, or to enter into, an Access Agreement with a Renewing Access Seeker for a Renewal more than five (5) years prior to the expiry of the Access Rights. For clarity, a refusal by Aurizon Network to negotiate an Access Agreement as a result of the operation of this **clause 7.3(e)** does not affect the Renewing Access Seeker's right to seek a Renewal under this **clause 7.3** within the period that is five (5) years prior to the expiry of the Access Rights.

(f) If a Renewing Access Seeker is seeking a Renewal at least twelve (12) Months (or such other later date as agreed between Aurizon Network and the Renewing Access Seeker) but no more than sixty (60) Months (or such earlier date as agreed between Aurizon Network and the Renewing Access Seeker) prior to the expiry of the relevant Access Rights, then:

(i) the term of an Access Agreement relating to the Renewal must be:

(A) for coal carrying Train Services, the lesser of ten (10) years and the remaining life of the relevant mine (as evidenced to Aurizon Network's satisfaction (acting reasonably) by the Renewing Access Seeker); or

(B) for other Train Services, the lesser of ten (10) years and the same length of time as the term of the relevant current Access Agreement; and

(ii) if:

(A) the Renewing Access Seeker's Access Application is not seeking a Renewal for; or

(B) the Renewing Access Seeker does not agree to an Access Agreement for,

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

(g) While this **clause 7.3** sets out how Aurizon Network will differentiate in the treatment of a Renewing Access Seeker as

compared to other Access Seekers, this **clause 7.3** does not affect the rights and obligations of the Renewing Access Seeker or Aurizon Network under **Part 4** or **Part 5** or the remaining provisions of this **Part 7** except as set out in this **clause 7.3**.

- (h) For clarity:
- (i) a Renewing Access Seeker must complete and submit an Access Application for Access Rights it is seeking to renew; and
 - (ii) subject to this **Part 7**, the negotiations for those Access Rights will be conducted in accordance with **Part 4** and **Part 5**, including:
 - (A) the Negotiation Cessation Notice provisions under **clause 4.13**;
 - (B) the Renewing Access Seeker and Aurizon Network beginning negotiations as soon as reasonably possible once the relevant Negotiation Period has commenced under **clause 4.11.1(a)**; and
 - (C) both the Renewing Access Seeker and Aurizon Network negotiating the terms of the relevant Access Agreement for the Renewal acting reasonably and in good faith under **clauses 5.1(c)** and **5.1(d)**.
 - (i) Aurizon Network acknowledges that any provision under **Part 4** which permits Aurizon Network:
 - (i) to treat an Access Application as being withdrawn (except where the Access Seeker expressly withdraws the Access Application); or
 - (ii) to cease negotiation under **clause 4.11.1(c)(v)** or otherwise issue a Negotiation Cessation Notice because there is insufficient Available Capacity,

does not apply in respect of a Renewal.

7.4 Dealing with Access Rights

7.4.1 *Assignments* Transfers

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

- (b) Subject to **clause 7.4.1(a)**, an Access Holder (or a Customer) (Transferor) may undertake a Transfer to another Access Holder or an Access Seeker (or a Customer or Customer Access Seeker) (Transferee) in accordance with this clause 7.4.
- (c) Schedule [insert] shows, diagrammatically, the process to effect a Long Term Transfer and Short Term Transfer.

7.4.2 Transfer Notice

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

- (1) have existing Train Service Entitlements from the origin for the Transferred Access Rights; and
 - (2) where there is more than one agreement that satisfies **clause 7.4.2(a)(v)(A)(1)**, must be the most recently executed Access Agreement; or
 - (B) if no existing Access Agreement, exists a short form Access Application completed by the Transferee which includes the information listed in **Schedule B, Part 6** in respect of the Transferred Access Rights;
 - (vi) evidence that the Transferor's and Transferee's Customers (as applicable) have consented to the Transfer (including if a Customer is comprised of more than one entity, each entity comprising the Customer); and
 - (vii) evidence that the Transferee (or its Customer) will be reasonably likely to be able to utilise the Transferred Access Rights based on whether:
 - (A) the Transferee (or its Customer) has secured, or is reasonably likely to secure, Supply Chain Rights for the Transferred Access Rights from the Transfer Date;
 - (B) unless the Transferee is a Railway Operator, the Transferee (or its Customer) has secured or is reasonably likely to secure, a rail haulage agreement for the Transferred Access Rights from the Transfer Date;
 - (C) the Transferee or its Railway Operator is reasonably likely to have access to facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Services to utilise the Transferred Access Rights; and
 - (D) the Transferee (or its Customer) is reasonably likely to have sufficient product (whether through the anticipated output of a mine or otherwise) to utilise the Transferred Access Rights.
- (b) If a Transfer Notice includes a short form Access Application in accordance with **clause 7.4.2(a)(v)(B)**, subject to this **Part 7**, the negotiation process for those Transferred Access Rights will be conducted on an expedited basis in accordance with **Part 4**.
- (c) A Transfer Notice for a Short Term Transfer must be provided:

- (i) if Ancillary Access Rights are not required, at least five (5) Business Days prior to close of Train Orders for the period commencing on the Transfer Date; and
- (ii) if Ancillary Access Rights are required, at least seven (7) Business Days prior to close of Train Orders for the period commencing on the Transfer Date.

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

- (i) if no Ancillary Access Rights are required, 20 Business Days prior to the Transfer Date; or
- (ii) if Ancillary Access Rights are required, 25 Business Days prior to the Transfer Date.

7.4.3 Criteria for a Transfer to take effect

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

- (i) the origin for the Transferred Access Rights is on the same Mainline Path as the Nominated Access Rights;
- (ii) the destination for the Transferred Access Rights is the same as the destination for the Nominated Access Rights or is in the same port precinct as the destination for the Nominated Access Rights;
- (iii) the Train Services for the Transferred Access Rights is the same as the nature or type of Train Services for the Nominated Access Rights; and
- (iv) the information or evidence required by **clause 7.4.2(a)** has been provided.

(b) If a Long Term Transfer:

- (i) satisfies the conditions of **clause 7.4.3(a)**; and
- (ii) requires Ancillary Access Rights.

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

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

(iv) if:

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

- (B) otherwise, the Transferee will be deemed to have submitted a short form Access Application in respect of the Ancillary Access Rights on the date of the Transfer Notice and that Access Application will be subject to **clause 7.5**; and
- (v) the transfer will not take effect unless and until the Ancillary Access Rights are granted to the Transferee in accordance with **clause 7.5**. Aurizon Network must provide written notice to the Transferor and Transferee once the Ancillary Access Rights are granted.
- (c) If a Short Term Transfer:

 - (i) satisfies the conditions of **7.4.3(a)**; and
 - (ii) requires Ancillary Access Rights.

Aurizon Network must undertake a Rapid Capacity Assessment to determine whether there is sufficient Available Capacity for the Ancillary Access Rights. Aurizon Network must promptly provide written notice to the Transferor and Transferee of the outcomes of the Rapid Capacity Assessment including full details of the assessment.
- (d) If Aurizon Network determines (acting reasonably) a Transfer does not comply with this **clause 7.4.3** (including if there is insufficient Available Capacity under **clause 7.4.3(c)**), it must promptly provide written notice (including reasons) to the Transferor and the Transferee.

7.4.4 Effect of Short Term Transfers

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

- (e) no Transfer Fee or Relinquishment Fee is payable;
- (f) the Transferred Access Rights will be taken to be Access Rights for an additional Train Service Type under the Transferee's nominated Access Agreement for the Transfer Period;
- (g) the Nominated Access Rights will be taken to have been relinquished for the Train Service Type specified in the Transfer Notice for the Transfer Period;
- (h) the Transferor and the Transferee will be taken to have varied the relevant Train Operations Deeds (or train operations agreement) (if any) to (as applicable) exclude the Nominated Access Rights and include the Transferred Access Rights for the Transfer Period; and
- (i) the Transferee's Access Agreement will be taken to be varied to include, in respect of the Transferred Access Rights, an Access

Charge Rate that is set by reference to the same Reference Tariff as the Nominated Access Rights.

7.4.5 Effect Long Term Transfers

- (a) If a Long Term Transfer meets the requirements of **clause 7.4.3**, Aurizon Network must promptly provide the Transferor and Transferee (and their respective Operators, if any) written notice approving the Long Term Transfer and then on and from the Transfer Date (or such later date as agreed by the Transferor, Transferee and Aurizon Network):
- (i) the Nominated Access Rights are removed from the Access Agreement identified in the Transfer Notice; and
 - (ii) the Transferred Access Rights are granted to the Transferee for the Transfer Period under the Access Agreement identified in the Transfer Notice or otherwise entered into by the Transferee.
- (b) Each of the parties to a Long Term Transfer referred to in **clause 7.4.5(a)** will promptly after the approval of the Long Term Transfer ensure:
- (i) Aurizon Network and the Access Holder enter into an agreement to vary the terms of the Access Holder's Access Agreement to address the relinquishment of the Nominated Access Rights (including any variations to the Access Charge Rates);
 - (ii) if the Transferred Access Rights are being granted under an existing Access Agreement between Aurizon Network and the Transferee, Aurizon Network and the Transferee enter into an agreement to vary the terms of that Access Agreement to accommodate the Transferred Access Rights (including any variations to the Access Charge Rates and the term of the agreement);
 - (iii) if the Transferred Access Rights are being granted under a new Access Agreement between Aurizon Network and the Transferee, that Access Agreement:
 - (A) has been negotiated and agreed in accordance with **clause 7.4.2(b)**; and
 - (B) (except for a condition in relation to the grant of the Transferred Access Rights taking effect under **this clause 7.4.5(b)**) is unconditional and binding upon the Transferee;

- (iv) the Transferor and the Transferee vary the relevant Train Operations Deeds (or train operator agreements) (if any) to (as applicable) exclude the Nominated Access Rights and include the Transferred Access Rights for the Transfer Period;
- (v) the Transferee provides Aurizon Network with security in respect of the Transferred Access Rights to the extent reasonably requested by Aurizon Network in accordance with this Undertaking; and
- (vi) payment of a Transfer Fee (if applicable).

~~7.4.2 Transfers~~

~~(a) If:~~

- ~~(i) an Access Holder (**Transferor**) intends to undertake a Transfer of all or part of its Access Rights; or~~
- ~~(ii) an Access Holder utilises Access Rights to provide Train Services for or on behalf of a Customer, and that Customer (also a **Transferor**) intends to undertake a Transfer of all or part of those Access Rights, to itself or a third party (each a **Transferee**), the Transferor must give Aurizon Network reasonable notice of its intention to do so (**Notice of Intention to Transfer**).~~

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

- ~~(A) specify full details of the proposed **Transfer** including:~~
- ~~(B) the Access Rights which the Transferor proposes to Transfer (**Nominated Access Rights**) by describing:~~
 - ~~(1) the number and type of Train Services to be transferred (which must be an even number of Train Services (each service being a one-way Train Service)); and~~
 - ~~(2) the existing origin and destination of the Nominated Access Rights;~~
 - ~~(C) the details of any changes to any nominations of a Train Operator previously given to take into account the proposed Transfer of the Nominated Access Rights;~~
 - ~~(D) the date on which the Transfer of the Nominated Access Rights is to take effect (**Transfer Date**) which:~~
 - ~~(1) for a transfer under clause 7.4.2(f), is:~~

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

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

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

~~(d) If either:~~

- ~~(i) the Transferee does not have an existing Access Agreement to which the Transferred Access Rights could be added; or~~
- ~~(ii) clause 7.4.2(f) or clause 7.4.2(g) does not apply;~~

~~then,~~

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

~~Customer Initiated Transfers~~

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

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

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

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

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

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

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

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

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

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

~~Transfer no additional Access Rights required~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Short Term Transfers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(i) — the Transfer Date; and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

Variations to relevant Access Agreement

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

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

- ~~(ii) — if the Transferred Access Rights are being granted under an existing Access Agreement between Aurizon Network and the Transferee, Aurizon Network and the Transferee entering into an agreement, in a form reasonably acceptable to the Transferee and Aurizon Network, to vary the terms of that Access Agreement to accommodate the Transferred Access Rights including:

 - ~~(A) — any variations to the Access Charge Rates; and~~
 - ~~(B) — the provision of security or additional security in respect of the Transferred Access Rights as a result of the transfer of the Transferred Access Rights, to the extent that Aurizon Network, acting reasonably, requires that security or additional security;~~~~
- ~~(iii) — if the Transferred Access Rights are being granted under a new Access Agreement between Aurizon Network and the Transferee, that Access Agreement:

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

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

Workability of Transfer provisions

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

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

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

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

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

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

~~in which event:~~

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

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

~~(vi) if either:~~

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

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

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

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

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

7.4.37.4.6 Transfer Fee

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

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

(b) Aurizon Network must:

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

at the following times:

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

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

(B) ~~where Ancillary Access Rights are required, within [insert]; and, [QRC note: for further consideration and discussion.]~~

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

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

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

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

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

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

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

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

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

~~(ii) in the case of a if the Transfer is a Short Term Transfer, the Transfer Period for the Nominated Access Rights, when aggregated with the sum of the Transfer Periods of all previous Transfers of Access Rights for Train Services for Train Service Types with the same origin and destination and which occur (for~~

~~each such Transfer) within the three (3) year period ending on the last day of the Transfer Period for the Nominated Access Rights, is less than two (2) years, or a Customer Initiated Transfer.~~

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

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

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

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

General

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

7.4.7 Customer Initiated Transfers

- (a) Where an Access Holder holds all or part of its Access Rights for a Customer, that Customer may seek to transfer those Access Rights (to the extent held for the Customer's benefit) to itself so that the Customer becomes the Access Holder in respect of those Access Rights provided that the Customer is not seeking any change to the origin and destination of, or the commodity for, the Access Rights (Customer Initiated Transfer).
- (b) Where a Customer seeks to undertake a Customer Initiated Transfer, the Customer must provide written notice to Aurizon Network and the Access Holder (CIT Notice) which specifies:

- (i) the date on which the Customer Initiated Transfer is to take effect (**CIT Date**) and to terminate (if any);
 - (ii) the Access Rights which the Customer is seeking to transfer from the Access Holder to itself (**CIT Access Rights**) by describing:
 - (A) the number and type of Train Services to be transferred (which must be an even number of Train Services (each service being a one way Train Service)) from the Access Holder; and
 - (B) the origin and destination of the Access Rights; and
 - (iii) any changes to the type of Train Services which the Customer requires once the Customer Initiated Transfer takes effect.
- (c) A Customer Initiated Transfer must meet the following conditions:
- (i) the Transferee agrees to pay all Adjustment Charges (**Transferred Adjustment Charges**) that, but for the Transfer of the CIT Access Rights, would have become payable by the Access Holder in relation to Train Services operated for the Access Holder utilising the CIT Access Rights prior to the commencement of the Customer's new Access Agreement; and
 - (ii) the Customer (or Customers where all Customers for the origin initiate the Customer Initiated Transfer) is the sole end Customer (or Customers) of the Train Services utilising the CIT Access Rights.
- (d) If a Customer Initiated Transfer complies with **clause 7.4.7(b)** and **clause 7.4.7(c)**, Aurizon Network must promptly provide the Customer and Access Holder written notice approving the Customer Initiated Transfer and then on and from the Transfer Date (or such later date as agreed by the Customer and Aurizon Network):
- (i) the CIT Access Rights are removed from the Access Holder's Access Agreement; and
 - (ii) those CIT Access Rights are granted to the Customer under a new Access Agreement on the same terms as the Access Holder's Access Agreement.
- (e) Each of the parties to a Customer Initiated Transfer referred to in **clause 7.4.7(d)** will promptly after the approval of the Customer Initiated Transfer do the following:
- (i) Aurizon Network and the Access Holder will enter into an agreement to vary the terms of the Access Holder's Access Agreement to address the relinquishment of the CIT Access Rights (including any variations to the Access Charge Rates);

- (ii) Aurizon Network and the Customer will enter into a new Access Agreement on the same terms as the Access Holder's Access Agreement except to the extent the Customer notified Aurizon Network of any changes to the types of Train Services in the CIT Notice; and
- (iii) the Customer will provide Aurizon Network with security in respect of the CIT Access Rights to the extent reasonably requested by Aurizon Network in accordance with this Undertaking.
- (f) For clarification, **clauses 7.4.2, 7.4.3, 7.4.4, 7.4.5 and 7.4.6 do not apply to Customer Initiated Transfers.**

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

7.4.47.4.8 Relinquishments

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

at the following times:

- (iii) if the Access Holder is considering relinquishing some or all of the Access Rights but has not given Aurizon Network a Notice of Intention to Relinquish in respect of those Access Rights, promptly following a request by the Access Holder; and
 - (iv) if the Access Holder has given Aurizon Network a Notice of Intention to Relinquish, not less than five (5) Business Days before the Relinquishment Date.
- (e) Subject to **clause 7.4.3(k)**, the Relinquishment Fee is the amount calculated as follows:
- (i) for coal carrying Train Services included in a Pre-Approval Date Coal Access Agreement, in accordance with that Pre-Approval Date Coal Access Agreement; or
 - (ii) in all other cases, the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the aggregate TOP Charges for the relevant Train Service Types that would have been payable for the remainder of the term of the relevant Access Agreement assuming:
 - (A) the Nominated Access Rights were not relinquished; and
 - (B) the relevant Train Services were not operated for the Access Holder for a reason other than Aurizon Network Cause,
- (PV Amount) less the amount which is the product of the PV Amount and the greater of:
- (C) 0.5; and
 - (D) the Reduction Factor.
- (f) [\[QRC Note: refer to separate mark-up of the payload/relinquishment provisions in the Standard Access Agreement and Standard Train Operations Deed. The following provisions will need to be updated to be consistent with that mark-up and as set out in the QRC's covering submission on this topic.\]](#) Aurizon Network may, in accordance, and subject to compliance, with clause 10 of the Standard Access Agreement, reduce the number of Nominated Monthly Train Services of an Access Holder for a Train Service Type if, at a point in time, the Average Annual Payload for that Train Service Type operated by the Train Operator exceeds the Maximum Payload for that Train Service Type.

- (g) Where the Nominated Monthly Train Services of an Access Holder are reduced by Aurizon Network as contemplated by **clause 7.3.4(f)**, Aurizon Network will notify the Train Operator(s) in accordance with clause 11.1(a)(ii) of the Standard Train Operations Deed(s) of any changes to the Nominated Monthly Operational Rights.
- (h) If an Access Holder wishes to increase the Maximum Payload for any of its Train Service Types which would result in that Access Holder holding Surplus Access Rights under its Access Agreement:
 - (i) the Access Holder may request the relinquishment of those Surplus Access Rights in accordance with the terms of clause 11 of the Standard Access Agreement;
 - (ii) subject to compliance by each of the Access Holder and Aurizon Network with the terms of clause 11 of the Standard Access Agreement, some or all of those Surplus Access Rights may be relinquished; and
 - (iii) Aurizon Network will notify the Train Operator of any changes to:
 - (A) the Nominated Monthly Operational Rights;
 - (B) the Maximum Payload for the relevant Train Service Type; and
 - (C) the Nominal Payload for the relevant Train Service Type,
 as a result of the increase in the Maximum Payload for a Train Service Type in accordance with clause 11.2(b) of the Standard Train Operations Deed.
- (i) Aurizon Network may, in accordance, and subject to compliance, with clause 12 of the Standard Access Agreement, give an Access Holder a notice of its intention to increase the Nominal Payload for a Train Service Type which may result in a reduction in the Nominated Monthly Train Services held by that Access Holder in respect of that Train Service Type.
- (j) Where the Nominated Monthly Train Services of an Access Holder are reduced by Aurizon Network as contemplated by **clause 7.3.4(i)**, Aurizon Network will notify the Train Operator(s) in accordance with clause 12.3(c) of the Standard Train Operations Deed(s) of any changes to the:
 - (i) Nominal Payload for the Train Service Type;
 - (ii) Maximum Payload for the Train Service Type; and

- (iii) Nominated Monthly Train Services for the Train Service Type,

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

- (k) Where the Nominated Monthly Train Services of an Access Holder are reduced by Aurizon Network as contemplated by **clause 7.3.4(f)** or **clause 7.3.4(i)** no Relinquishment Fee will be payable by the relevant Access Holder to Aurizon Network.
- (l) Despite any other provision in this **clause 7.4.3**, if the Relinquishment Fee is calculated to be an amount that is less than zero, then the Relinquishment Fee will be zero.

7.4.57.4.9 General provisions

- (a) Aurizon Network must act in a diligent and timely manner in dealing with a proposed Transfer under **clause 7.4.2** or relinquishment under **clause 7.4.3**.
- (b) If the calculation of the Transfer Fee or Relinquishment Fee changes after the date of the notice under **clause 7.4.6(b)(ii)** or **7.4.3(d)(ii)**, but before the Transferor or Access Holder (as applicable) (**Payor**) has paid the amount in the notice, then:
 - (i) Aurizon Network must advise the Payor of the revised amount and full reasons for the change in the calculation; and
 - (ii) the Payor must pay the revised amount, unless:
 - (A) it has already paid the amount in the notice; or
 - (B) the amount paid by the Payor is in excess of the revised amount, in which case Aurizon Network must refund the excess amount to the Payor or set it off against the next invoice (if any) payable by the Payor to Aurizon Network.
- (c) In calculating the Transfer Fee or Relinquishment Fee, Aurizon Network may assume that each of the Access Charge Rates (as at the Transfer Date or Relinquishment Date, as applicable) will escalate, on each 1 July, at the rate of 2.5% per annum for the remainder of the term of the relevant Access Agreement.
- (d) The Reduction Factor is the amount calculated as follows:
 - (i) if:
 - (A) a new Access Holder or a Transferee has executed an Access Agreement (or a variation

to an existing Access Agreement) in respect of Access Rights that Aurizon Network could not have provided without using the whole or part of the Nominated Access Rights; and

(B) Aurizon Network's provision of the Access Rights under that Access Agreement commenced, for a new Access Holder:

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

(2) who is a Transferee, on and from the Transfer Date,

then:

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

(1) the relevant Train Services of the existing Access Holder and of the new Access Holder or Transferee are coal carrying Train Services; and

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

an amount calculated as follows:

TOPB / TOPA

where:

TOPA is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the take or pay amount that would have been payable for the remainder of the term of the Access Agreement (**Remainder of the Original Term**) or for a Transfer, the take or pay amount that would have been payable for the Transfer Period if the Nominated Access Rights were not relinquished but

the existing Access Holder did not operate the relevant Train Services for a reason other than Aurizon Network Cause; and

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

(D) if **clause 7.4.4(d)(i)(C)** does not apply, an amount calculated as follows:

A / B

where:

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

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

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

(ii) if **clause 7.4.4(d)(i)** does not apply, zero (0).

(e) If the Reduction Factor is calculated in accordance with **clause 7.4.4(d)** and the Reference Tariff in relation to the Nominated

Access Rights includes a System Discount or System Premium, then the Transfer Fee or Relinquishment Fee, as applicable, must be further adjusted by Aurizon Network to account for any consequential decrease or increase (as applicable) in the System Discount or System Premium (as applicable) that would otherwise result in Aurizon Network under-recovering or over-recovering (as applicable) amounts from the Access Holder due to the application of the System Discount or System Premium (as applicable).

- (f) Aurizon Network must maintain, on its Website, worked examples of the calculation of a Relinquishment Fee.
- (g) The Access Holder may dispute, in accordance with the dispute provisions under the Access Agreement, the calculation of the Transfer Fee or Relinquishment Fee notified by Aurizon Network to the Transferor or the Access Holder (as applicable) under **clause 7.4.6(b)(ii)** or **7.4.3(d)(ii)** (including any assumptions made by Aurizon Network).

7.5 Mutually Exclusive Access Applications

7.5.1 Notification and assistance

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

7.5.2 Queuing mechanism

- (a) This **clause 7.5.2**:
 - (i) applies in respect of Mutually Exclusive Access Applications or where this Undertaking otherwise specifies that an Access Seeker has joined the Queue; and
 - (ii) does not apply to:
 - (A) an Access Application for Access Rights that can only be granted subject to an Expansion creating additional Available Capacity; or
 - (B) in relation to the allocation of Available Capacity that:

- (1) is subject to a Provisional Capacity Allocation under **Part 8** (including a Provisional Capacity Allocation arising from a reallocation under **Part 8**, for example under **clause 8.2.3(b)**);
- (2) is or was subject to a Provisional Capacity Allocation that Aurizon Network, in accordance with **Part 8**, is seeking to reallocate following a withdrawal of that Provisional Capacity Allocation; or
- (3) is or was subject to a Provisional Capacity Allocation in respect of which the relevant Access Seeker has entered into an Access Agreement, Access Conditions or User Funding Agreement relating to the corresponding Access Rights; or
 - (C) an Access Application for Access Rights which are sought according to a Transfer under **clause 7.4.2** or in accordance with the terms of an Access Agreement; or
 - ~~(C)~~ (D) a Customer Initiated Transfer.

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

- (i) a Renewing Access Seeker will be placed ahead of all other Access Seekers in the Queue in respect of the Access Rights the subject of the Renewal, but only to the extent that the Renewing Access Seeker complies with **clause 7.3(h)(ii)(C)**;
- (ii) in respect of Conditional Access Rights where:
 - (A) Aurizon Network has notified relevant Access Holders in accordance with **clause 8.9.2** of its Reduced Conditional Access Rights; and
 - (B) an Access Application is deemed to have been lodged in respect of the reduction as a result of the Conditional Access Holder providing notice to Aurizon

Network under **clause 8.9.3(a)(ii)**; and

- (C) either:
- (1) there is Available Capacity which is capable of satisfying that Access Application in respect of the reduction; or
 - (2) an Affected Access Holder elects to seek to fund an Expansion in accordance with **clause 8.9.3(e)**,

then:

- (D) the Conditional Access Holder and Affected Access Holder (as applicable) will be given priority in the Queue behind any Renewals in respect of the Access Application for that reduction; and
 - (E) where there are two (2) or more Conditional Access Holders or Affected Access Holders (as applicable) affected, each Conditional Access Holder and Affected Access Holder (as applicable) will be treated as having the same position in the Queue for the purpose of negotiating and allocating the Available Capacity.
- (c) Access Applications to be included in the Queue that are Competing Applications will be collectively positioned in the Queue in accordance with **clause 7.5.2(b)** as though they were a single application received by Aurizon Network, for the purposes of the Queue, at the time the earliest of the Competing Applications was deemed to be received by Aurizon Network.
- (d) An Access Seeker will be removed from the Queue if:
- (i) the Access Seeker's Access Application has been withdrawn or the Negotiation Period for an Access Seeker has ceased in accordance with **Part 4**;
 - (ii) Aurizon Network has determined not to allocate Available Capacity to an Access Seeker as a result of the operation of **clause 7.2.1**;

- (iii) the Access Seeker is a Conditional Access Holder and it has not provided notice to Aurizon Network under **clause 8.9.3(a)(ii)**; or
 - (iv) the Access Seeker is an Affected Access Holder and it has made an election under **clause 8.9.3(e)(i)**.
- (e) Aurizon Network must promptly notify:
- (i) following receipt of a notification of intent from an Access Seeker under **clause 4.7**, that Access Seeker of the initial position of their Access Application in the Queue; and
 - (ii) thereafter, of any change to that position in the Queue and the reason(s) for that change.

(For clarity, the timing of Aurizon Network's notification under **clause 7.5.2(e)(i)** does not affect the position of an Access Seeker's Access Application in the Queue).

- (f) An Access Seeker may assign its position in the Queue to another party who:
- (i) is a Railway Operator and the Access Seeker has entered into an agreement with that Railway Operator to provide the Train Services and requires that Railway Operator to hold the Access Rights;
 - (ii) is a Related Party of the Access Seeker and the assignment is not a Material Variation; or
 - (iii) has acquired the whole or a substantial part of the assets of the Access Seeker.
- (g) If a dispute concerning positions in the Queue or any other aspect of Aurizon Network's management of the Queue is referred for resolution under **Part 11**, Aurizon Network must not change an Access Seeker's position in that Queue unless and until that Dispute is resolved in favour of such a change in position.

7.5.3 Mutually Exclusive Access Application

- (a) If Aurizon Network has received Mutually Exclusive Access Applications for Available Capacity, then Aurizon Network will enter into negotiations for Access Agreements (including any agreements to allow Access Rights to be exercised or created – for example, a Rail Connection Agreement) for the Available Capacity for those Access Applications that meet the requirements of **Part 4**.
- (b) Subject to the terms of this Undertaking and for the purposes of **clause 7.5.2(b)**, in allocating Available Capacity, Aurizon Network may offer that Available Capacity simultaneously to each

Access Seeker in the Queue who has an Access Application for Access Rights that correspond with the Available Capacity, which offer must specify:

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

7.6 Capacity resumption

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

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

- (iii) reasonable details of the Resumption Trigger Event;

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

For clarity:

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

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

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

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

(e) A Resumption Notice must:

- (i) not be given before the end and not more than twenty (20) Business Days after the end of the fifteen (15) Business Day period in **clause 7.6(c)(i)**; and
- (ii) specify:
 - (A) full details of the Access Rights for the Train Service Type to be resumed (**Resumed Access Rights**); and
 - (B) the date on which the resumption will take effect (which must be at least ten (10) Business Days after the Resumption Notice is given to the Access Holder) (**Resumption Date**).

(f) If a valid Resumption Notice is given under this **clause 7.6**, the underutilised Access Rights for the Train Service Type will cease to form part of the Access Rights for the Train Service Type on and from the Resumption Date (other than for the purpose of calculating any TOP Charges that are payable as a result of the non-utilisation of any of the Resumed Access Rights prior to the Resumption Date).

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

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

Part 7A: Capacity

7A.1 Intent

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

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

7A.2 Network Management Principles

7A.2.1 *Compliance with Network Management Principles*

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

7A.2.2 *Nature of the System Rules*

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

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

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

7A.2.4 Reviewing and amending the System Rules

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

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

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

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

(collectively, the **Affected Persons**) of the following matters:

 - (E) the outcome of the review and the necessity (or otherwise) to amend the System Rules;
 - (F) if the System Rules are to be amended, the proposed amendments (**Proposed Amendments**);
 - (G) reasons for the Proposed Amendments or the decision to not amend the relevant System Rules; and

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

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

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

7A.2.5 Approval of System Rules

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

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

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

additional information, to address the matters in the QCA's reasons within twenty (20) Business Days after the giving of that notice (or such other period as the QCA may in its absolute discretion determine).

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

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

7A.2.6 General provisions

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

7A.3 Supply Chain coordination

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

- (iii) if requested by the Supply Chain Group, investigate operational changes that could increase Capacity in the relevant Coal System, including by conducting a review of the relevant System Operating Parameters under **clause 7A.5**.
- (c) Subject to the terms of this Undertaking, Aurizon Network must, in respect of each Supply Chain,:
- (i) reasonably facilitate an appropriate balance between cooperation between all elements of Supply Chains (in respect of which Access forms a part) to seek to maximise the performance of those Supply Chains and the other matters set out in **clause 2.2** of this Undertaking; and
 - (ii) act in a way that is not inconsistent with **Part 2**.
- (d) Subject to **clause 7A.3(e)(ii)**, Aurizon Network must adopt any operational changes determined by each Supply Chain Group that could increase Capacity in the relevant Coal System, but only to the extent that the operational change does not#:
- (i) ~~a Supply Chain Group identifies an operational change to its Coal System which change may improve Capacity in the relevant Coal System~~ adversely affect any existing Network Management Principles, System Rules or System Operating Parameters; ~~or~~
 - (ii) result in the Rail Infrastructure being operated in a manner inconsistent with the Safeworking Procedures and the Safety Standards ~~Aurizon Network decides not to implement the change.~~
- For clarity, any dispute in relation to Aurizon Network's action (or decision) to not adopt operational changes under this **clause 7A.3(d)** will be dealt with in accordance with **Part 11** ~~Aurizon Network will provide the Supply Chain Group with its reasons for not implementing the change.~~
- (e) Aurizon Network will not be obliged to:
- (i) undertake any activity referred to in **clause 7A.3(a)** or **clause 7A.3(b)** unless the reasonable cost of undertaking that activity is recoverable by Aurizon Network on the terms of this Undertaking; ~~and~~
 - (ii) undertake any activity referred to in **clause 7A.3(d)**:
 - (A) where any upfront costs are associated with that activity, unless and until the reasonable costs of undertaking that activity are recovered by Aurizon Network on the terms of this Undertaking; and
 - (B) where there are ongoing operational costs associated with that activity, unless, prior to

undertaking that activity, the recovery by Aurizon Network of the reasonable costs of undertaking that activity on the terms of this Undertaking is approved in writing by the QCA; and

~~(ii)(iii)~~ make any binding commitment or to take any action as a result of its participation and discussions referred to in **clause 7A.3(a)**, except to the extent required by clause 7A.3(d).

7A.4 Capacity assessments

7A.4.1 [not used]

7A.4.2 Capacity Assessment and System Capacity Assessment

(a) _____ Aurizon Network must undertake:

(i) _____ -a static or dynamic (as appropriate) Capacity Analysis to determine the Capacity; and

(ii) _____ a static or dynamic (as appropriate) System Capacity Analysis to determine the System Capacity.

~~-determine the Capacity:~~

for each Coal System and if that Coal System has one or more existing Expansion Tariffs, separately for each relevant Expansion:

~~(ii)(iii)~~ on each anniversary of the date the QCA published Aurizon Network's Baseline Capacity Assessment Report under the 2016 Undertaking; and [QRC Note: a baseline capacity assessment report may be required for any existing Expansions which are subject to an Expansion Tariff, where this has not already been undertaken (eg WIRP).]

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

(b) A Capacity Assessment must:

(i) include consideration of outcomes of any consultation by Aurizon Network with Access Holders and Access Seekers (and their Customer and Train Operator, as applicable) for Train Services operating in that Coal System or Expansion in relation to that assessment;

(ii) include the STP for each Coal System or Expansion;

(iii) include consideration of outcomes of any consultation with any Supply Chain Group for the relevant Coal System or Expansion;

(iv) include consideration of the following factors:

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

(c) A System Capacity Assessment must:

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

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

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

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

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

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

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

- (iii) Aurizon Network must engage an appropriately qualified and experienced expert acceptable to the QCA to review ~~audit~~ the Capacity Assessment or System Capacity Assessment (including the STP);
- (iv) **clause 7A.4.4** applies; and
- (v) Aurizon Network will, after receiving the expert's ~~final audit report~~ report, promptly provide the expert's ~~final audit~~ report to:
 - (A) the QCA on an unredacted basis; and
 - (B) Access Holders, Access Seekers and, if applicable, Customers:
 - (1) in respect of agreements entered into after the Approval Date of the 2016 Undertaking and to the extent permitted

by any confidentiality obligations it may have in relation to the information contained in the expert's ~~final audit~~ report (and if those obligations permit disclosure if required by this Undertaking then Aurizon Network is required to disclose the information contained in the expert's ~~final audit~~ report), on an unredacted basis; and

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

~~(e)(f)~~ Within 20 Business Days of the provision of the expert's ~~final audit~~ report under **clause 7.6(e)(v)**, Aurizon Network will make available to the QCA, Access Holders, Access Seekers and, if applicable, Customers its response to that report, which shall, in respect of each recommendation in that report, provide:

- (i) Aurizon Network's view as to whether it is a reasonable recommendation;

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

~~(e)~~(g) Aurizon Network will amend the Preliminary Capacity Assessment Report [or Preliminary System Capacity Assessment Report](#) to the extent required to take account of any modifications ~~to the modelling process~~ that may be made by Aurizon Network in accordance with **clause 7.6(f)(iii)**.

(h) [If an expert's report under clause 7.6\(e\)\(v\) determines that there is no Available Capacity or there is no System Available Capacity \(as applicable\) and Aurizon Network subsequently seeks to contract any Capacity in respect of that Coal System or Expansion, Aurizon Network must provide prior written notice to each Access Holder in respect of the relevant Coal System or Expansion, as well as the QCA.](#)

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

- (i) the Train Paths for an Access Holder only include those Train Paths for the Access Holder relating solely to the relevant Coal System [or Expansion](#);
- (ii) the Train Paths must be calculated as at the date on which Aurizon Network receives a notice under **clause 7A.4.2(d) (Notice Date)**;
- (iii) subject to **clause 7.6(i)(iv)**, the Train Paths must be determined (based on the Access Rights specified in that Access Agreement) for a 12 Month period starting on the Notice Date; and
- (iv) where:
 - (A) the Access Agreement is due to expire less than twelve (12) Months after the Notice Date; and
 - (B) there has been a Renewal in relation to the relevant Access Rights under that Access Agreement,

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

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

- (i) an Access Holder who holds Access to the Coal System or Expansion on behalf of more than one Customer it will have the number of votes equal to the number of Customers in that Coal System or Expansion for which it holds the Access Rights under the relevant Access Agreements;
- (ii) if an Access Holder or Customer is a Related Party of another Access Holder or Customer in that Coal System or in respect of that Expansion, it will be counted once only;
- (iii) the number of Access Holders or Customers must be calculated as at the date on which Aurizon Network receives a notice under **clause 7A.4.2(d) (Notice Date)**;
- (iv) subject to **clause 7.6(j)(v)**, the number of Access Holders or Customers must be determined for a twelve (12) Month period starting on the Notice Date; and
- (v) where:
 - (A) the Access Agreement is due to expire less than twelve (12) Months after the Notice Date; and
 - (B) there has been a Renewal in relation to the relevant Access Rights under that Access Agreement,

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

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

- (i) the Capacity Assessment Report (including the STP);
- ~~(h)~~(ii) the System Capacity Assessment Report;

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

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

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

- (i) the QCA on an unredacted basis; and
- (ii) stakeholders and when published on its Website:
 - (A) in respect of agreements entered into after the Approval Date of the 2016 Undertaking and to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the Capacity Assessment Report (and if those obligations permit disclosure if required by this Undertaking then Aurizon Network is required to disclose the information contained in the Capacity Assessment Report), on an unredacted basis; and
 - (B) in respect of agreements entered into prior to the Approval Date of the 2016 Undertaking or if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
 - (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the Capacity Assessment Report on an unredacted basis;
 - (2) in respect of the information referred to in **paragraph (i)** or for which consent is obtained under **paragraph (ii)(A)**, on an unredacted basis; and

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

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

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

provided that Aurizon Network will be deemed to have complied with its obligations under this **clause 7.6(m)** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with **clause 7.6(m)(i)** and **clause 7.6(m)(ii)**, whether or not the Access Seeker actually agrees to the inclusion of such obligations in the Access Agreement.

7A.4.3 Capacity Deficit or System Capacity Deficit

(a) If a System Capacity Assessment reveals there is a System Capacity Deficit, Aurizon Network must not execute an Access Agreement that would increase the size of that System Capacity Deficit prior to constructing any relevant new Expansion for that Coal System or existing Expansion.

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

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

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

- (i) have regard to that Capacity Deficit prior to executing an Access Agreement that would increase the size of that Capacity Deficit prior to constructing any **relevant new** Expansion for that Coal System;
- (ii) within twenty (20) Business Days after the Approval Date (**Publication Date**), and only in circumstances where a preliminary report in respect of the Capacity Deficit under a Baseline Capacity Assessment Report has not been published under the 2016 Undertaking, submit a preliminary report to the QCA (and publish such preliminary report in a prominent place on its Website) setting out:
 - (A) the relevant Coal System [or Expansion](#) and the location in that Coal System [or Expansion](#) where the Capacity Deficit arises;
 - (B) the cause and quantum of the Capacity Deficit;
 - (C) the Access Holders and, if any, Access Seekers affected by the Capacity Deficit;
 - (D) Aurizon Network's consultation plan (which, when followed, must satisfy the requirements of **clauses 7.6(c)(i)(B), 7.6(c)(i)(C) and 7.6(c)(ii)**); and
 - (E) Aurizon Network's preliminary views on solutions which could most efficiently address the Capacity Deficit; and
- (iii) within six (6) Months after:
 - (A) the Publication Date; or
 - (B) where the relevant preliminary report in respect of the Capacity Deficit under a Baseline Capacity Assessment Report has been published under the 2016 Undertaking, the date of publication of that report under the 2016 Undertaking,

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

- (C) the preferred changes to the operation and management of the Rail Infrastructure that can address the Capacity Deficit (including estimates of costs (if any) to implement those changes);
- (D) if relevant, evidence of Aurizon Network's consultation under **clauses 7.6(c)(i)(B) and 7.6(c)(i)(C)** that explains why changes to the operation and management of the Rail Infrastructure cannot address the Capacity Deficit;
- (E) a shortlist of Expansions considered by Aurizon Network and through the consultation under **clause 7.6(c)(i)(C)** (including estimates of costs to undertake each Expansion); and
- (F) any Expansion which Aurizon Network and the affected Access Holders or Access Seekers have agreed will address the Capacity Deficit.

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

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

submit a preliminary report to the QCA (and publish such preliminary report in a prominent place on its Website) which sets out the matters listed in **clauses 7.6(m)(ii)(A) to (E)**; and

- (iii) within six (6) Months after the Publication Date, submit a detailed report to the QCA showing the outcome of Aurizon Network's analysis of the Capacity Deficit and solutions which could address the Capacity Deficit and which includes the matters listed in **clauses 7.6(m)(iii)(C) to (F)**.

(c) In preparing the report specified in **clause 7.6(m)(iii)** or **clause 7.6(b)(iii)** (as applicable), Aurizon Network must:

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

(d) The QCA may publish any report provided by Aurizon Network under **clauses 7A.4.3(a)** and **7.6(b)**.

(e) If Aurizon Network and affected Access Holders consider that an Expansion is the best option to address the Capacity Deficit, then:

- (i) **Part 8** will apply to that Expansion;

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

- (3) in respect of the information that does not satisfy **paragraph (i)** or for which consent is not obtained under **paragraph (ii)(A)**:
- to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
 - to the extent not possible, on a redacted basis.
- (g) Aurizon Network must use reasonable endeavours to agree to confidentiality obligations that:
- (i) do not prevent the disclosure of the information in respect of the Capacity Deficit; and
 - (ii) permit disclosure of information required by this Undertaking,
- but
- (iii) in any event, must not agree to any confidentiality obligations that prevent disclosure to the QCA,
- provided that Aurizon Network will be deemed to have complied with its obligations under this **clause 7.6(g)** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with **clause 7.6(g)(i)** and **clause 7.6(g)(ii)**, whether or not the Access Seeker actually agrees to the inclusion of such obligations in the Access Agreement.
- (h) Nothing in this **clause 7A.4.3** affects or limits Aurizon Network's obligations or liabilities in respect of an Access Agreement or any other agreement entered into in accordance with this Undertaking.

7A.4.4 Expert engagement

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

- (a) the expert must:
 - (i) act independently;
 - (ii) give an undertaking to Aurizon Network to act independently of all relevant persons (including Aurizon Network and any individual Access Seeker, Access Holder, Customer or Train Operator);
 - (iii) have no interest or duty which conflicts or may conflict with its function;
 - (iv) not be an employee of Aurizon Network or a Related Party of Aurizon Network;

- (v) have regard to the provisions of this Undertaking and consider all submissions made to it by Aurizon Network or any Access Seeker, Access Holder, Customer or Train Operator on a timely basis;
- (vi) give an undertaking to Aurizon Network and the QCA to keep confidential and not use for another purpose all information and other matters coming to its knowledge by reason of its appointment and performance of its ~~audit~~ review;

~~(vii)~~ review the Capacity Assessment and the Preliminary Capacity Assessment Report or the System Capacity Assessment and the Preliminary System Capacity Assessment Report (as applicable);

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

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

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

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

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

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

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

~~(A) appropriately and correctly reflects the outcome of modelling that uses the input parameters referred to in **clause 7A.4.4(b)(i)(A)** in accordance~~

~~with Aurizon Network's modelling process; and~~

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

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

(b) the expert may:

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

(ii) develop assumptions that it considers are appropriate:

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

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

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

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

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

7A.5 System Operating Parameters

- (a) Aurizon Network must ensure that System Operating Parameters are in place for each Coal System at all times.
- (b) In reviewing the System Operating Parameters for a Coal System, Aurizon Network will:
 - (i) notify the QCA (who may, if determined necessary by the QCA, publish the information provided on its Website) and each of the following:
 - (A) Access Holders and Access Seekers (and Customers but only to the extent that the Access Holder or Access Seeker has given Aurizon Network those Customer contact details) whose Train Services will be affected by any amendments necessary as a result of such review;
 - (B) the applicable Supply Chain Group (if any);
 - (C) affected infrastructure providers for infrastructure forming part of the relevant Supply Chain (including, for example, the unloading facility operator that is the destination of Train Services operating in the relevant Coal System);
 - (D) affected Infrastructure Service Providers; and
 - (E) affected Railway Operators,of the relevant System Operating Parameters and the time in which to make submissions;
 - (ii) consider any submissions received in respect of the proposed System Operating Parameters or whether any variation of the System Operating Parameters is required (as applicable);
 - (iii) seek to be consistent with Aurizon Network's assumptions affecting Capacity and relied upon for the most recent Capacity Assessment (or Baseline Capacity Assessment, as applicable);
 - (iv) ensure that any amendments to the System Operating Parameters:
 - (A) do not conflict with any provision of this Undertaking; and
 - (B) are appropriate having regard to the matters listed in section 138(2) of the Act; and
 - (v) respond (with reasons) to any such submissions within fifteen (15) Business Days of receipt of the submission (or such longer period approved by the QCA) including whether

and, if so, how Aurizon Network has varied the proposed or existing System Operating Parameters (as applicable) in response to those submissions.

- (c) Without limitation to **clause 7A.5(b)**, Aurizon Network will review the System Operating Parameters for a Coal System as soon as practicable after:
 - (i) Aurizon Network becomes aware that any sustained change has occurred, or will occur, to that Coal System that materially affects the System Operating Parameters;
 - (ii) a new coal basin or port terminal is connected to the Rail Infrastructure;
 - (iii) the completion of a major Expansion; or
 - (iv) being requested by the QCA or by 60% of Access Holders (or its Customers) on the relevant Coal System.
- (d) Nothing in this **clause 7A.5** obliges Aurizon Network to vary the System Operating Parameters.
- (e) Aurizon Network must keep its most current System Operating Parameters available on the Website.
- (f) Aurizon Network must provide the current System Operating Parameters as a complete and transparent document to:
 - (i) the QCA on an unredacted basis;
 - (ii) stakeholders and when published on its Website:
 - (A) in respect of agreements entered into after the Approval Date of the 2016 Undertaking and to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the System Operating Parameters (and if those obligations permit disclosure if required by this Undertaking then Aurizon Network is required to disclose the information contained in the System Operating Parameters), on an unredacted basis; and
 - (B) in respect of agreements entered into prior to the Approval Date of the 2016 Undertaking or if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
 - (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the System Operating Parameters on an unredacted basis;

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

7A.6 Network Development Plan

- (a) Aurizon Network must develop a Network Development Plan and keep its most current Network Development Plan available on the Website.

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

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

- (B) growth scenarios within each Coal System associated with an optimisation project at a terminal in each port precinct connected to the Rail Infrastructure; and
- (C) assumed Expansions which would be required to support expansions at each port connected to the Rail Infrastructure, on the assumption that each port expansion would be sufficient to support an additional berth at the relevant port;

- (ii) the impact of Operational Constraints on Existing Capacity, Committed Capacity and Available Capacity;
 - (iii) in respect of each Expansion being studied or investigated by Aurizon Network as a Concept Study, Pre-feasibility Study or Feasibility Study, the proposed scope, standard and preliminary determination of the cost of the proposed Expansion;
 - (iv) if Aurizon Network considers it appropriate (acting reasonably), an overview of opportunities for increasing Existing Capacity to support expansions in each port precinct connected to the Rail Infrastructure, on the assumption that each port expansion would be sufficient to support an additional shiploading berth;
 - (v) a comparison of opportunities for increasing Existing Capacity within each Coal System; and
 - (vi) the studies and investigations that Aurizon Network is undertaking or expects to undertake to inform the next review and update of the Network Development Plan.
- (c) Aurizon Network will review and update the Network Development Plan annually or more frequently as it considers necessary, including:
- (i) if circumstances change in a way that Aurizon Network expects will materially affect the Network Development Plan;
 - (ii) if a new coal basin or port terminal is connected to the Rail Infrastructure;
 - (iii) at the completion of a major Expansion; or
 - (iv) where requested by the QCA or by 60% of Access Holders (or its Customers) on the relevant Coal System.
- (d) In developing or reviewing the Network Development Plan, Aurizon Network must:
- (i) ensure the Network Development Plan has regard to:
 - (A) the Network Management Principles;
 - (B) any:
 - (1) System Operating Parameters;
 - (2) Supply Chain Master Plan; and
 - (ii) notify the QCA (who may, if determined necessary by the QCA, publish the information provided on its Website) and each of the following:
 - (A) Access Holders and Access Seekers and its Customers (but only to the extent that the Access

- Holder or Access Seeker has given Aurizon Network those Customer contact details);
- (B) affected infrastructure providers for infrastructure forming part of the relevant Supply Chain (including, for example, the unloading facility operator that is the destination of Train Services operating in the relevant Coal System);
- (C) affected Infrastructure Service Providers;
- (D) affected Railway Operators; and
- (E) other interested parties identified by Aurizon Network in relation to the proposed Network Development Plan;
- (iii) consider submissions received from any interested parties;
- (iv) have regard to:
 - (A) forecast changes in demand for Queensland coal exports;
 - (B) any relevant Access Applications;
 - (C) any relevant port terminal developments or development of other out-loading facilities;
 - (D) any relevant previous or current studies undertaken by Aurizon Network; and
 - (E) other developments or circumstances which in Aurizon Network's opinion are relevant to the Network Development Plan;
- (v) make a draft Network Development Plan available to the QCA and each person identified in **clause 7A.6(d)(ii)** and provide twenty (20) Business Days for comments or submissions to be made by those persons before finalising the Network Development Plan for publication on the Website.
- (e) If Access Holders, Access Seekers or its Customers (if relevant) notify Aurizon Network that they require a peer review to be conducted of the Network Development Plan, then Aurizon Network must cooperate with a consultant appointed to conduct that peer review by and at the cost of the Access Holders, Access Seekers and its Customers (if relevant), except that Aurizon Network is not obliged to cooperate with more than one consultant for a review contemplated under this clause.
- (f) Any Dispute regarding the contents of the Network Development Plan must be determined in accordance with **Part 11**.

- (g) Neither anything in this **clause 7A.6**, nor the development, review or notification of a Network Development Plan, gives rise to any commitment by, representation by or obligation on Aurizon Network in relation to funding, constructing, permitting or otherwise implementing any aspect of the Network Development Plan.

Part 8: Network development and Expansions

8.1 Overview

This **Part 8** sets out various provisions relating to the creation of new Rail Infrastructure, in particular:

- (a) **clause 8.2** sets out general principles regarding limitations on Aurizon Network's rights and obligations to fund, construct or permit the creation of new Rail Infrastructure;
- (b) **clause 8.3** sets out principles in relation to Aurizon Network's undertaking of Concept Studies, Pre-feasibility Studies and Feasibility Studies;
- (c) **clause 8.4** sets out principles in relation to the way in which Concept Studies, Pre-feasibility Studies and Feasibility Studies are to be funded;
- (d) **clause 8.5** sets out how Capacity is provisionally allocated if a Study Funding Agreement for a Feasibility Study becomes unconditional;
- (e) **clause 8.6** sets out the ability for third parties to step into a Concept Study, Pre-feasibility Study or Feasibility Study in certain circumstances;
- (f) **clause 8.7** sets out general principles in relation to the funding of Expansions;
- (g) **clause 8.8** describes how Users may fund all or part of an Expansion; and
- (h) **clause 8.9** sets out provisions in relation to Capacity Shortfalls and Access Agreements which are conditional on Expansions and Aurizon Network's obligation to deliver a minimum level of Capacity out of an Expansion.

8.2 General principles

8.2.1 *Rights and obligations to fund, construct or permit the creation of new Rail Infrastructure*

- (a) Subject to **clauses 8.2.1(b), 8.2.1(c), 8.2.1(d)** and **Part 9**, nothing in this Undertaking:
 - (i) obliges Aurizon Network to fund, construct or permit an Expansion, or to agree to do so; or
 - (ii) prevents Aurizon Network from agreeing (in its absolute discretion), or deciding itself, to fund, construct or permit an Expansion, or any part thereof.
- (b) Aurizon Network may, at its discretion, fund all or part of the construction of any Expansion and must provide notice of that

decision (including details of the amount of funding) to the parties requesting the Expansion. The delivery of that notice by Aurizon Network will create a funding obligation on Aurizon Network to provide the relevant funding for the purposes of this Undertaking.

- (c) Notwithstanding any other provision of this **Part 8**, Aurizon Network is obliged to construct or permit an Expansion only to the extent that:
- (i) Aurizon Network is satisfied (acting reasonably) that the Expansion is technically and economically feasible and consistent with the safe and reliable operation of the Rail Infrastructure.

The proposed Expansion is deemed to be technically and economically feasible and consistent with the safe and reliable operation of the Rail Infrastructure unless:

- (A) within ten (10) Business Days after entry into a relevant Study Funding Agreement for a Feasibility Study for that Expansion, Aurizon Network has notified the Access Seekers selected to utilise an Expansion in accordance with this **Part 8** that the Expansion does not satisfy those requirements; or
 - (B) despite Aurizon Network not having notified the relevant Access Seekers, there has been a material change so that the proposed Expansion no longer satisfies those requirements (in which case Aurizon Network will notify the relevant Access Seekers of the material change and the basis of its decision not to construct or permit the Expansion);
- (ii) the Expansion is fully funded through one of the following means:
- (A) Aurizon Network is obliged by this Undertaking to fund the Expansion or, where Aurizon Network is not obliged by this Undertaking, it agrees (at its discretion) to fund the Expansion;

- (B) Expansion Funders agree to fund the Expansion in accordance with a User Funding Agreement for the Expansion; or
- (C) Expansion Funders partially fund the Expansion under a User Funding Agreement and the remainder of the funding is provided by Aurizon Network;
- (iii) Aurizon Network and all other relevant parties have entered into User Funding Agreements, Access Conditions and/or an Access Agreement (as the case may be) and such agreements are, or have become, unconditional in accordance with their terms (except for the delivery of the Capacity being generated by the Expansion); and
- (iv) unless otherwise agreed by Aurizon Network, the Expansion (whether or not funded in whole or part by a person other than Aurizon Network) is or will be leased from the State, an Authority or a trustee as contemplated by SUFA or owned, and in either case operated, by Aurizon Network.
- (d) The pricing principles to apply to an Expansion are set out in **Part 6** and nothing in this **Part 8** limits the application of **Part 6**.
- (e) Notwithstanding any other provision of this **Part 8** and **Part 6**, to the extent that Aurizon Network is obliged to undertake asset replacement works in order to meet its obligations under an Access Agreement, Aurizon Network will be responsible for the funding of Asset Replacement and Renewal Expenditure as well as undertaking or procuring the undertaking of the asset replacement covered by that funding. (Aurizon Network's obligations to provide that funding and to undertake or procure the asset replacement will be governed by the terms of the relevant Access Agreement).
- (f) Aurizon Network is not obliged to fund or construct a Customer Specific Branch Line (subject to its obligations in relation to Connecting Infrastructure). However, nothing in this Undertaking prevents Aurizon Network and the Customer seeking to construct the Customer Specific Branch Line from agreeing that Aurizon Network may do so.
- (g) Aurizon Network's obligations in respect of Connecting Infrastructure are set out in **Part 9** and nothing in this **Part 8** limits Aurizon Network's obligations under **Part 9**.

- (h) Aurizon Network will not unnecessarily or unreasonably delay any Expansion that it is obliged to construct in accordance with this Undertaking provided that after any relevant agreement with any Access Seeker, Access Holder, Customer or Expansion Funder (as applicable), including any relevant User Funding Agreement, is executed for that Expansion then Aurizon Network's obligations in relation to any delay are solely governed by that agreement.
- (i) Aurizon Network must, in accordance with **Part 4**, enter into Access Agreements with relevant Access Seekers for Capacity to be created by an Expansion.
- (j) It is acknowledged that:
 - (i) Aurizon Network and an Access Seeker (or, as applicable, Customer) may agree (in each party's absolute discretion) to enter into arrangements relating to, or in connection with, funding, constructing or permitting an Expansion or Customer Specific Branch Line necessary to provide additional Capacity required to grant Access Rights requested by that Access Seeker (or, as applicable, Customer);
 - (ii) Aurizon Network and an Access Seeker (or, as applicable, Customer) may agree that Aurizon Network will fund and construct a Customer Specific Branch Line; and
 - (iii) Aurizon Network may elect to otherwise invest in the Rail Infrastructure on its own account,
 provided that any such agreement or election must not:
 - (iv) in any way unfairly prejudice or unfairly disadvantage another Access Seeker (or, as applicable, Customer) who is seeking Capacity to be created by an Expansion or Customer Specific Branch Line under this **Part 8**; or
 - (v) affect the priority of allocation of Capacity between Access Seekers that would otherwise apply under **Part 7 or clause 8.5**.
- (k) To the extent that this Undertaking is inconsistent with a User Funding Agreement or a Studies Funding Agreement for a Pre-feasibility Study or a Feasibility Study:
 - (i) subject to **clause 8.2.1(k)(ii)**, the User Funding Agreement or Studies Funding Agreement (as applicable) will prevail to the extent of that inconsistency (but only as between Aurizon Network and the other parties to those agreements, any relevant Access Seeker (if its Customer is one of those

- parties) and any relevant Customer (if its Access Seeker is one of those parties)); and
- (ii) if the inconsistency relates to the right or ability of a party to make submissions, provide information or refer disputes to the QCA, this Undertaking will prevail.
- (l) Except where set out to the contrary in this **Part 8**, the person responsible for:
- (i) the investigation and design of any Expansion that is necessary in order to provide any Access Rights requested by an Access Seeker:
 - (A) must be Aurizon Network if Aurizon Network agrees to seek reimbursement of only its efficient costs relating to the investigation and design, but to the extent only that such costs have not, or will not be, included in the Regulatory Asset Base or recovered by Aurizon Network through other means under this Undertaking; or
 - (B) may be any party nominated by an Access Seeker (or its Customer) if:
 - (1) Aurizon Network does not comply with **clause 8.2.1(l)(i)(A)**; and
 - (2) only one party is nominated if there is more than one Access Seeker (or Customer) for a Concept Study, Pre-feasibility Study or Feasibility Study,
 in which case:
 - (3) Aurizon Network must cooperate with the third party and provide all reasonable assistance to that party, including information; and
 - (4) that party must give Aurizon Network an undertaking to keep confidential and not use for another purpose all information and other matters coming to their knowledge by reason of their appointment which if disclosed or used for another purpose could constitute a breach of Aurizon Network's obligations under **Part 3**; and

- (ii) construction of any Expansion must be Aurizon Network.
- (m) In this **Part 8**, where an Access Seeker has submitted two or more Access Applications which differ in respect of origins/destinations, quantum of capacity, commencement dates or other capacity requirements in relation to a particular Expansion, Aurizon Network must:
 - (i) treat each Access Application as a separate Access Application and as if each were lodged by a separate Access Seeker; and
 - (ii) ensure that the Access Applications do not distort any analysis of capacity requirements for the purposes of any Capacity Analysis, Demand Assessment, Concept Study, Pre-feasibility Study or Feasibility Study as a result of being treated as separate Access Applications.
- (n) This **Part 8** applies to Expansions for the purpose of providing additional Access to both coal carrying Train Services and non-coal carrying Train Services.
- (o) Except where set out to the contrary in this **Part 8**, Aurizon Network will not discriminate in the performance of its obligations and the exercise of its rights in this **Part 8** as between Access Seekers (or, as applicable, Customers) on the basis of the identity of the funder of a Pre-feasibility Study, a Feasibility Study or an Expansion. For example, Aurizon Network will not provide an Access Seeker (or, as applicable, Customer) with priority in the allocation of Capacity in respect of an Expansion on the basis that Aurizon Network is providing funding for the Expansion over another Access Seeker (or as applicable, Customer) with a different source of funding.
- (p) In this **Part 8**, if the Access Seeker is intending to use Access Rights that may be developed as a result of an Expansion for another person (in that Access Seeker's capacity as a Railway Operator):
 - (i) the Access Seeker must be acting on behalf of a Customer or Customers identified to Aurizon Network for all of the Access Rights sought by the Access Seeker and Aurizon Network must make reasonable inquiries as to the identity of the Customer(s) in accordance with the requirements of this **Part 8**;
 - (ii) a reference to the Access Seeker also includes a reference to its Customer; and

- (iii) Aurizon Network and the Access Seeker must copy the Customer on any correspondence or notices between them.

8.2.2 *Disputes under Part 8*

(a) For clarity, an Access Seeker, proposed Pre-feasibility Funder, proposed Feasibility Funder or proposed Expansion Funder ~~(to the extent that such proposed Pre-feasibility Funder or proposed Feasibility Funder is an Access Seeker, Customer or Train Operator)~~ (as applicable) may dispute any matter that may arise under this **Part 8**, other than a decision by Aurizon Network in accordance with this Undertaking that it will not fund an Expansion, including:

- (i) any decision made by Aurizon Network under **Part 8**;
- (ii) the completion of schedules in a Studies Funding Agreement where the relevant Studies Funding Agreement is in the form of the Standard Studies Funding Agreement;
- (iii) the completion of schedules in a User Funding Agreement, where the relevant User Funding Agreement is in the form of a SUFA;
- (iv) the adequacy or otherwise of any report prepared by Aurizon Network under **Part 8**;
- (v) whether Aurizon Network has acted reasonably or in good faith in applying **Part 8**; and
- (vi) whether Aurizon Network has complied with its obligations,

by referring the matter to the QCA.

(b) Any dispute referred to in **clause 8.2.2(a)** must be:

- (i) referred to the QCA to be determined in accordance with **clause 11.1.5**; and
- (ii) notified to Aurizon Network;
 - (A) within ten (10) Business Days of the notification of any decision by Aurizon Network;
 - (B) within twenty (20) Business Days of the date of receipt of any report from Aurizon Network;
 - (C) within twenty (20) Business Days of the date of receipt of a Capacity Assessment Notice; or

- (D) at any time in respect of completion of schedules in a Studies Funding Agreement or a SUFA.
- (c) A dispute notified under **clause 8.2.2(a)** is a Dispute for the purpose of **clause 11.1**.
- (d) On receipt of a notice under **clause 8.2.2(b)**, Aurizon Network must:
 - (i) promptly notify (with an outline of the matters in dispute and the identity of the initial parties to the Dispute) each Access Seeker (or where applicable, Customer) that is either affected by the decision made by Aurizon Network or has indicated an interest in the Expansion the subject of the Dispute that a Dispute has been referred to the QCA;
 - (ii) use its best endeavours to promptly identify all other parties that should be bound by the outcome of the Dispute and provide those parties with notice of the existence of the Dispute including an outline of the matters in dispute and the identity of the initial parties to the Dispute; and
 - (iii) provide the QCA with a list of the parties to whom notice of the Dispute has been given under this **clause 8.2.2(d)**.
- (e) Any party receiving notice of the Dispute under **clause 8.2.2(d)** may contact the QCA to seek to be heard on the Dispute.
- (f) Any party that did not receive a notice of the Dispute under **clause 8.2.2(d)** but believes it should have received that notice may also contact the QCA to seek to be heard on the Dispute.
- (g) The QCA's determination may include alternative conclusions (where the adequacy of a report is in dispute) and will be binding on all of the Access Seekers the subject of the relevant Demand Assessment, Concept Study, Pre-feasibility Study or Feasibility Study (as applicable) and on Aurizon Network.
- (h) Aurizon Network must not effect any decision made under this **Part 8** until:
 - (i) the relevant period for disputing that decision has expired and the decision has not been referred to the QCA; or
 - (ii) if the decision is the subject of a dispute, the QCA has determined that Aurizon Network may proceed with the relevant decision.

8.2.3 *Interdependent and sequential nature of Expansions*

- (a) The following principles relate to the interdependent and sequential nature of Expansions:
- (i) for any Coal System there may be multiple Expansions that incrementally build on each other in sequence to increase the Capacity of that Coal System;
 - (ii) as the Expansions are sequential, Expansions later in the sequence will assume the satisfactory completion of, and delivery of outcomes for, Expansions earlier in the sequence;
 - (iii) to the extent that events or circumstances affect an Expansion in the sequence (for example, by it being delayed, not progressing or not delivering the expected outcomes), then Expansions later in the sequence may also be affected and will need to be reviewed to take into account the effect of those events or circumstances;
 - (iv) similarly, to the extent that any Coal Systems overlap, Expansions on one Coal System may affect Expansions on another Coal System; and
 - (v) subject to **clause 8.2.3(b)**, until:
 - (A) the Access Seekers (or, as applicable, their Customers) for any earlier Expansion in a sequence of Expansions have entered into Access Agreements or User Funding Agreements, as applicable, (**Earlier Expansion Agreements**) in respect of that earlier Expansion; and
 - (B) such agreements are or have become unconditional,

Aurizon Network and Access Seekers (or, as applicable, their Customers) for any later Expansion in a sequence of Expansions must not enter into Access Agreements or User Funding Agreements, as applicable, (**Later Expansion Agreements**) in respect of that later Expansion except where the Later Expansion Agreement is conditional on the requirements in **clauses 8.2.3(a)(v)(A)** and **8.2.3(a)(v)(B)** being satisfied for the Later Expansion Agreement to come into full effect.
- (b) Where different Access Seekers have been identified to be provided with Access through sequential proposed Expansions and either:

- (i) an Access Seeker allocated to a later Expansion in the sequence of Expansions has advised Aurizon Network that it will have an unconditional Access Agreement or a User Funding Agreement on a date Aurizon Network (acting reasonably) determines is at least six (6) Months earlier than the date on which an Access Seeker allocated to an earlier Expansion in the sequence of Expansions is likely to have an unconditional Access Agreement or User Funding Agreement, as applicable; or
- (ii) there has been a delay of at least six (6) Months in the expected date on which an Access Seeker allocated to an earlier Expansion in the sequence of Expansions can fully utilise the relevant Access Rights under that proposed Expansion (taking into account the matters in **clause 8.4.3(a)(ii)** and ramp up profiles notified by the Access Seeker to Aurizon Network) and another Access Seeker allocated to a later Expansion in the sequence of Expansions is expected to be able to fully utilise the Access Rights created by the earlier Expansion at least ninety (90) days earlier than the delayed Access Seeker,

Aurizon Network may, acting reasonably and in good faith, reallocate Capacity proposed to be created by the sequential Expansions between those Access Seekers but only to the extent that the reallocation does not prevent:

- (iii) the relevant Expansions from achieving the dates for practical completion or dates for commissioning agreed for each Expansion; and
 - (iv) the Access Seeker allocated to the earlier Expansion in the sequence of Expansions obtaining its Access Rights at the time agreed by Aurizon Network and that Access Seeker.
- (c) If Aurizon Network intends to reallocate Capacity to Access Seekers under **clause 8.2.3(b)**, it must give reasonable prior notice to each Access Seeker affected by the reallocation, including sufficient grounds for the reallocation to permit the Access Seeker to understand Aurizon Network's decision but without disclosing information that is sensitive to the other Access Seekers (or Customer, if any) and all details of the intended reallocation.
- (d) If the majority of Access Seekers in a later Expansion in a sequence (by reference to the number of Train Paths sought by those Access Seekers), consider that the circumstances described in **clause 8.2.3(b)(i)** or **clause 8.2.3(b)(ii)** exist, those

Access Seekers may notify Aurizon Network of that belief and the grounds for that belief. On receipt of a notice under this **clause 8.2.3(d)**, Aurizon Network must reasonably consider whether a reallocation should be made under **clause 8.2.3(b)**.

8.2.4 Determination of sufficient demand for an Expansion

- (a) Without limiting Aurizon Network's ability to conduct a Demand Assessment for an Expansion of its own volition, Aurizon Network must:
 - (i) promptly (and in any case within ten (10) Business Days of the relevant event referred to below) commence a Demand Assessment for an Expansion where:
 - (A) the operator of an existing or proposed coal terminal formally advises Aurizon Network that it has commenced a process to expand an existing coal terminal or to build a new coal terminal which is likely to create demand for additional below rail capacity; or
 - (B) an Access Seeker submits an Access Application for Access that Aurizon Network concludes cannot be satisfied without Aurizon Network undertaking an Expansion and that Access Seeker requests in writing that Aurizon Network carry out a Concept Study for that Expansion; and
 - (ii) provide the QCA, each relevant Access Seeker and, if relevant, the proponent of the coal terminal with a copy of a detailed report of the results of its Demand Assessment within twenty (20) Business Days after the commencement of the study (except where a Dispute arises in respect of the information being sought by Aurizon Network for the purposes of Demand Assessment, in which case the period is extended by the number of Business Days between (and including) the day on which the Dispute is referred to the QCA and the day on which the QCA's determination is published).
- (b) Where Aurizon Network undertakes a Demand Assessment for an Expansion it must do so using the most appropriate means

and any information it considers relevant (in each case acting reasonably) in the circumstances including as follows:

- (i) the Access Applications it has received;
- (ii) liaison and consultation with participants in Supply Chains and Supply Chain Groups relating to each affected Coal System;
- (iii) analysis or advice on demand or capacity submitted by participants in relevant Supply Chain Groups; and
- (iv) analysis or advice from relevantly experienced expert advisors, if necessary.

Aurizon Network agrees not to seek information from Access Seekers or Prospective Access Seekers under this **clause 8.2.4(b)** which is not reasonably required for a prudent and sound Demand Assessment.

- (c) The Demand Assessment report:
 - (i) must not exceed the quantum of out-loading capacity being sought at the coal terminal (if the Demand Assessment is triggered by the operator of an existing or proposed coal terminal);
 - (ii) may investigate different capacity permutations in branch lines to reflect anticipated origin points for the port infrastructure (if relevant);
 - (iii) must not identify individual Access Seekers or Prospective Access Seekers by name or, to the extent practicable, precise origins or destinations for trains utilising the potential Expansion; and
 - (iv) must aggregate capacity information so that capacity use or requirements cannot be associated with a particular Access Seeker, Prospective Access Seeker or Access Holder.

8.2.5 Participation of Customers

- (a) If Aurizon Network proposes to conduct a Pre-feasibility Study, Feasibility Study or Expansion, it must notify any Customer or Access Seeker who could reasonably be expected to be interested in funding the cost of that Pre-feasibility Study, Feasibility Study or Expansion and provide a reasonable period of time by when that party may indicate to Aurizon Network its desire to fund the cost of that Pre-feasibility Study, Feasibility Study or Expansion.
- (b) If a Customer or Access Seeker wishes to fund the cost of:
 - (i) a Pre-feasibility Study, as a Pre-feasibility Funder under **clause 8.4.2**;

- (ii) a Feasibility Study, as a Feasibility Funder under **clause 8.4.3**; or
- (iii) an Expansion, as a User under **clause 8.8**,

as applicable, then within the time set out in Aurizon Network's notice, it must give a notice to Aurizon Network that it wishes to do so and agrees to be bound by the provisions of this Undertaking in relation to such matters. Nothing in this **clause 8.2.5(b)** obliges a Customer to give a funding notice earlier than the time required under the relevant part of this **Part 8**.

- (c) Where Aurizon Network does not receive a notice under **clause 8.2.5(b)** in respect of a proposed Pre-feasibility Study, Feasibility Study or Expansion (as applicable), then Aurizon Network may refuse to negotiate agreements in relation to such matters with that Customer or Access Seeker or to otherwise treat it as a proposed Pre-feasibility Funder or Feasibility Funder.
- (d) Where Aurizon Network considers, acting reasonably, that a Customer or Access Seeker has materially failed to comply with any provision of this Undertaking relating to the funding of the cost of a Pre-feasibility Study, Feasibility Study or an Expansion (as applicable), then Aurizon Network may, without prejudice to any other rights it may have, do either or both of the following:
 - (i) give a written Negotiation Cessation Notice to the Customer or Access Seeker under **clause 4.13(a)**; and
 - (ii) cease any other relevant negotiations with that Customer or Access Seeker in relation to the funding of the cost of the Pre-feasibility Study, Feasibility Study or an Expansion (as applicable) by giving notice to that Customer,

except that if the Negotiation Cessation Notice is disputed by the Customer or Access Seeker, the notice is not effective, and the parties must continue as if the notice had not been given, until the Dispute is resolved.

8.2.6 Compliance with obligations

Aurizon Network must meet its obligations under this **Part 8** in respect of Concept Studies, Pre-feasibility Studies, Feasibility Studies and Expansions, despite any resource constraints on Aurizon Network.

8.3 Undertaking Concept Studies, Pre-feasibility Studies and Feasibility Studies

8.3.1 *Concept Studies*

- (a) Aurizon Network must promptly undertake a Concept Study:
 - (i) for capacity that is consistent with the capacity identified in the relevant Demand Assessment report finalised under **clause 8.2.4**; or
 - (ii) if requested by any person (in which case, Aurizon Network may require that person to fund the Concept Study),

unless a sufficient Concept Study for the relevant Expansion is already underway or completed.

- (b) Any person may request Aurizon Network to undertake a Concept Study on its behalf (except to the extent that **clause 8.3.1(a)** permits Aurizon Network to not undertake that study) in which case:
 - (i) the costs incurred by Aurizon Network in undertaking that study must not be included as part of the Regulatory Asset Base except to the extent that that Expansion is developed and the costs associated with the Expansion is included as part of the Regulatory Asset Base; and
 - (ii) Aurizon Network must cooperate with that person and provide all reasonable assistance to that party.
- (c) Aurizon Network will include in its Network Development Plan general details of:
 - (i) each Concept Study it is undertaking promptly after commencement of work on the Concept Study; and
 - (ii) the project configuration alternatives appropriate for Pre-feasibility Study consideration,

regardless of whether or not the Concept Study is funded by Aurizon Network or another person.

8.3.2 *Pre-feasibility Study*

Following a Concept Study, Aurizon Network must immediately commence a Pre-feasibility Study for that Expansion, if:

- (a) one (1) or more Potential Pre-feasibility Funders give notice to Aurizon Network that they will:
 - (i) fund the Pre-feasibility Study; and
 - (ii) enter into a Studies Funding Agreement for the Expansion and for an amount equal to or greater than

the estimate of the cost of that Pre-feasibility Study determined in the Concept Study for that Expansion,

and that the conditions precedent set out in the Studies Funding Agreement referred to in **clause 8.3.2(a)(ii)** are satisfied or waived in accordance with the terms of that agreement;

- (b) subject to **clause 8.4.2(b)**, the Potential Pre-feasibility Funders and Aurizon Network agree that Aurizon Network should fund the Pre-feasibility Study; or
- (c) subject to **clause 8.4.2(b)**, Aurizon Network chooses, at its discretion, to fund the Pre-feasibility Study itself in circumstances where no unconditional Studies Funding Agreement comes into effect as contemplated by **clause 8.3.2(a)**:
 - (i) within forty (40) Business Days after the date of a communication referred to in **clause 8.4.2(d)(ii)**; or
 - (ii) within fifteen (15) Business Days after QCA determination of a Dispute in respect of Aurizon Network's decision under **clause 8.4.2(c)**.

8.3.3 Feasibility Studies

- (a) Following a Pre-feasibility Study, Aurizon Network must immediately commence a Feasibility Study for that Expansion if one or more of the Potential Feasibility Funders give notice to Aurizon Network that they will:
 - (i) fund the Feasibility Study; and
 - (ii) enter into a Studies Funding Agreement for that Expansion,

and all of the conditions precedent set out in the Studies Funding Agreement referred to in **clause 8.3.3(a)(ii)** are satisfied or waived in accordance with the terms of that agreement.

- (b) Aurizon Network must (acting reasonably and in good faith) determine the target amount of Capacity for the potential Expansion to be investigated in the proposed Feasibility Study (**Target Capacity**) having regard to:
 - (i) the outcomes of the Pre-feasibility Study, including the scope determined for the Feasibility Study;
 - (ii) the total indicative demand for Capacity from all the relevant Access Seekers that satisfy the requirements under **clause 8.4.3(a)(ii)**;
 - (iii) the potential scope of the proposed Expansion;
 - (iv) the capacity of the port or other unloading facility relevant to the use of the proposed Expansion; and
 - (v) any potential staging of Expansions.

- (c) Aurizon Network will notify all the relevant Access Seekers of:
 - (i) the Target Capacity for the potential Expansion to be investigated in the Feasibility Study, as determined under **clause 8.3.3(b)**;
 - (ii) the total indicative demand for Capacity from all the relevant Access Seekers that satisfy the requirements under **clause 8.4.3(a)(ii)**; and
 - (iii) if the total demand under **clause 8.3.3(c)(ii)** is more than the Target Capacity under **clause 8.3.3(c)(i)**, the reasons why a higher Target Capacity has not been proposed.

8.3.4 General provisions

- (a) Aurizon Network must not make any amendments to the scope (as the scope is defined in the relevant definition in **Part 12**) of:
 - (i) the Concept Study;
 - (ii) the Pre-feasibility Study; or
 - (iii) the Feasibility Study,

that are not agreed by all funders of the Concept Study, Pre-feasibility Funders or Feasibility Funders, as applicable.

- (b) Unless otherwise agreed by Aurizon Network and a proposed Pre-feasibility Funder or Feasibility Funder, a Studies Funding Agreement for a Pre-feasibility Study or Feasibility Study (as applicable) must be in the form of the Standard Studies Funding Agreement.
- (c) Aurizon Network and the proposed Pre-feasibility Funders or Feasibility Funders, as applicable, must agree on the completion of schedules in a Studies Funding Agreement in the form of the Standard Studies Funding Agreement within:
 - (i) twenty (20) Business Days of a communication referred to in **clause 8.4.2(d)(ii)** or **8.4.3(e)(ii)**, as applicable; or
 - (ii) if a decision communicated in accordance with **clause 8.4.2(d)** or **8.4.3(e)**, as applicable, is referred for dispute resolution, within five (5) Business Days following the QCA's decision.
- (d) The capital expenditure for an Expansion includes the cost of a Pre-feasibility Study or Feasibility Study relating to that Expansion except that any amounts that are not repaid or reimbursed (as applicable):
 - (i) for a Pre-feasibility Study, under **clause 8.4.4(b)(iii)(A)**; and

(ii) for a Feasibility Study, under **clause 8.4.4(b)(iii)(B)**, will not be treated as capital expenditure and will not be included in the Regulatory Asset Base.

- (e) Without limiting any provision of this Undertaking, Aurizon Network is not obliged to construct, fund or permit an Expansion or to undertake a Feasibility Study, merely because Aurizon Network undertakes or funds any Pre-feasibility Study or Feasibility Study relating to that Expansion.
- (f) Aurizon Network must publish to relevant Access Seekers (and, where applicable, their Customers) general details of each multi-user Pre-feasibility Study and Feasibility Study it is undertaking promptly after commencement of work on the Pre-feasibility Study or Feasibility Study. The publication must not identify individual Access Seekers by name, precise details of origins and destinations (to the extent possible) or any other confidential information.
- (g) The Concept Study, Pre-feasibility Study or Feasibility Study must be provided as a complete and transparent document:
 - (i) to the QCA on an unredacted basis; and
 - (ii) to a party other than the QCA or relevant Access Seeker (or, where applicable its Customer) or in the Network Development Plan (if a Concept Study):
 - (A) to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the Concept Study, Pre-feasibility Study or Feasibility Study (and if those obligations permit disclosure if required by this Undertaking, then Aurizon Network is required to disclose the information contained in the Concept Study, Pre-feasibility Study or Feasibility Study), on an unredacted basis; and
 - (B) if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
 - (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the Concept Study, Pre-feasibility Study or Feasibility Study on an unredacted basis;

- (2) in respect of the information referred to in **paragraph (i)** or for which consent is obtained under **paragraph (ii)(A)**, on an unredacted basis; and
 - (3) in respect of the information that does not satisfy **paragraph (i)** or for which consent is not obtained under **paragraph (ii)(A)**:
 - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
 - to the extent not possible, on a redacted basis.
- (h) Aurizon Network must use reasonable endeavours to agree to confidentiality obligations that:
- (i) do not prevent the disclosure of the information contained in a Concept Study, Pre-feasibility Study or Feasibility Study; and
 - (ii) permit disclosure of information required by this Undertaking,

but in any event, must not agree to any confidentiality obligations that prevent disclosure to the QCA.

8.4 Funding Concept Studies, Pre-feasibility Studies and Feasibility Studies

8.4.1 Concept Studies

- (a) Aurizon Network must fund all Concept Studies except:
 - (i) if an Access Seeker (or, as applicable, Customer), at its absolute discretion, agrees to fund the Concept Study; or
 - (ii) **clause 8.3.1(a)(ii)** applies.
- (b) If Aurizon Network does not fund a Concept Study, the funding party must not be provided with any rights that person would not otherwise be entitled to had they not funded the Concept Study. For clarity, this includes providing the funding Access Seeker (or, as applicable, Customer) with priority for the Expansion relevant to that Access Seeker (or, as applicable, Customer).

8.4.2 Pre-feasibility Studies

- (a) Subject to **clause 8.4.2(b)**, if all of the relevant Studies Funding Agreements for a Pre-feasibility Study terminate prior to completion of a Pre-feasibility Study, then Aurizon Network may

(in its discretion) elect to continue to undertake and complete the Pre-feasibility Study at its own cost (in which case Aurizon Network releases the relevant Pre-feasibility Funders from any further liability with respect to that Pre-feasibility Study).

(b) If Aurizon Network elects to fund the Pre-feasibility Study in accordance with **clause 8.3.2(b)** or **8.3.2(c)**, or elects to continue to undertake and complete a Pre-feasibility Study under **clause 8.4.2(a)**:

- (i) Aurizon Network must not afford an Access Seeker (or, as applicable, Customer) any rights that Access Seeker (or, as applicable, Customer) would not otherwise be entitled had Aurizon Network not funded the Pre-feasibility Study; and
- (ii) the costs incurred by Aurizon Network must not be included as part of the Regulatory Asset Base except to the extent that that Expansion is developed and the costs associated with the Expansion is included as part of the Regulatory Asset Base.

(c) The Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Pre-feasibility Study under **clause 8.3.2(a)** for an Expansion, as proposed Pre-feasibility Funders, will be:

- (i) where Aurizon Network knows that a Capacity Shortfall exists and the proposed Expansion could create Capacity that would reduce or remove the Capacity Shortfall, Access Seekers with Capacity Shortfall Access Applications to which that Capacity Shortfall relates (or, as applicable, their Customers); and
- (ii) each of the Access Seekers (or, as applicable, their Customers) who Aurizon Network considers, acting reasonably, satisfy the following requirements:
 - (A) is participating in a process for the acquisition or development of out-loading capacity (such as an expression of interest process or study funding process in relation to a coal export terminal or a domestic power station or similar out-loading facility) or otherwise has a reasonable likelihood of obtaining out-loading capacity, in either case, in a timeframe and having an out-loading capacity entitlement that are consistent with the Access Seeker's Access Application;

- (B) where the relevant Access Seeker (or, as applicable, their Customer) is a producer of coal:
 - (1) has at least an Exploration Permit for Coal under the *Mineral Resources Act 1989* (Qld);
 - (2) has a credible program for the development of its mine or mine expansion on a basis that is consistent with its Access Application; and
 - (3) is diligently developing its mine or mine expansion in accordance with the development program referred to in **paragraph 8.4.2(c)(ii)(B)(2)**;
 - (C) where the relevant Access Seeker (or, as applicable, their Customer) is a consumer of coal:
 - (1) has or is reasonably likely to obtain the licences, approvals, consents, permits and other permissions (if any) necessary to evaluate the feasibility of the business or activity for which Access Rights are required;
 - (2) has a credible program for the development of any infrastructure or other facilities and has or is likely to secure coal necessary for that business or activity; and
 - (3) is diligently developing any infrastructure or other facilities in accordance with the development program referred to in **clause 8.4.2(c)(ii)(C)(2)**; and
 - (D) where applicable, has either provided a bank guarantee in accordance with the relevant Study Funding Agreement or otherwise has the ability to meet the funding obligation under the terms of the relevant Studies Funding Agreement.
- (d) Following a decision under **clause 8.4.2(c)**, Aurizon Network will advise each Access Seeker (or, as applicable, Customer) who was:
- (i) not selected to fund the Pre-feasibility Study, of that fact; and

- (ii) selected to fund the Pre-feasibility Study, of that fact and of the Access Rights for which it has been selected to participate in the funding of the Pre-feasibility Study.

8.4.3 Feasibility Studies

- (a) Subject to **clauses 8.4.3(b)** and **8.4.3(d)**, the Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Feasibility Study under **clause 8.3.3(a)** for an Expansion, as proposed Feasibility Funders, will be:
 - (i) firstly, Access Seekers that satisfy the requirements of **clause 8.4.2(c)(i)** other than any of them who (or whose Customer) were offered an opportunity to fund the Pre-feasibility Study for the Expansion but did not become a Pre-feasibility Funder for that Pre-feasibility Study; and
 - (ii) secondly, subject to **clause 8.3.3(b)**, those Access Seekers (or, as applicable, their Customers) whom Aurizon Network decides (acting reasonably) satisfy all of the requirements of **clause 8.4.2(c)(ii)** and, in addition, either:
 - (A) where the relevant Access Seeker (or, as applicable, their Customer) is a producer of coal:
 - (1) has at least a Mineral Development Licence under the *Mineral Resources Act 1989* (Qld); and
 - (2) has Marketable Coal Reserves (as defined by the JORC Code) equal to at least ten (10) times the annual capacity for which Access is required (as determined by reference to the Access Seeker's Access Application), following ramp up; or
 - (B) where the relevant Access Seeker (or, as applicable, their Customer) is a consumer of coal:
 - (1) has or will obtain all licences, approvals, consents, permits and other permissions necessary for the business or activity for which Access Rights are required; and
 - (2) has or is reasonably likely to obtain a supplier or suppliers of coal in connection with the business or activity for amounts of coal consistent with the Access Rights requested.

- (b) For the purposes of **clause 8.4.3(a)**:
- (i) where the Access Seeker has a Customer (the identity and details of which has been notified to Aurizon Network by the Access Seeker):
 - (A) Aurizon Network will notify the Customer that it is identifying Potential Feasibility Funders for the relevant Feasibility Study; and
 - (B) the Customer must notify Aurizon Network within ten (10) Business Days after receiving that notice:
 - (1) that the Customer should be considered for an opportunity to fund the Feasibility Study (rather than the Access Seeker) (**Customer Nomination**); or
 - (2) that the Access Seeker (and, where there are two (2) or more Access Seekers seeking the same Access Rights, which of the Access Seekers) should be considered for an opportunity to fund the Feasibility Study (rather than the Customer or any other of those Access Seekers) (**Access Seeker Nomination**);
 - (ii) where Aurizon Network is given:
 - (A) a Customer Nomination under **clause 8.4.3(b)(i)(B)(1)**, only the Customer can be eligible for an opportunity to fund the relevant Feasibility Study (and not the Access Seeker(s) for the Customer); or
 - (B) an Access Seeker Nomination under **clause 8.4.3(b)(i)(B)(2)**, only the nominated Access Seeker can be eligible for an opportunity to fund the relevant Feasibility Study (and not the Customer or any other relevant Access Seeker for the Customer); and
 - (iii) where the Customer does not give Aurizon Network a Customer Nomination or an Access Seeker Nomination under **clause 8.4.3(b)(i)(B)**, neither that Customer nor that Customer's Access Seeker(s) can be eligible for an opportunity to fund the relevant Feasibility Study.

- (c) Aurizon Network must not make a decision under **clause 8.4.3(d)** until:
- (i) if Aurizon Network's decision has not been referred to the QCA for resolution as a Dispute, twenty (20) Business Days after receipt by the Access Seekers of the notice under **clause 8.3.3(c)**; or
 - (ii) if Aurizon Network's decision has been referred to the QCA for resolution of a Dispute, the QCA has made its determination.
- (d) Subject to **clause 8.4.3(c)**, if the Target Capacity to be created by the proposed Expansion as determined under **clause 8.3.3(b)** by Aurizon Network, or (if applicable) as determined by the QCA, is expected to be insufficient Capacity for all the relevant Access Seekers that satisfy the requirements under **clause 8.4.3(a)(ii)**, then priority will be given to Access Seekers or Customers having regard to the following criteria (in order of priority):
- (i) those Access Seekers who meet the requirements set out in **clause 8.4.3(a)(ii)** to a greater extent than other Access Seekers; and
 - (ii) the Access Seekers who funded the Pre-feasibility Study.

For clarity, the assessment under this **clause 8.4.3(d)** will be undertaken to ensure that the aggregate of requested capacity of the proposed Feasibility Funders is not more than (and wherever possible equals) the Target Capacity for which the Feasibility Study is being conducted.

- (e) Following a decision under **clause 8.4.3(a)**, Aurizon Network will notify:
- (i) each Access Seeker (or, as applicable, Customer) who was not selected to fund the Feasibility Study, of that fact; and
 - (ii) each Access Seeker (or, as applicable, Customer) who was selected to fund the Feasibility Study of:
 - (A) that fact;
 - (B) the Access Rights for which the Access Seeker has been selected to participate in the funding of the Feasibility Study; and
 - (C) the date by which Aurizon Network anticipates that an Access Agreement or a User Funding Agreement, as applicable, in respect of the funding and construction of the Expansion the subject of the Feasibility Study would become unconditional.

- (f) Aurizon Network will provide details to each relevant Access Seeker (or, as applicable, Customer) of Aurizon Network's assessment of that Access Seeker's case against the requirements and criteria in **clause 8.4.3(a)(ii)**.
- (g) Feasibility Studies must be funded by Access Seekers and/or, as applicable, Customers and must not be funded by:
 - (i) Aurizon Network, except where **clause 8.4.4(b)(i)** applies; or
 - (ii) a Railway Operator acting as an Access Seeker, other than where a specifically identified Customer has made an Access Seeker Nomination under **clause 8.4.3(b)(i)(B)(2)** in favour of that Railway Operator.
- (h) Where this **Part 8** provides that a Railway Operator (acting as an Access Seeker) cannot act other than on behalf of an identified Customer:
 - (i) that Railway Operator must notify Aurizon Network of the identity and details of the Customer on whose behalf it is purporting to act; and
 - (ii) Aurizon Network must make reasonable inquiries to verify the identity of that Customer and confirm that the Customer agrees to the Railway Operator acting on its behalf.

8.4.4 General provisions

- (a) If a Pre-feasibility Study or Feasibility Study for an Expansion is funded by more than one Pre-feasibility Funder or Feasibility Funder under Studies Funding Agreements, then Aurizon Network must ensure that each Pre-feasibility Funder and Feasibility Funder either:
 - (i) provides a bank guarantee for the amount required in the relevant Study Funding Agreement as a condition precedent to that relevant Study Funding Agreement becoming unconditional; or
 - (ii) has the ability to meet its financial obligations under the relevant Study Funding Agreement. For clarity, Aurizon Network may require a bank guarantee for the amount required in the relevant Study Funding Agreement as a condition precedent to that relevant Study Funding Agreement becoming unconditional, despite the Pre-feasibility Funder or Feasibility Funder having the ability to meet its financial obligations under the relevant Study Funding Agreement.

- (b) If a Pre-feasibility Study or Feasibility Study for an Expansion is funded under one or more Studies Funding Agreements, then:
- (i) as a result of the application of **clause 8.4.4(a)**, Aurizon Network must fund any shortfall in the Pre-feasibility Study or Feasibility Study arising as a result of the default of a Pre-feasibility Funder or Feasibility Funder under its Study Funding Agreement if there is more than one Study Funding Agreement for the Pre-feasibility Study or Feasibility Study;
 - (ii) the relevant Feasibility Funders and Expansion Funders (if any) must include in the funding amounts under their Study Funding Agreement or User Funding Agreement, as applicable, amounts that in aggregate equal the amount to be repaid or reimbursed by Aurizon Network:
 - (A) under a Study Funding Agreement for a Feasibility Study, the funding provided by:
 - (1) Aurizon Network in accordance with **clause 8.4.4(b)(i)**; and
 - (2) the Pre-feasibility Funder under each Study Funding Agreement,for the relevant Pre-feasibility Study; and
 - (B) under a User Funding Agreement or Access Conditions, the funding provided by:
 - (1) Aurizon Network in accordance with **clause 8.4.4(b)(i)**; and
 - (2) the Feasibility Funder under each Study Funding Agreement,for the relevant Feasibility Study; and
 - (iii) Aurizon Network must repay or reimburse itself the funding it provided under **clause 8.4.4(b)(i)** or the Pre-feasibility Funder or Feasibility Funder, as applicable, the funding provided under its Study Funding Agreement when:
 - (A) in respect of funding for a Pre-feasibility Study, the Study Funding Agreement for the Feasibility Study become unconditional; and
 - (B) in respect of funding for a Feasibility Study:
 - (1) the agreements with Access Seekers (or their Customers) for the funding and construction of that Expansion or the Access Agreement for utilisation of that

- Expansion have been executed and have become unconditional (save for any condition regarding construction of the Expansion); and
- (2) a Feasibility Funder is a party to those agreements and will use Access Rights granted as a result of the Capacity to be created by that Expansion.
- (c) If a Pre-feasibility Study or Feasibility Study is funded under one or more Studies Funding Agreements, then Aurizon Network must perform a reconciliation of funding amounts against amounts that Aurizon Network has incurred in performing the Pre-feasibility Study or Feasibility Study, when:
- (i) a Study Funding Agreement for a Pre-feasibility Study or Feasibility Study is terminated; or
 - (ii) when the report in respect of the Pre-feasibility study or Feasibility Study is completed.
- (d) If the reconciliation under **clause 8.4.4(c)**:
- (i) shows Aurizon Network has incurred amounts greater than amounts funded, then Aurizon Network must be reimbursed by the Pre-feasibility Funders or Feasibility Funders, as applicable, for that amount; or
 - (ii) shows the Pre-feasibility Funders or Feasibility Funders, as applicable, have funded amounts greater than Aurizon Network has incurred, then Aurizon Network must reimburse that amount to the Pre-feasibility Funders or Feasibility Funders, as applicable.

8.5 Provisional Capacity Allocation

- (a) Where the scope of a Feasibility Study and the schedules of the Studies Funding Agreement for that study have been:
- (i) agreed by Aurizon Network with all of the proposed Feasibility Funders of the study; or
 - (ii) the subject of a QCA determination,

Aurizon Network will, within five (5) Business Days of that agreement being reached or publication to Aurizon Network of the determination, as applicable, send to each of the Feasibility Funders an executable copy of the Studies Funding Agreement with completed Schedules reflecting the agreement reached or the QCA's determination, as applicable.

- (b) Within twenty (20) Business Days after a Studies Funding Agreement for a Feasibility Study becoming unconditional, Aurizon Network will:
- (i) issue an IAP (or if one has previously been provided, a revised IAP) to the relevant Access Seeker who is, or whose Customer is, funding the Feasibility Study; and
 - (ii) subject to **clauses 8.5(c)** and **8.5(d)**, grant that Access Seeker a provisional allocation of the capacity detailed in the Train Service description included in the Studies Funding Agreement (**Provisional Capacity Allocation**).
- (c) If an Access Seeker intends to progress its Access Application under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in an IAP or revised IAP issued under **clause 8.5(b)(i)**, that Access Seeker must notify Aurizon Network of that intention within twenty (20) Business Days after Aurizon Network gives a relevant notice under **clause 8.7.1(c)(ii)**.
- (d) Subject to **clause 8.5(e)**, all or part of a Provisional Capacity Allocation may be withdrawn by Aurizon Network acting reasonably and in good faith, where:
- (i) the relevant Access Seeker's circumstances change in a substantial way so that the Access Seeker ceases to satisfy all of the requirements in **clause 8.4.3(a)(ii)**;
 - (ii) (other than due to any default or negligent act or omission of Aurizon Network) the relevant mine or out-loading facility (including an expansion of a mine or out-loading facility) will be delayed by twelve (12) Months or more as compared to the timeframe that was proposed when Aurizon Network made the original assessment;
 - (iii) Aurizon Network exercises a right to lawfully terminate the Feasibility Funder's Studies Funding Agreement; or
 - (iv) Aurizon Network and the relevant Access Seeker (or, as applicable, its Customer) do not execute an Access Agreement or an agreement in relation to the funding and/or construction of the Expansion within one hundred and twenty (120) Business Days (or such longer period as agreed by Aurizon Network acting reasonably and in good faith) after the Feasibility Study is completed (provided that to the extent that the Access Seeker, or its Customer, is a party to a dispute concerning the negotiation of an Access Agreement or

User Funding Agreement, then the time from when that dispute is notified to the determination of that dispute, is excluded from that period).

For clarity, where a Provisional Capacity Allocation is withdrawn under this **clause 8.5(d)**, Aurizon Network must seek to reallocate that Provisional Capacity Allocation in accordance with **clause 8.5(g)**.

- (e) If Aurizon Network intends exercising its rights under **clause 8.5(d)** to withdraw all or a part of a Provisional Capacity Allocation, it must:
 - (i) give the relevant Feasibility Funder notice and a reasonable opportunity (for a period of at least twenty (20) Business Days) to explain why Aurizon Network should not exercise its rights in the way proposed; and
 - (ii) permit the Feasibility Funder to assign its Study Funding Agreement to a replacement Access Seeker in accordance with the terms of the Study Funding Agreement.
- (f) If having considered any explanation provided by the Access Seeker Aurizon Network (acting reasonably) withdraws all or part of the Provisional Capacity Allocation, it must give the relevant Access Seeker notice, including reasons for its decision. That decision takes effect on the later of:
 - (i) ten (10) Business Days after the date the Access Seeker receives that notice; and
 - (ii) the date of determination of a dispute if the Access Seeker disputes Aurizon Network's decision.
- (g) Subject to the terms of the relevant Studies Funding Agreements, where a Provisional Capacity Allocation is withdrawn under **clause 8.5(d)**, Aurizon Network must to the extent feasible (and provided that other Access Seekers will not be materially delayed) seek a replacement Access Seeker (or, as applicable, Customer) (**Replacement**) for all or some of that Capacity who:
 - (i) will be selected using the criteria set out in **clause 8.4.3(a)**; and
 - (ii) is willing to enter into a Studies Funding Agreement as a Feasibility Funder for the relevant Feasibility Study on the same terms and conditions as the Studies Funding Agreement between Aurizon Network and the Feasibility Funder being replaced,

subject to that Replacement and the other relevant Feasibility Funders agreeing with Aurizon Network any relevant amendments relating to scope, timing and cost of the Feasibility Study in respect of the Studies Funding Agreement for that Feasibility Study.

- (h) For clarity, if a proposed replacement Feasibility Funder enters into a Studies Funding Agreement in respect of the relevant Feasibility Study, then **clauses 8.5(b) to 8.5(d)** apply to that replacement Feasibility Funder.
- (i) It will be a term of the Studies Funding Agreement entered into by a replacement Feasibility Funder that it must pay all costs incurred by the exiting Access Seeker to the date of the withdrawal of the Provisional Capacity Allocation under **clause 8.5(d)** to Aurizon Network who must refund those costs to the exiting Access Seeker.
- (j) A Provisional Capacity Allocation will automatically cease to apply upon the Access Seeker to which that Provisional Access Allocation applies signing an Access Agreement, Access Conditions or User Funding Agreement relating to corresponding Access Rights.

8.6 Step-in where Aurizon Network fails to enter into Studies Funding Agreement or delay doing so

- (a) If:
 - (i) either:
 - (A) Aurizon Network fails to enter into a Studies Funding Agreement in accordance with this Undertaking or unreasonably delays doing so;
 - (B) Aurizon Network fails to commence a Concept Study, Pre-feasibility Study or Feasibility Study within twenty (20) Business Days after the Studies Funding Agreement for the relevant study becoming unconditional; or
 - (C) there is a reasonable expectation that the relevant Pre-feasibility Study or Feasibility Study (as applicable) cannot be completed by Aurizon Network prior to the date (**Completion Date**) that is sixty (60) Business Days after the target date specified (including as amended, extended or otherwise varied from time to time) in accordance with the

Studies Funding Agreement
(Performance Delay);

- (ii) a relevant affected Access Seeker (or, as applicable, Customer) who is a proposed party or party to the relevant Studies Funding Agreement has given notice to Aurizon Network's Executive Officer:
 - (A) identifying the alleged failure, unreasonable delay or Performance Delay; and
 - (B) in the case of the circumstance referred to in **clause 8.6(a)(i)(A)**, (under the hand of a person with authority to bind the Access Seeker and who warrants that he or she has that authority when giving the notice), confirming that the Access Seeker is ready, willing and able to execute a Studies Funding Agreement as previously agreed or as determined by a final, binding determination in accordance with the provisions of this Undertaking;
- (iii) where the failure or unreasonable delay is that referred to in **clause 8.6(a)(i)(A)**, Aurizon Network fails to enter into the Studies Funding Agreement within ten (10) Business Days after receiving the relevant notice under **clause 8.6(a)(ii)**; and
- (iv) where there is a failure referred to in **clause 8.6(a)(i)(B)** or an alleged Performance Delay referred to in **clause 8.6(a)(i)(C)**, Aurizon Network:
 - (A) fails to prepare and provide to the relevant affected Access Seeker (or, as applicable, Customer), within ten (10) Business Days after receiving the relevant notice under **clause 8.6(a)(ii)**, a response confirming that Aurizon Network will commence the study or complete the study by the Completion Date (and supported by reasonable particulars demonstrating how completion will be achieved); or
 - (B) after preparing and providing such a response to the relevant affected Access Seeker (or, as applicable, Customer), materially fails, due to its

own acts or omissions, to comply with any aspect of that response,

then a relevant affected Access Seeker (or, as applicable, Customer) may refer the matter to the QCA for resolution as a Dispute under **Part 11**.

- (b) If the QCA determines that Aurizon Network:
 - (i) is obliged to enter into a Studies Funding Agreement and, subject to **clause 8.6(a)(iii)**, has failed unreasonably to do so or unreasonably delayed doing so; or
 - (ii) has failed to commence a study under **clause 8.6(a)(i)(B)** and either:
 - (A) failed to provide a response within the time specified in **clause 8.6(a)(iv)(A)**; or
 - (B) has failed to comply with the steps detailed in the response provided under **clause 8.6(a)(iv)(A)**; or
 - (iii) has been the cause of a Performance Delay (as described in **clause 8.6(a)(i)(C)**) and either:
 - (A) failed to provide a response within the time specified in **clause 8.6(a)(iv)(A)**; or
 - (B) has failed to comply with the steps detailed in the response provided under **clause 8.6(a)(iv)(A)**,

the QCA may (with the approval of all relevant Access Seekers and Customers) determine that the relevant study be undertaken by an appropriately qualified and experienced nominee of all relevant Customers.

- (c) If the QCA determines that the relevant study is to be undertaken by the nominee of all relevant Customers:
 - (i) Aurizon Network must comply with that determination;
 - (ii) the nominee must:
 - (A) comply with all confidentiality obligations that Aurizon Network is required to comply with in respect of the information coming to their knowledge by reason of their appointment and performance of the study; and
 - (B) give Aurizon Network an undertaking to keep confidential and not use for another purpose all information and other matters coming to their knowledge by reason of their appointment and

performance of the study which if disclosed or used for another purpose could constitute a breach of Aurizon Network's obligations under **Part 3**;

- (iii) if the nominee provides Aurizon Network the undertaking referred to in **clause 8.6(c)(ii)**, then despite Aurizon Network's obligations under **Part 3** Aurizon Network must provide the nominee with all reasonable assistance, including information, which is reasonably required by the nominee to undertake the applicable study; and
 - (iv) Aurizon Network must use the relevant study output for the purposes for which it was provided.
- (d) If a study is undertaken by a nominee of all relevant Customers as contemplated by **clause 8.6(c)** Aurizon Network must implement the output of the study for completion of the applicable Feasibility Study, User Funding Agreement or Access Agreement, except to the extent that Aurizon Network successfully seeks a review of the scope (which may include the standard of work) of the Expansion referred to in the study by means of a QCA determination.
- (e) Aurizon Network:
- (i) may refer the matter to the QCA under **Part 11** within twenty (20) Business Days following publication to Aurizon Network of the study by the nominee;
 - (ii) must provide notice of its dispute to the relevant Access Seekers, each of whom may make submissions to the QCA in respect of the dispute; and
 - (iii) must provide written submissions to the QCA, with copies to each of the relevant Access Seekers, detailing why, in Aurizon Network's view, the scope (which may include the standard of work) decided by the nominee is not appropriate and how it should be amended.

8.7 Funding an Expansion

8.7.1 General

- (a) ~~If Aurizon Network provides notice under **Clause 8.7.1(c)(ii)** that it is not willing to fund an Expansion, or is willing to do so only with Access Conditions, then an Access Seeker may s~~ Subject to this **clause 8.7 and clause 8.8**, [an Access Seeker may](#) fund its relevant portion of the cost of ~~the an~~ Expansion that is necessary to create additional Capacity so that Access Rights may be granted to Access Seekers and Aurizon Network must agree to

the Access Seeker funding its portion of the cost even if Aurizon Network is willing to fund the Expansion, with or without Access Conditions.

(b) For clarity, any obligation on Aurizon Network to construct or permit an Expansion is subject to **clause 8.2.1(c).**

(c) Aurizon Network will:

(i) provide an ~~initial~~ indication by notice to the Pre-feasibility Funders (~~Indicative Funding Notice~~) within ten (10) Business Days after the relevant Studies Funding Agreements become unconditional of whether, indicating one of the three following intentions:

- (A) Aurizon Network is likely to be willing to fund the Expansion without Access Conditions;
- (B) Aurizon Network is likely to not be willing to fund the Expansion; or
- (C) the Access Conditions (if any) on which Aurizon Network is likely to be willing to fund the Expansion ~~with Access Conditions~~; and

(ii) ~~provide a further~~ confirm by notice (~~Definitive Funding Notice~~) to the Feasibility Funders within ~~forty~~ twenty (~~40~~20) Business Days after the relevant Studies Funding Agreements become unconditional, ~~notifying one of the three following decisions:~~ whether:

- (A) ~~Aurizon Network is willing to fund the Expansion without Access Conditions;~~ Aurizon Network has changed its position as set out in its notice under clause 8.7.1(c)(i); and
- (B) ~~Aurizon Network is not willing to fund the Expansion if Aurizon Network is willing to fund the Expansion, the Access Conditions (if any) on which Aurizon Network is willing to fund the Expansion.~~
- (B) ~~_____~~; or
- (C) ~~Aurizon Network is willing to fund the Expansion with Access~~

~~Conditions, in which case the Final Funding Notice will specify the indicative Access Conditions on which Aurizon Network is willing to fund the Expansion.~~

- (d) If Aurizon Network has not given a ~~Definitive Funding Notice~~ notice under **clause 8.7.1(c)(ii)(B) or clause 8.2.1(b)** then (for the purposes of the Access Seekers commencing the processes under clause 8.8.1(a)) Aurizon Network is deemed not to be willing to fund the expansion.
- (e) If Aurizon Network has given a notice ~~Definitive Funding Notice~~ under either clause 8.7.1(c)(ii)(C) or 8.7.1(c)(ii)(B) and the relevant Access Seeker is willing to negotiate, then **clause 6.13** will apply to the terms on which Aurizon Network ~~has indicated it is willing to~~ will fund the Expansion.
- (f) Where Aurizon Network has ~~, or is deemed to have,~~ given a ~~Definitive Funding Notice~~ notice under **clause 8.7.1(c)(ii)(B)**, ~~or has given a Definitive Funding Notice under clause 8.7.1(c)(ii)(C)~~, an Access Seeker may require Aurizon Network to negotiate a User Funding Agreement for the Expansion in parallel to any other negotiations.
- (g) **Clause 8.7.1(c)** does not prevent Aurizon Network from subsequently notifying relevant parties of whether Aurizon Network is willing to fund the Expansion. Any notice under this **clause 8.7.1(g)** does not prevent Access Seekers from pursuing User Funding in preference to the proposal from Aurizon Network for it to fund the Expansion.
- (h) Where Aurizon Network is obliged under this Undertaking to fund an Expansion, Aurizon Network must negotiate an Access Agreement in accordance with this Undertaking with those Access Seekers that will utilise the Expansion.
- (i) It is acknowledged that if an Expansion is funded partly by Expansion Funders and partly by Aurizon Network, the terms of the SUFA to be entered into by the Expansion Funders may require amendment to ensure Aurizon Network is in no worse taxation or accounting position than if the Expansion Funders funded the entire Expansion.
- (j) Where Aurizon Network is:
 - (i) granting a Provisional Capacity Allocation under **clause 8.5(b)**; or
 - (ii) negotiating or entering into an Access Agreement,

Aurizon Network must not have regard to ~~may consider~~ whether any relevant Expansion is or may be a User Funded Expansion or is or

may be funded by Aurizon Network, ~~only to the extent permitted by the Act and this Undertaking.~~

8.7.2 Inclusion of Expansion cost in Regulatory Asset Base

- (a) The Regulatory Asset Base may include User Funded Expansions (subject to the QCA's approval), notwithstanding that the cost of such Expansions are not paid for by Aurizon Network.
- (b) If the scope of works (including the standard of work) and an estimated cost of an Expansion is:
 - (i) agreed through a Feasibility Study;
 - (ii) determined by the QCA as contemplated by this **Part 8**; or
 - (iii) determined by a nominee under **clause 8.6**,

Aurizon Network must promptly apply to the QCA following agreement or determination of scope for pre-approval in accordance with the process in **clause 2 of Schedule E**.

- (c) Capital expenditure for the Expansion must only be included in the Regulatory Asset Base in accordance with **Schedule E**.
- (d) If the capital expenditure for the Expansion is not approved for inclusion into the Regulatory Asset Base by the QCA, as contemplated by **Schedule E**, Aurizon Network is not obliged to:
 - (i) fund the cost of that Expansion; nor
 - (ii) construct that Expansion without User Funding.
- (e) If the Expansion is a User Funded Expansion:
 - (i) as soon as is reasonably practicable on completion of the Expansion, Aurizon Network must apply to the QCA to have all of the costs of a User Funded Expansion included in the Regulatory Asset Base. The application must identify that it is made at the request of the Expansion; and
 - (ii) the Expansion Funders may each choose to make their own independent submissions to the QCA in relation to any application made under **Schedule E** or **clause 8.7.2(e)(i)**.

8.8 User Funded Expansions

8.8.1 Process where Users intend to fund an Expansion

- (a) If an Access Seeker intends to fund its relevant portion of the cost of an Expansion under **clause 8.7.1**:
 - (i) each proposed Expansion Funder must give notice to Aurizon Network of its bona fide intention to negotiate

- a User Funding Agreement for its relevant portion of the cost of the Expansion;
 - (ii) after receiving such notice, Aurizon Network and the proposed Expansion Funders will negotiate in good faith a User Funding Agreement;
 - (iii) if required by the proposed Expansion Funder, an entity other than an Access Seeker or Access Holder (or its Customer) may be the Preference Unit Holder under the User Funding Agreement in respect of that Access Seeker or Access Holder's portion of the cost of the Expansion;
 - (iv) the User Funding Agreement must be in the form of the Standard User Funding Agreement unless otherwise agreed by Aurizon Network and the proposed Expansion Funders (in which case, any amendments proposed to those terms must be negotiated by both Aurizon Network and the Expansion Funder acting reasonably and in good faith);
 - (v) Aurizon Network must provide the proposed Expansion Funders with relevant scope and cost information (clarity, nothing in this **clause 8.8.1(a)(v)** requires Aurizon Network to disclose any information that is commercially sensitive to the Aurizon Group); and
 - (vi) upon the User Funding Agreement being agreed by Aurizon Network and the Expansion Funders, or its terms being determined through dispute resolution, in accordance with this Undertaking:
 - (A) Aurizon Network will issue the proposed User Funding Agreement to the proposed Expansion Funders and other relevant parties (for example, the State, if applicable), as applicable; and
 - (B) Aurizon Network will execute the User Funding Agreement in accordance with its requirements.
- (b) Aurizon Network will use reasonable endeavours to procure the State to enter into a User Funding Agreement.

8.8.2 *Inconsistency with a User Funding Agreement*

To the extent of any inconsistency, but except for **clauses 8.9.3** and **8.9.4**, the terms of an executed User Funding Agreement prevail over the terms of this Undertaking as between Aurizon Network and the Expansion Funders (and their Customers, if relevant).

8.8.3 *Development and review of the SUFA*

- (a) Within three (3) Months after the Approval Date, Aurizon Network must submit to the QCA:
 - (i) a proposed Standard User Funding Agreement based on:
 - (A) the standard user funding agreement developed and submitted to the QCA for approval under the 2016 Undertaking and approved by the QCA (**UT4 SUFA**); or
 - (B) If there is no UT4 SUFA, then the most recent standard user funding agreement developed and submitted to the QCA for approval under the 2016 Undertaking, taking into account any decision made by the QCA in respect of that document; and
 - (ii) a draft amending access undertaking incorporating amendments to this Undertaking it considers reasonably necessary.
- (b) The QCA must assess the proposed Standard User Funding Agreement and draft amending access undertaking and, if deemed appropriate, seek submissions from stakeholders on that proposal, in accordance with Section 142 of the Act.
- (c) If the QCA agrees with Aurizon Network's proposal submitted under clause 8.8.3(a), it must give a notice to Aurizon Network and relevant stakeholder of its approval, specifying a date upon which the proposed amendments will take effect.~~Aurizon Network does not make any submission under clause 8.8.3(a) within the applicable timeframe then the QCA may commence the process under Division 7 of Part 5 of the Act, including section 139 and 141, in the manner contemplated by the Act~~

(d) if:

(i). Aurizon Network does not make any submission under clause 8.8.3(a) within the applicable timeframe; or

(ii). the QCA does not agree with the proposal submitted by Aurizon Network under clause 8.8.3(a).

then:

(iii). the QCA must notify Aurizon Network and relevant stakeholder of the reasons for its disagreement; and

(iv). the QCA may commence the progress under Division 7 of Part 5 of the Act, including section 139 and 141 of the Act, to seek and subsequently impose amendments to the proposed Standard User Funding Agreement in the way the QCA considers appropriate to enhance the workability of the document.

(e) Promptly after any of the following:

(i) executing the first User Funding Agreement in the form of the SUFA (or in the event that Aurizon Network and the ~~relevant Access Seekers~~ Expansion Funders are unable to agree on any User Funding Agreement for execution after at least ~~forty (40) one hundred and twenty (120)~~ Business Days of good faith negotiations); or

(ii) within sixty (60) Business Days of the date of a written request from the QCA.

~~(d)~~ Aurizon Network will:

~~(i)~~ (iii) undertake a review of the SUFA including having regard to ~~any the~~ principles developed for such reviews by Aurizon Network in consultation with industry participants; and

~~(ii)~~ (iv) consult with the Expansion Funders and ~~relevant~~ Access Seekers about the workability of the SUFA for User Funding,

and, after doing so:

~~(iii)~~ (v) submit to the QCA any amendments that Aurizon Network (acting reasonably) considers will improve the workability of the SUFA, in the form of a draft amending access undertaking under the Act; or

~~(iv)~~ (vi) if Aurizon Network (acting reasonably) considers no amendments are required, Aurizon Network must make a submission to the QCA giving detailed written reasons for that belief.

~~(e)(f)~~ The QCA must consider any draft amending access undertaking submitted by Aurizon Network under ~~clause 8.8.3(d)(iii)~~ in accordance with section 142 of the Act.

~~(f)(g)~~ If:

- (i) Aurizon Network does not make any submission under **clause 8.8.3(de)** within the timeframe specified; or
- (ii) the QCA refuses to approve the proposed amendments submitted by Aurizon Network or disagrees with Aurizon Network's reasons provided for not amending the SUFA,

then:

- (iii) the QCA must notify Aurizon Network of the reasons for its refusal or disagreement (as applicable) ~~with any response provided by Aurizon Network under clause 8.8.3(d)(iv)~~; and
- (iv) where the review has been initiated by the QCA under clause 8.8.3(e), the QCA may commence the process under Division 7 of Part 5 of the Act, including section 139 and 141 of the Act, to seek and subsequently impose amendments to the proposed Standard User Funding Agreement in the way the QCA considers appropriate to enhance the workability of the document, ~~in the manner contemplated by the Act~~

~~(g)(h)~~ Nothing in this **clause 8.8.3** prevents Aurizon Network from submitting to the QCA for approval proposed amendments to the SUFA it considers necessary to improve its workability, even if the QCA has previously refused to accept proposed amendments in relation to the SUFA.

8.9 Contracting for Capacity

8.9.1 *Access Agreements conditional on an Expansion*

If Access Rights sought by an Access Seeker require an Expansion, then Aurizon Network must only enter into an Access Agreement with that Access Seeker if:

- (a) that Access Agreement is subject to a condition precedent that requires the relevant Expansion to have been completed and commissioned;
- (b) that Access Agreement includes terms and conditions so that the Access Rights relevant to the Expansion are limited to the available Capacity created by the Expansion; and
- (c) either:
 - (i) the Access Seeker and Aurizon Network have agreed the scope of work for the Expansion; or

- (ii) the scope of work for the Expansion has been determined through resolution of a dispute in accordance with **clause 11.1**.

8.9.2 *Notice of completion and commissioning of Expansion*

Aurizon Network must provide written notice to each Conditional Access Holder in respect of an Expansion of the date of completion and commissioning of that Expansion.

8.9.28.9.3 *Capacity analysis*

If Aurizon Network grants Access Rights (**Conditional Access Rights**) to Access Seekers (**Conditional Access Holders**) that are conditional on an Expansion being completed and commissioned, then Aurizon Network will, no more than six (6) Months following commissioning of the Expansion, undertake an assessment of the change in Capacity arising as a result of that Expansion (**Capacity Change**) after the Expansion is commissioned by calculating the Capacity Change as:

- (a) the Existing Capacity of the System at the time; less
- (b) the Existing Capacity of the system in the absence of the Expansion,

using consistent System Operating Parameters. Aurizon Network must notify all of the relevant Conditional Access Holders and the QCA of the conclusions of that assessment and the basis for those conclusions including if a reduction of Conditional Access Rights is required under clause 8.9.4.

8.9.38.9.4 *Capacity shortfall*

- (a) If Aurizon Network's assessment under **clause 8.9.2** indicates that there is a Capacity Shortfall in relation to Conditional Access Holders, then:
 - (i) the Conditional Access Rights of each Conditional Access Holder are proportionally reduced in accordance with this Undertaking or as agreed by all affected Conditional Access Holders; and
 - (ii) subject to **clause 8.9.3(b)**, where those Conditional Access Rights are reduced, each Conditional Access Holder will be deemed to have lodged an Access Application with Aurizon Network for Access Rights equivalent to that reduction if they notify Aurizon Network within twenty (20) Business Days after receiving notice under clause 8.9.3 ~~the reduction occurs~~ that they wish to seek Access Rights equal to (or less than) that reduction.
- (b) For the purpose of a Conditional Access Holder's Access Application under **clause 8.9.3(a)**:

- (i) the Access Application is taken to be on the same terms as the previous Access Application made by that Conditional Access Holder for those Conditional Access Rights but only to the extent that its Conditional Access Rights have been reduced in accordance with its Access Agreement as a result of the Capacity Shortfall;
- (ii) Aurizon Network and the Conditional Access Holder are taken to have complied with **clauses 4.2 to 4.4(b) and 4.8(a) to 4.8(c)**; and
- (iii) **clause 4.8** applies to the Access Application.

(c) If the scope of works (including the standard of work) for an Expansion is altered or determined by unanimous agreement of Conditional Access Holders or through resolution of the dispute in accordance with clause 11.1 and:

- (i) the Expansion is constructed in accordance with that altered or determined scope and standard; and
- (ii) the Expansion results in a Capacity Shortfall (determined in accordance with the process in clause 8.9.3), then Aurizon Network (acting reasonably) must calculate the Capacity Shortfall, if any, that would have existed if the same process as outlined in clause 8.9.3 is applied but it is assumed the scope of work (including standard of work) previously proposed by Aurizon Network had been constructed (**AN Shortfall**).

(d) Aurizon Network must comply with clause 8.9.6(a)(ii) in respect of any AN Shortfall and give the affected Access Holders a priority allocation of Capacity arising out of the resulting Shortfall Expansion.

(e) In addition to clause 8.9.4(d), if the AN Shortfall is less than the Capacity Shortfall, then the affected Access Holders may:

- (i) make an irrevocable election (subject to their right to seek an Expansion at a later date) to have their rights of Access remain compressed (in accordance with the process for compression in this Undertaking) in relation to that Expansion as a result of any remaining Capacity Shortfall after the AN Shortfall is addressed, in which case their Access Rights in their Access Agreements will be amended to reflect the compression; or
- (ii) elect to seek to fund an Expansion to address the difference in Capacity between the AN Shortfall and the Capacity Shortfall in which case

- ~~(c) If there is a Capacity Shortfall, Aurizon Network must meet affected Access Holders and discuss with them the available options to address that Capacity Shortfall. Aurizon Network must act reasonably in determining available options.~~
- ~~(d) If Aurizon Network and affected Access Holders consider that an Expansion is the best option to address any Capacity Shortfall, then:
 - ~~(i) This Part 8 will apply to that Expansion;~~
 - ~~(ii) Aurizon Network must give the affected Access Holders a priority allocation of Capacity in an existing or future process for the scoping and funding of a related Expansion that can be utilised to address the Capacity Shortfall; and~~
 - ~~(iii) Aurizon Network must act reasonably and negotiate with the affected Access Holders the terms of a funding arrangement for that Expansion.~~~~
- ~~(e)(iii) Aurizon Network will not breach this Part 8 by giving the affected Access Holders priority allocation of Capacity in accordance with this clause 8.9.3.~~

8.9.5 Funding a Shortfall Expansion

- (a) Subject to an election by the affected Access Holders to fund an Expansion to address the difference in Capacity between the AN Shortfall and a Capacity Shortfall as set out in clause 8.9.3, where an Expansion (Shortfall Expansion) is required as a result of a Capacity Shortfall arising in respect of an earlier Expansion commenced after the Approval Date of the 2016 Undertaking (Earlier Expansion) and that Shortfall Expansion is technically and economically feasible:
 - (i) subject to clause 8.9.4(a)(ii):
 - (A) if Aurizon Network funded the Earlier Expansion, then Aurizon Network must rectify the Shortfall Expansion;
 - (B) if Aurizon Network funded part of the Earlier Expansion, then:
 - (1) Aurizon Network must rectify the proportion of the Shortfall Expansion that represents the proportion of the Earlier Expansion that was funded by Aurizon Network; and
 - (2) the Conditional Access Holder(s) who (or whose Customers) provided funding in respect of the Earlier Expansion must rectify the remainder of the Shortfall

Expansion if they require it (in which case Aurizon Network and the Conditional Access Holder(s) (or their Customers) will promptly enter into User Funding Agreements on the same terms as the Earlier Expansion's User Funding Agreements); or

(C) if Aurizon Network did not fund (in whole or part) the Earlier Expansion, a Conditional Access Holder must rectify the Shortfall Expansion if they require it, failing which its Access Rights will be reduced in accordance with **clause 8.9.5**; and

(ii) if the Capacity Shortfall was caused (partly or wholly) by a default by, or the negligent acts or omissions of, Aurizon Network (and for the purposes of this clause an AN Shortfall is deemed to have been caused by a default by, or the negligent act or omission of, Aurizon Network), Aurizon Network must rectify the implications of:

(A) the Shortfall Expansion if the Capacity Shortfall was caused wholly by a default by or the negligent act or omission of Aurizon Network; or

(B) the part of the Shortfall Expansion relating to the AN Shortfall, if the Capacity Shortfall included an AN Shortfall and the Capacity Shortfall (other than the AN Shortfall) was not otherwise caused by a default by, or the negligent act or omission of, Aurizon Network.

8.9.48.9.6 Reduction of Conditional Access Rights due to Capacity Shortfall

- (a) If an Access Agreement nominates a Train Service Type as being conditional on completion and commissioning of an Expansion, then:
- (i) the Access Rights for that Train Service Type under the Access Agreement are Conditional Access Rights for that Train Service Type; and
 - (ii) despite the Train Service Commitment Date specified in the Train Description for the Conditional Access Rights, the Train Service Commitment Date for the Conditional Access Rights will be taken to be the later of:
 - (A) the Train Service Commitment Date for the Conditional Access Rights specified in the Train

Description for the Conditional Access Rights; and

(B) the date upon which all Segments are completed and commissioned.

(b) Where **clause 8.9.3(a)(i)** applies, the Reduced Conditional Access Rights for a Segment which has a Capacity Shortfall will be calculated in accordance with the following formula:

$$RCAR = EAR \times \frac{CAR_{(Original)}}{\sum CAR_{(Original)}}$$

where:

RCAR = the Reduced Conditional Access Rights for the relevant Segment of the Expansion (expressed as a number of Train Services and rounded down to the nearest even number of whole Train Services)

EAR = the lesser of:
(a) the sum of CC and IAC; and
(b) $\sum CAR_{(Original)}$,
(expressed as a number of Train Services)

CC = the Capacity Change for the relevant Segment of the Expansion (expressed as a number of Train Services)

IAC = the amount (expressed as a number of Train Services) specified as the "Initial Available Capacity" for the Segment in the Train Description for the Conditional Access Rights in the relevant Access Agreement

$CAR_{(Original)}$ = the Conditional Access Rights (expressed as a number of Train Services) in the relevant Access Agreement

$\sum CAR_{(Original)}$ = the sum of:
(i) the Conditional Access Rights (expressed as a number of Train Services) in the relevant Access Agreements; and
(ii) for each other Conditional Access Holder for the Segment of the Expansion, the other Conditional Access Holder's other Conditional Access Rights for the Expansion (expressed as a number of Train Services) in each of their Access Agreements.

(i) within thirty (30) days after the completion of Aurizon Network's assessment under **clause 8.9.2**, Aurizon Network must give each Affected Access Holder a

notice (**Capacity Assessment Notice**) which specifies:

- (A) the Conditional Access Rights;
 - (B) the amount of the Capacity Change for each Segment of the Expansion;
 - (C) whether or not there is a Capacity Shortfall in respect of any Segment of the Expansion; and
 - (D) if there is a Capacity Shortfall in respect of any Segment of the Expansion, the Reduced Conditional Access Rights for each such Segment of the Expansion (calculated in accordance with the formula in **clause 8.9.5(b)**), including reasonable details of the calculation of the Reduced Conditional Access Rights for each Segment.
- (c) The Conditional Access Rights in the relevant Access Agreement will be taken to be varied to the lowest of the Reduced Conditional Access Rights for a Segment of the Expansion as:
- (i) specified in the Capacity Assessment Notice; or
 - (ii) as agreed or determined through the dispute resolution process,
- with effect on the later of:
- (iii) twenty (20) Business Days from receipt by the Access Holders of the Capacity Assessment Notice; and
 - (iv) if the Capacity Assessment Notice has been referred to the QCA for resolution of a Dispute, ten (10) Business Days after the Dispute is agreed or determined.

Part 9: Connecting Private Infrastructure

9.1 Connecting Infrastructure

- (a) The Private Infrastructure Owner must give Aurizon Network a written proposal for the proposed connection to the Rail Infrastructure. The written proposal must provide reasonably sufficient details about the proposed connection to allow it to be properly assessed by Aurizon Network against the criteria in **clause 9.1(b)** and for development of a Rail Connection Agreement.
- (b) Within two (2) Months (or such longer period as may be agreed between Aurizon Network and the Private Infrastructure Owner) of receiving the written proposal, Aurizon Network must assess the proposal, acting reasonably and in good faith, and decide whether or not it meets the following criteria:
 - (i) the proposed Connecting Infrastructure is for the purpose of connecting to the Rail Infrastructure in order to allow Trains operating on that Private Infrastructure to enter or exit from the Rail Infrastructure for the purpose of Access;
 - (ii) the proposed Connecting Infrastructure will meet the technical specifications required by Aurizon Network (acting reasonably) for connection to the Rail Infrastructure;
 - (iii) the proposed Connecting Infrastructure is to be constructed to a standard appropriate to the nature of the traffic and the current service standards of the adjoining Rail Infrastructure (including any planned or anticipated Expansion);
 - (iv) the proposed Connecting Infrastructure will not adversely impact on safety; and
 - (v) the proposed Connecting Infrastructure will not, after completion and commissioning of the proposed connection and any related Expansion, reduce Capacity or Supply Chain Capacity.
- (c) Connecting Infrastructure must be owned by Aurizon Network or, where Aurizon Network holds the Rail Infrastructure of which that Connecting Infrastructure will form a part under a lease, must be included under that lease as part of the leased infrastructure.
- (d) Within five (5) Business Days of making its decision under **clause 9.1(b)**, Aurizon Network must notify the Private Infrastructure Owner and the QCA of that decision.

- (e) If Aurizon Network decides the proposal meets the criteria under **clause 9.1(b)**, then within two (2) Months of notifying the Private Infrastructure Owner under **clause 9.1(d)**, Aurizon Network must agree with the Private Infrastructure Owner the timeframes within which Aurizon Network (acting reasonably) will:
- (i) enter into a Rail Connection Agreement with the Private Infrastructure Owner;
 - (ii) design and construct any Connecting Infrastructure;
 - (iii) commission any Connecting Infrastructure; and
 - (iv) complete any other matters Aurizon Network and the Private Infrastructure Owner consider necessary,

(each a **Connection Milestone**) which must be supported by reasons explaining the length of the timeframe selected by Aurizon Network.

- (f) Aurizon Network and the Private Infrastructure Owner may agree to delay setting the Connection Milestones under **clause 9.1(e)** until an Access Agreement which requires the proposed connection to the Rail Infrastructure to be completed has been entered into between the parties.
- (g) Within five (5) Business Days of reaching agreement under **clause 9.1(e)** or agreeing under **clause 9.1(f)** to delay setting the Connection Milestones, Aurizon Network must notify the QCA of either each Connection Milestone (and the reasons supporting each Connection Milestone) or the decision to delay.
- (h) Where Aurizon Network decides that the criteria set out in **clause 9.1(b)** are, or will be, satisfied and that **clause 9.1(c)** will be complied with, it must permit the connection of the Private Infrastructure to the Rail Infrastructure subject to:
- (i) Aurizon Network and the Private Infrastructure Owner entering into a Standard Rail Connection Agreement (unless the Private Infrastructure Owner agrees with Aurizon Network to vary the terms of the Standard Rail Connection Agreement, in which case any amendments proposed to those terms must be negotiated by both Aurizon Network and the Private Infrastructure Owner acting reasonably and in good faith);
 - (ii) Aurizon Network gaining access, on terms acceptable to Aurizon Network (acting reasonably and in good faith), to the land necessary to construct, operate, use and maintain the Connecting Infrastructure; and
 - (iii) Aurizon Network and the Private Infrastructure Owner or any other relevant person entering into any other agreements in relation to:

- (A) the design, construction, project management or commissioning of the Connecting Infrastructure; or
- (B) other works relating to the proposed connection,

required under the Rail Connection Agreement or any Law.

- (i) If Aurizon Network decides, acting reasonably and in good faith:
 - (i) in accordance with **clause 9.1(b)**, that the criteria set out in **clause 9.1(b)** have not been satisfied; and
 - (ii) to refuse to enter into a Rail Connection Agreement as a result,

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

- (iii) notify the Private Infrastructure Owner and the QCA of its decision if it has not already done so under **clause 9.1(d)**;
 - (iv) provide reasons for its decision to the Private Infrastructure Owner and the QCA; and
 - (v) specify the amendments it requires to be made to the Private Infrastructure Owner's proposal in order to satisfy the criteria in **clause 9.1(b)** and to enable Aurizon Network to enter into a Rail Connection Agreement.
- (j) If a Private Infrastructure Owner is notified by Aurizon Network under **clause 9.1(i)(iii)**, the Private Infrastructure Owner may re-submit its proposal to Aurizon Network under **clause 9.1(a)**, in which case Aurizon Network must recommence the assessment and decision-making process under **clause 9.1(a)**.
- (k) If connection of the Private Infrastructure to the Rail Infrastructure is permitted under this **clause 9.1**, then unless otherwise agreed with the Private Infrastructure Owner, Aurizon Network:
 - (i) must be responsible for designing, constructing, project managing and commissioning the Connecting Infrastructure;
 - (ii) must do so in accordance with the relevant Rail Connection Agreement, Construction Agreement and any other relevant agreement without unreasonable delay;
 - (iii) is entitled to payment for that design, construction, project management and commissioning consisting only of reimbursement of its efficient costs which

directly relate to the Connecting Infrastructure, but to the extent only that such costs have not, or will not be, included in the Regulatory Asset Base or recovered by Aurizon Network through other means under this Undertaking; and

- (iv) must not in the technical specifications required by Aurizon Network for connection to the Rail Infrastructure, require higher standards for the design or construction than those required under the relevant legislation and Safety Standards.
- (l) Aurizon Network must pay all reasonable costs (excluding Consequential Loss) incurred by the Private Infrastructure Owner arising directly out of Aurizon Network's unreasonable delay in:
- (i) entering into:
 - (A) a Rail Connection Agreement;
 - (B) an agreement relating to the design and construction, project management and/or commissioning of any Connecting Infrastructure required under the Rail Connection Agreement or any Law; and
 - (C) an agreement relating to any other works required for the connection or proposed connection under the Rail Connection Agreement or any Law;
 - (ii) designing and constructing any Connecting Infrastructure;
 - (iii) commissioning any Connecting Infrastructure; and
 - (iv) completing any other matters that Aurizon Network and the Private Infrastructure Owner consider necessary.

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

- (v) loss of revenue, loss of profits, or loss of production;
- (vi) loss of whatever nature concerning supply of product from a mine to any third party or to make product available to transport;
- (vii) loss of business opportunities;
- (viii) loss of or damage to reputation or good will;

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

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

Nothing in this **Part 9** requires or obliges either Aurizon Network or the Private Infrastructure Owner to agree that the technical specifications or the completed construction of either the Private Infrastructure or any Connecting Infrastructure is required to the standards or condition for the design or construction of any relevant Rail Infrastructure (including any planned or anticipated Expansion).

Part 10: Reporting, compliance and audits

10.1 Overview

This **Part 10** sets out various provisions relating to the reporting requirements for Aurizon Network, in particular:

- (a) **clause 10.3** sets out the reports that Aurizon Network must provide in respect of network performance, including maintenance cost reports and network performance reports;
- (b) **clause 10.4** sets out the reports that Aurizon Network must provide in respect of other matters, particularly the annual financial statements, the Regulatory Asset Base roll-forward report and the findings on the conditions based assessment;
- (c) **clause 10.5** sets out the actions that Aurizon Network must take and the reports that Aurizon Network must provide to assist with showing its compliance with this Undertaking;
- (d) **clause 10.6** sets out the audits that Aurizon Network must undertake and the rules that relate to any audits required by this Undertaking; and
- (e) **clause 10.7** sets out general matters relating to provision of information, errors in reports and certification by Aurizon Network's Executive Officer.

10.2 General Principles

Unless otherwise required by this Undertaking or agreed between Aurizon Network and the QCA, any report required under this **Part 10** must report separately:

- (a) in respect of each Coal System;
- (b) to the extent applicable, in respect of each Reference Tariff; and
- (c) in respect of the conditions based assessment under **clause 10.4.3**, for each User Funded Expansion.

10.3 Network performance

10.3.1 *Annual maintenance plan*

Aurizon Network must provide Access Holders, and their Customers, if applicable, with a briefing in the form of a report and presentation on details of the planned scope of maintenance and renewals for the forthcoming Year and the contents of the maintenance cost reports for the previous Year, three (3) Months before the commencement of each Year.

10.3.2 *Quarterly maintenance cost report*

- (a) Within six (6) Months after the Approval Date or such longer time as agreed by the QCA, Aurizon Network must, provided it has not already done so under the 2016 Undertaking, submit to the QCA

a draft format (including the content) of a quarterly maintenance cost report. In considering whether to approve the draft format, the QCA must take into account the extent:

- (i) to which Aurizon Network consulted stakeholders in developing the draft format; and
 - (ii) of any stakeholder support for the draft format.
- (b) If the QCA considers that the draft format (and content) is not sufficiently detailed or does not provide sufficient transparency, the QCA may determine, and Aurizon Network must vary accordingly, the format for the report to ensure it does satisfy the QCA's requirements. The format (including the content) of the report may be varied from time to time by agreement between Aurizon Network and the QCA, or failing agreement, as required by the QCA.
- (c) Following the QCA's approval of the format, within one (1) Month after the end of each Quarter in the Term, Aurizon Network must publish on the Website a maintenance cost report for the relevant Quarter utilising the format (and including the content) approved or determined by the QCA under **clause 10.3.2(a)** or **10.3.2(b)**.

10.3.3 Annual maintenance cost report

- (a) Within four (4) Months after the end of each Year in the Term, or such longer time as agreed by the QCA, Aurizon Network must publish on the Website a maintenance cost report for the relevant Year which includes the content required by **clause 10.3.3(c)**. The format and the manner in which the report is to be published or provided may be varied from time to time by agreement between Aurizon Network and the QCA or, failing agreement, as required by the QCA.
- (b) The maintenance cost report will be certified as accurate by Aurizon Network's Executive Officer.
- (c) The maintenance cost report required by **clause 10.3.3(a)** must:
- (i) provide a detailed report of Aurizon Network's actual maintenance costs in the relevant Year compared to the forecast maintenance costs accepted by the QCA for the purpose of determining Reference Tariffs for the relevant Year:
 - (A) for:
 - (1) General Track Maintenance;
 - (2) structures and facilities maintenance;
 - (3) trackside systems maintenance;
 - (4) electrical overhead maintenance; and

- (5) telecommunications maintenance;
- (B) for mechanised maintenance:
 - (1) separately for each type of maintenance (including ballast cleaning, rail grinding, and rail resurfacing);
 - (2) in addition to a report for each Coal System, in aggregate for all Coal Systems; and
 - (3) unless otherwise agreed between the QCA and Aurizon Network, for any section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted an estimate of Aurizon Network's forecast maintenance costs for the purposes of assessing the relevant Reference Tariff(s);
- (ii) provide a detailed report of Aurizon Network's actual scope of maintenance compared to the forecast scope of maintenance accepted by the QCA for the purpose of determining Reference Tariffs for the relevant Year:
 - (A) for the maintenance activities set out in **clause 10.3.3(c)(i)(A)** in aggregate for all Coal Systems:
 - (1) for mechanised maintenance, separately for each Coal System and in aggregate for all Coal Systems; and
 - (2) unless otherwise agreed between the QCA and Aurizon Network, for any section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted an estimate of Aurizon Network's forecast scope of maintenance for the purposes of assessing the relevant Reference Tariff(s);
- (iii) provide an explanation of significant variations between:
 - (A) the actual and forecast maintenance costs; and
 - (B) the actual and forecast scope of maintenance;
- (iv) report the actual MCI and the forecast MCI accepted by the QCA for the purposes of determining Reference Tariffs for the relevant Year (including the indices, if any, comprised in the MCI) and provide an explanation

of how any significant differences have or will impact on Aurizon Network's maintenance costs;

- (v) report for:
 - (A) annual Below Rail Transit Times;
 - (B) OTCI results; and
 - (C) the number of major reportable safety incidents reported to the Safety Regulator, excluding those reported under **clause 10.3.3(c)(vi)**;
- (vi) report on the number of derailments where the cost to Aurizon Network of recovery from the derailment exceeded AUD\$100,000, including the effect of action taken to restore Aurizon Network's rail network after such derailments on the completion of planned maintenance work; and
- (vii) report details of all capital expenditure related to asset renewal incurred in place of planned maintenance work during the relevant Year.

10.3.4 Quarterly network performance report

- (a) Unless otherwise agreed between Aurizon Network and the QCA, Aurizon Network must, within twenty (20) Business Days after the end of each Quarter in the Term, publish on the Website a report (which Aurizon Network must ensure is accurate and not misleading) in relation to each Month in the relevant Quarter containing the information set out in **clauses 10.3.4(b) to 10.3.4(i)**, inclusive.
- (b) Information on the number and reliability of Train Services that operated each Month in the relevant Quarter, as follows:
 - (i) the number and percentage of Train Services that reached their destination within the Allotted Time Threshold;
 - (ii) the number and percentage of Train Services that did not reach their destination within the Allotted Time Threshold:
 - (A) due primarily to the acts or omissions of Aurizon Network;
 - (B) due primarily to delays attributed to a Railway Operator;
 - (C) due primarily to other matters not identified in either **paragraph (A) or (B)**; and
 - (iii) the total number of Train Services.

- (c) Information on the average transit times of Train Services that operated each Month in the relevant Quarter, as follows:
 - (i) the average Above Rail Delay;
 - (ii) the average Below Rail Delay; and
 - (iii) the average Unallocated Delay,in minutes per 100 train kilometres, for all Train Services.
- (d) Information on the availability of the network for Train Services in each Month in the relevant Quarter, as follows:
 - (i) number and percentage of Train Services cancelled due to a reason that can be attributed directly to Aurizon Network as Railway Manager;
 - (ii) number and percentage of Train Services cancelled due to a reason that can be attributed directly to a Railway Operator; and
 - (iii) number and percentage of Train Services cancelled due to a reason that cannot be clearly assigned as directly attributable to a Railway Operator or to Aurizon Network as Railway Manager.
- (e) Information on the safety of Train Services that have operated in each Month in the relevant Quarter, being the number of major reportable incidents, as reported to the Safety Regulator.
- (f) Information on network service quality, as follows:
 - (i) speed restrictions in each Month in the relevant Quarter, being the average percentage and the average number of kilometres of Track under temporary speed restriction; and
 - (ii) the most recent measure of Track quality for the network measured by a quality index with component measures including gauge, top, twist and versine.
- (g) Information on coal carrying Train Services that have operated in each Month in the relevant Quarter, being:
 - (i) the aggregate gtk;
 - (ii) the aggregate nt;
 - (iii) the aggregate ntk;
 - (iv) the aggregate egtk;
 - (v) the average actual Below Rail Transit Time Percentage (including the methodology for calculating that percentage);

- (vi) the aggregate Train Paths used by the relevant Train Services;
 - (vii) the aggregate Train Paths contracted for relevant Train Services in accordance with the relevant Train Service Entitlements; and
 - (viii) the aggregate number of Train Paths available for coal carrying Train Services.
- (h) Subject to **clause 10.3.4(k)**, information for each Month in the relevant Quarter in respect of:
- (i) the aggregate number of Train Paths scheduled;
 - (ii) the aggregate number of Train Paths used for planned maintenance;
 - (iii) the aggregate number of Train Paths used for unplanned maintenance; and
 - (iv) the percentage of Train Paths available but not used.
- (i) Information on the outcome of the Contested Train Path decision making process contained in **clause 8 of Schedule G** in respect of:
- (i) the number of contests run each Month; and
 - (ii) the number and percentage of Train Paths allocated under each of the Contested Train Path principles set out in **clause 8.3 of Schedule G**.
- (j) Subject to **clause 10.3.4(k)** and **(l)**, for the purposes of **clauses 10.3.4(b) to 10.3.4(d)**, the Train Services will be aggregated as follows, Train Services operated for the purpose of:
- (i) transporting coal;
 - (ii) transporting freight products, and bulk minerals (other than coal); and
 - (iii) providing long distance passenger transport.
- (k) In addition to the report published under **clause 10.3.4(a)**, unless otherwise agreed between Aurizon Network and the QCA, Aurizon Network must, within twenty (20) Business Days after the end of each Quarter in the Term, publish on the Website a report (which Aurizon Network must ensure is accurate and not misleading) containing:
- (i) the information set out in **clauses 10.3.4(b) to 10.3.4(i)** inclusive for the previous Quarter; and

- (ii) a comparative presentation against the aggregate, published information for the corresponding Quarter of the preceding Year,

provided that for the reports in respect of the Quarters in the first Year during the Term, the information for the preceding Year is that published for the Quarters in that preceding Year under the 2016 Undertaking.

- (l) Aurizon Network will, in conjunction with its public release of a report under this **clause 10.3.4**, provide to the QCA a supplementary report that presents the information included in the published report for each Railway Operator. If a supplementary report relates to a Railway Operator, Aurizon Network will provide to that Railway Operator those parts of the supplementary report that relate to that Railway Operator.

10.4 Reports

10.4.1 Annual financial report

- (a) The financial statements referred to in **clause 3.7.1(a)** must be certified as being in accordance with this Undertaking by Aurizon Network's Executive Officer.
- (b) Within six (6) Months after the end of each Year in the Term, or such longer time as agreed by the QCA, Aurizon Network must publish on the Website the financial statements relating to the relevant Year which have been prepared and certified under **clause 10.4.1(a)**.
- (c) Within six (6) Months after the later of the Approval Date and the QCA approving the Costing Manual, Aurizon Network must publish on the Website the financial statements for any Year prior to the Approval Date that have not been published, but is not required to publish for any Year commencing prior to 1 July 2010. Aurizon Network must ensure the financial statements are prepared, audited and certified in accordance with this Undertaking.

10.4.2 Public annual Regulatory Asset Base roll-forward report

- (a) To the extent that the QCA has accepted Aurizon Network's proposed roll-forward of the Regulatory Asset Base under **clause 1.3 of Schedule E**, Aurizon Network must, within four (4) weeks after the QCA's acceptance, publish on the Website a report of changes to the Regulatory Asset Base for the relevant Year containing the information set out in **clause 10.4.2(b)**.
- (b) Aurizon Network will, in the Regulatory Asset Base roll-forward report, include details of:
 - (i) the opening value of the Regulatory Asset Base for the relevant Year;

- (ii) indexation of the Regulatory Asset Base;
- (iii) depreciation of the Regulatory Asset Base;
- (iv) capital expenditure that is included in the Regulatory Asset Base, separately identifying individual projects with a value in excess of \$10 million;
- (v) disposals and transfers from the Regulatory Asset Base;
- (vi) the closing value of the Regulatory Asset Base for the relevant Year; and
- (vii) for comparative purposes, the value of the Capital Indicator for the subject Year.

10.4.3 Conditions Based Assessment

- (a) Aurizon Network must procure a condition based assessment of the Rail Infrastructure no later than three (3) Months prior to the Terminating Date, or such other date as is agreed with the QCA in accordance with this **clause 10.4.3 (Condition Based Assessment)**.
- (b) Aurizon Network will appoint an independent qualified consultant, who has been accepted by the QCA, to conduct the Condition Based Assessment (**Assessor**).
- (c) The Assessor will have a duty of care to the QCA in the conduct of the Condition Based Assessment and, in the event of a conflict between the Assessor's obligations to Aurizon Network and its duty of care to the QCA, the Assessor's duty of care to the QCA will take precedence.
- (d) Prior to commencing the Condition Based Assessment, the Assessor must agree an assessment plan with Aurizon Network, document that assessment plan and obtain the QCA's approval of that assessment plan.
- (e) The assessment plan will:
 - (i) consist of a proposed work program for conducting the Condition Based Assessment;
 - (ii) provide for the establishment of an assessment liaison group, comprising the Assessor, Aurizon Network and the QCA, during the course of the Condition Based Assessment to provide a forum for the resolution of any issues that arise; and
 - (iii) propose a methodology for assessing Track condition to be agreed between Aurizon Network and the QCA and in the absence of agreement determined by the QCA, but which in any case must be such as to allow

for a comparison of results to relevant prior condition based assessments.

- (f) Aurizon Network must provide the Assessor with any relevant information and access to land or sites as reasonably required by the Assessor for the purposes of conducting the Condition Based Assessment.
- (g) To the extent Aurizon Network is requested to provide confidential information to the Assessor, the Assessor will be required to enter into an agreement with Aurizon Network in relation to any information provided by Aurizon Network to the effect that it must keep the information confidential and only use that information for the purpose of conducting the Condition Based Assessment and completing the assessment report.
- (h) The Assessor must provide to Aurizon Network and the QCA a report on the findings of the Condition Based Assessment, including (as far as reasonably practicable) identifying the extent to which the Rail Infrastructure has deteriorated by more than would have been the case had good operating practice and prudent and effective maintenance and asset replacement policies and practices been pursued.
- (i) Aurizon Network must publish the report on the findings of the Condition Based Assessment on the Website.
- (j) Aurizon Network must provide, or make available in accordance with this **clause 10.4.3(j)**, the report on the findings of the Condition Based Assessment as a complete and transparent document:
 - (i) to the QCA on an unredacted basis; and
 - (ii) to stakeholders and when published on its Website:
 - (A) in respect of agreements entered into after the Approval Date of the 2016 Undertaking and to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the report (and if those obligations permit disclosure if required by this Undertaking then Aurizon Network is required to disclose the information contained in the report), on an unredacted basis; and
 - (B) in respect of agreements entered into prior to the Approval Date of the 2016 Undertaking or if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
 - (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the

- information contained in the report on an unredacted basis;
- (2) in respect of the information for which consent is obtained under **paragraph (ii)(B)(1)**, on an unredacted basis; and
 - (3) in respect of the information for which consent is not obtained under **paragraph (ii)(B)(1)**:
 - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
 - to the extent not possible, on a redacted basis.
- (k) Aurizon Network must use reasonable endeavours to agree to confidentiality obligations that:
- (i) do not prevent the disclosure of the information contained in the report on the findings of the Condition Based Assessment; and
 - (ii) permit disclosure of information required by this Undertaking,
- but
- (iii) in any event, must not agree to any confidentiality obligations that prevent disclosure to the QCA,
- provided that Aurizon Network will be deemed to have complied with its obligations under this **clause 10.4(k)** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with **clause 10.4(k)(i)** and **clause 10.4(k)(ii)**, whether or not the access seeker actually agrees to the inclusion of such obligations in the Access Agreement.
- (l) For clarity, the costs and expenses incurred by Aurizon Network in relation to the Condition Based Assessment will be included in the calculation of the AT2-4 components of Reference Tariffs.

10.5 Compliance with this Undertaking

10.5.1 Compliance Officer

- (a) Aurizon Network must appoint a Compliance Officer and advise the QCA as to the identity of the Compliance Officer and of any changes to the identity of the Compliance Officer during the Term.

- (b) The Compliance Officer will be appropriately resourced by Aurizon Network to perform their role, which will include responsibility for:
 - (i) management of the governance framework through systems and practices reasonably required to ensure Aurizon Network complies with its obligations in this Undertaking; and
 - (ii) notifying Aurizon Network's Executive Officer as soon as possible of any material breach of this Undertaking by Aurizon Network and advising of any remedial action proposed or taken by Aurizon Network in respect of the breach.

10.5.2 Annual compliance report

- (a) Within four (4) Months of the end of each Year in the Term, or such longer time as agreed by the QCA, Aurizon Network must publish on the Website an annual compliance report in relation to the subject Year containing the information set out in **clauses 10.5.2(c), (d) and (e)** and which will be accompanied by an audit report prepared in accordance with **clause 10.6.3** in respect of Aurizon Network's compliance with its obligations under this **clause 10.5.2**.
- (b) Aurizon Network must, in conjunction with the publication on the Website of an annual compliance report in accordance with **clause 10.5.2(a)**, provide to the QCA a supplementary report that presents the information included in the public annual compliance report for each of the following classes of Access Holders (on an aggregated basis):
 - (i) Third Party Access Holders; and
 - (ii) Aurizon Party Access Holders.
- (c) Information in relation to Aurizon Network's compliance with this Undertaking over the relevant Year as follows:
 - (i) the number and percentage of Access Applications acknowledged in accordance with this Undertaking and within the applicable timeframe nominated in **clauses 4.3(c) and 4.4(a)**;
 - (ii) for those Access Applications received in accordance with this Undertaking and that have not been acknowledged within the applicable timeframe nominated in **clauses 4.3(c) and 4.4(a)** the average delay (in days) taken to acknowledge the Access Applications;

- (iii) the number of requests for Capacity Information and percentage acknowledged in accordance with the applicable timeframe nominated in **clause 4.2(c)**;
- (iv) the number and percentage of Indicative Access Proposals provided in accordance with this Undertaking within the applicable timeframe nominated in **clause 4.6(e)**;
- (v) the number and percentage of Access Applications received in accordance with this Undertaking for which the time for the provision of an Indicative Access Proposal was extended in accordance with either **clause 4.6(e)** (or **4.6(i)**);
- (vi) for those Indicative Access Proposals provided in accordance with this Undertaking but that have not been provided within the applicable timeframe nominated in **clause 4.6**, the average delay (in days) taken to provide the Indicative Access Proposals;
- (vii) the number of instances where a Dispute arose and was referred for resolution under **Part 11**;
- (viii) the number of instances where a Dispute arose and was referred for resolution under **Part 11** and Aurizon Network was found to have committed a breach of this Undertaking;
- (ix) the number of instances where Aurizon Network has received a written complaint from a Third Party that it has allegedly breached one or more of its obligations in **Part 3**;
- (x) the number of instances where Aurizon Network has received a written complaint from a Third Party that it has allegedly breached one or more of its obligations in **Part 3** and Aurizon Network was found to have committed a breach of those ringfencing obligations;
- (xi) the percentage of Aurizon Network Personnel receiving, in the course of performing their duties, Confidential Information who have completed training in accordance with **clause 3.15(a)**;
- (xii) the number of instances where an Access Holder has made a written complaint to Aurizon Network about an incorrectly calculated invoice, and where Aurizon Network's investigation into the complaint identifies that the invoice was materially incorrectly calculated;
- (xiii) in respect of written complaints that Aurizon Network has made a decision in breach of Aurizon Network's

traffic management decision making matrix contained in **clause 9 of Schedule G** (for each of the Railway Operators collectively and Related Operators as Access Holders collectively):

- (A) the number of complaints received by Aurizon Network;
 - (B) of the complaints received by Aurizon Network, the number which are currently being assessed by Aurizon Network; and
 - (C) of the complaints received by Aurizon Network, the number which, after being assessed by Aurizon Network, were verified as breaches; and
- (xiv) in respect of written complaints that Aurizon Network has made a decision in breach of Aurizon Network's Contested Train Path decision making process contained in **clause 8 of Schedule G** (for each of the Railway Operators collectively and Related Operators as Access Holders collectively):
- (A) the number of complaints received by Aurizon Network;
 - (B) of the complaints received by Aurizon Network, the number which are currently being assessed by Aurizon Network; and
 - (C) of the complaints received by Aurizon Network, the number which, after being assessed by Aurizon Network, were verified as breaches.
- (d) Information in relation to the outcome of Aurizon Network's negotiations with Access Seekers over the relevant Year as follows:
- (i) the average length of the Negotiation Period (in days), where the Negotiation Period has ceased as the result of the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker;
 - (ii) the average length of the Negotiation Period (in days), where the Negotiation Period ceased as the result of any reason other than the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker; and
 - (iii) the number of instances where a Negotiation Period ceased as the result of the execution of an Access

Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker,

with such information to be reported separately for Access Agreements and Train Operations Deed.

- (e) Information in relation to Transfers under **clause 7.4.2** and Part 4 as follows:
 - (i) the number of Notices of Intention to Transfer received in accordance with **clause 7.4.2(b)**, including identifying:
 - (A) whether the process in **clause 7.4.2(f)**, **clause 7.4.2(g)** or **Part 4** applied to the Transfer (disregarding whether the Transfer was effected in accordance with that clause or Part); and
 - (B) the Transfer Period;
 - (ii) the number of Transfers effected in accordance with each of **clauses 7.4.2(f)** and **7.4.2(g)** and **Part 4**;
 - (iii) the number of consecutive Transfers for the same Nominated Access Rights that have been effected, including details of whether the Transfer was effected under **clause 7.4.2(f)**, **7.4.2(g)** or **Part 4**;
 - (iv) the average length of time (in days) from the date of receipt of a Notice of Intention to Transfer for a Transfer (completed and submitted in accordance with the requirements of the relevant Access Agreement), to the commencement of the Transferee's new or varied Access Agreement giving effect to the Transfer; and
 - (v) whether the Transferred Access Rights are being granted under:
 - (A) an Access Agreement executed prior to the Approval Date; or
 - (B) an Access Agreement executed on or after the Approval Date that has been negotiated and agreed in accordance with this Undertaking.

10.5.3 Breach reports to the QCA

- (a) Aurizon Network must report to the QCA any breaches of this Undertaking of which Aurizon Network is aware, including advising the QCA of the nature of the breach and the remedial action proposed or taken by Aurizon Network in respect of the breach, at the following times:

- (i) within ten (10) Business Days after the end of each calendar Month, in relation to any breaches of obligations with respect to timeframes that occurred within that calendar Month; and
 - (ii) in relation to other breaches, as soon as Aurizon Network becomes aware of the breach.
- (b) If Aurizon Network is obliged to report a breach to the QCA in accordance with this **clause 10.5.3** and that breach directly and adversely affects the interests of an Access Seeker, Access Holder or, if applicable, a Train Operator, then Aurizon Network must also provide the information reported to the QCA in respect of that breach to the relevant Access Seeker, Access Holder or Train Operator.
- (c) Aurizon Network must maintain an Issues Register that includes all information in its possession or knowledge in relation to:
 - (i) any breaches of this Undertaking, of which Aurizon Network is aware, that have occurred on or after the Approval Date;
 - (ii) any alleged breaches of this Undertaking, of which Aurizon Network is aware, that are alleged to have occurred on or after the Approval Date;
 - (iii) any written complaints by an Access Seeker, Access Holder or Train Operator in relation to Aurizon Network's performance of its obligations under this Undertaking on or after the Approval Date of which Aurizon Network is aware; and
 - (iv) the steps taken by Aurizon Network to remediate or otherwise address, and the current status of, all matters recorded on the Issues Register under **clauses 10.5.3(c)(i) to 10.5.3(c)(iv)**.
- (d) The QCA and any Auditor appointed under this **Part 10**, may, at any time, make a written request to Aurizon Network to:
 - (i) inspect the Issues Register; and/or
 - (ii) be provided with an electronic copy of any information recorded on the Issues Register and any documents stored on, or referred to in, the Issues Register,

and Aurizon Network must facilitate such an inspection, and/or provide the relevant information and documents (as applicable), within five (5) Business Days of its receipt of the written request.

10.6 Audit

10.6.1 Report auditing

- (a) An audit of Aurizon Network's compliance with all or a part of its reporting obligations under this **Part 10** must be conducted:
 - (i) annually and as otherwise required in writing by the QCA; and
 - (ii) subject to this **clause 10.6.1**, in accordance with **clause 10.6.4**.
- (b) The Auditor will compile an audit report identifying:
 - (i) whether Aurizon Network has complied in all material respects with its reporting obligations under this **Part 10** and, if not, details as to the relevant non-compliance; and
 - (ii) the process adopted for the conduct of the audit.
- (c) If the QCA requires an audit of Aurizon Network's compliance with all or a part of its obligations under this **Part 10** in relation to a relevant report, then the date by which that report must be provided to the QCA or published will be extended by twenty (20) Business Days.

10.6.2 Ringfencing audit

- (a) An audit of:
 - (i) Aurizon Network's compliance with its obligations under **Part 3**; and
 - (ii) other issues (to the extent that the QCA specifically requests that the Auditor consider such matters) for which the QCA reasonably believes that an audit is necessary,must be conducted annually and as otherwise requested by the QCA (under **clause 10.6.3**) in accordance with **clause 10.6.4**.
- (b) In considering Aurizon Network's compliance with its obligations under **Part 3**, the Auditor may take into account Aurizon Network's compliance with any relevant internal procedures.
- (c) The Auditor will compile an audit report identifying whether Aurizon Network has complied in all material respects with its obligations under **Part 3** and, if not, details as to the relevant non-compliance.

10.6.3 Compliance audit requested by the QCA

- (a) Despite any other provisions of this Undertaking that require the conduct of an audit, the QCA may request Aurizon Network in writing to, and on receipt of that request Aurizon Network must, engage an Auditor to undertake an audit, in accordance with

clause 10.6.4, in relation to whether any specific conduct or decisions of Aurizon Network comply with this Undertaking.

- (b) The audit will be conducted in accordance with **clause 10.6.4**.
- (c) The Auditor will compile an audit report identifying:
 - (i) whether Aurizon Network has complied in all material respects with its obligations which were the subject of the requested audit and if not, details as to the relevant non-compliance; and
 - (ii) the process adopted for the conduct of the audit.
- (d) To the extent approved by the QCA, costs incurred by Aurizon Network in complying with this **clause 10.6.3** will be incorporated in the Adjusted Allowable Revenue in accordance with **clause 3.3** of **Schedule F**.

10.6.4 Audit process

An audit process under this Undertaking must be conducted in accordance with the following process:

- (a) Aurizon Network will appoint an Auditor (or Auditors) who will be available to conduct audits required in accordance with this Undertaking. The appointment will be made in the first year of the Term;
- (b) the Auditor must:
 - (i) be independent of Aurizon Network and all other Aurizon Parties;
 - (ii) be appropriately qualified and experienced;
 - (iii) be subject to professional standards of ethics and independence; and
 - (iv) be approved by the QCA. Once approved, the approval will be effective for the Term, subject to the QCA having a right to require the appointment of a replacement Auditor;
- (c) the Auditor will have a duty of care to the QCA in the provision of the audit and, in the event of a conflict between the Auditor's obligations to Aurizon Network and its duty of care to the QCA, the Auditor's duty of care to the QCA will take precedence;
- (d) the Auditor for a financial matter may be different from the Auditor for another matter;
- (e) prior to commencing an audit, the Auditor must agree on an audit plan with Aurizon Network, document that audit plan, and obtain the QCA's approval of the audit plan;

- (f) the audit plan will:
 - (i) consist of a proposed work program for the execution of and scope of the audit, including audit costs (which are payable by Aurizon Network);
 - (ii) where necessary, contain any procedural controls necessary to ensure the independence of the Auditor;
 - (iii) provide for the establishment of an audit liaison group, comprising the Auditor, Aurizon Network and the QCA, during the course of the audit, to provide a forum for the resolution of any audit issues that arise; and
 - (iv) include a process for consultation with the QCA during the audit to ensure that the audit addresses the matters and standards required by the QCA for the particular audit being conducted. The QCA may consult with Access Holders and Access Seekers over the matters and standards to be addressed in, and required of, the audit;
- (g) Aurizon Network must provide:
 - (i) any relevant information the Auditor reasonably requires for the purpose of conducting the audit, within a nominated timeframe that is determined by the Auditor to be reasonable after consultation with Aurizon Network; and
 - (ii) if an audit is required of the financial statements referred to in **clause 3.7**, access to Aurizon Network's financial records and information systems necessary for the purpose of conducting the audit;
- (h) the Auditor may be required to enter into a confidentiality deed with Aurizon Network in relation to any information provided by Aurizon Network, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the audit and completing the audit report, provided however that the Auditor will be entitled to provide all information obtained as a result of the audit to the QCA;
- (i) any drafts of an audit report that are provided to Aurizon Network by the Auditor must, at the same time, be provided to the QCA;
- (j) the Auditor will provide Aurizon Network and the QCA a copy of:
 - (i) the audit report; and
 - (ii) any letter or report from the Auditor accompanying the audit report which explains the audit findings in greater detail,

both of which the QCA may, if it considers it appropriate to do so, publish to parties thought appropriate by the QCA having regard to the scope of the audit and its findings;

(k) Aurizon Network must:

- (i) prepare and provide to the QCA an implementation plan; and
- (ii) use reasonable endeavours,

to implement the Auditor's recommendations in the audit report or any other letters or reports provided under **clause 10.6.4(j)**, including recommendations in relation to implementing new policies, practices or procedures directed to ensuring Aurizon Network satisfies the obligations set out in this Undertaking, as soon as reasonably practicable after receiving the Auditor's recommendations, except to the extent the non-implementation is approved by the QCA;

(l) following the provision of an audit report under **clause 10.6.4(j)** and receipt of Aurizon Network's implementation plan under **clause 10.6.4(k)**:

- (i) QCA may, at its discretion, request that Aurizon Network provide evidence that it has used reasonable endeavours to implement any or all of the recommendations made by the Auditor in the relevant audit report in accordance with the implementation plan prepared under **clause 10.6.4(k)**; and
- (ii) if Aurizon Network cannot provide such evidence to the satisfaction of the QCA (in its discretion), the QCA may direct Aurizon Network use reasonable endeavours to take the necessary actions required to implement the relevant recommendations within a specified timeframe; and

(m) if Aurizon Network fails to comply with a direction issued by the QCA under **clause 10.6.4(l)**, on request from the QCA, Aurizon Network must provide all the documents and information in its possession that relate to its failure to comply with the direction given under **clause 10.6.4(l)** to the QCA.

10.7 General

10.7.1 Information provision

- (a) ~~Upon request by the QCA,~~ Aurizon Network must provide to the QCA signed Access Agreements (including details of Access Charges) to allow the QCA to satisfy itself that the Below Rail aspects of the Access Agreement do not offend the provisions of this Undertaking or the Act.

- (b) In addition to **clause 10.7.1(a)**, the QCA may, by notice, request that Aurizon Network provide to the QCA information or a document that the QCA reasonably requires for the purpose of:
 - (i) performing its obligations or functions under this Undertaking; or
 - (ii) determining whether it should exercise powers in this Undertaking.

The notice must include a description of the information or document required, the purpose for which it is required, and the day by which it is required, provided that the day stated in the notice must be reasonable.

- (c) Except as provided for in clause **10.7.1(d)**, Aurizon Network will permit the public disclosure of the Below Rail aspects of Access Agreements (including Access Charges) for all coal carrying Train Services for new or renewed Train Services except that the Below Rail aspects of Access Agreements will not include:
 - (i) the insurance provisions;
 - (ii) the contact details included in the Interface Coordination Arrangement;
 - (iii) the Rollingstock and Rollingstock Configuration performance characteristics;
 - (iv) the IRMP; and
 - (v) the Environmental Management Plan.
- (d) If a party to an Access Agreement considers that specified parts of the Access Agreement should not be publicly disclosed, it may make a request to the QCA for non-disclosure of those specified parts. The QCA must agree to the request if it is satisfied that disclosure of the information would be likely to damage that party's commercial activities and that disclosure would not be in the public interest.
- (e) Aurizon Network must comply with a request by the QCA under **clause 10.7.1(a)** by the day stated in the notice, unless Aurizon Network has a reasonable excuse for noncompliance.
- (f) Except for documents that are to be made public in accordance with the terms of this Undertaking, nothing in this **clause 10.7** permits the QCA to disclose any information (including the contents of a document) provided to it under this **clause 10.7.1**.

10.7.2 Errors in reports

- (a) If a report has been published under **Part 10** and Aurizon Network has actual knowledge of a material error in that report, Aurizon Network must, as soon as practicable but no later than three (3)

Months after acquiring knowledge of the material error, publish on the Website either, at Aurizon Network's discretion, an erratum or a corrected report identifying the material errors. An error will be a material error where:

- (i) if the error is a numerical error, the number reported deviates from the correct number by an amount of more than 2%; or
 - (ii) otherwise, Aurizon Network or the QCA considers the error to be material.
- (b) Aurizon Network must notify the QCA of any errors that Aurizon Network has actual knowledge of any report published under **Part 10** unless the QCA has otherwise been notified or is aware of the error.

10.7.3 Certifications required from Aurizon Network's Executive Officer

- (a) All certifications provided by Aurizon Network's Executive Officer under this Undertaking, including certifications of accuracy required in respect of financial statements and cost reports under this **Part 10**, are provided subject to **clause 10.7.3(b)**.
- (b) If in providing a certification required by this Undertaking Aurizon Network's Executive Officer relies on information or professional or expert advice, given or prepared by:
 - (i) Aurizon Network Personnel whom Aurizon Network's Executive Officer believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
 - (ii) a professional adviser or expert in relation to matters that Aurizon Network's Executive Officer believes on reasonable grounds to be within the person's professional or expert competence;
 - (iii) another director or officer of Aurizon Network in relation to matters within the director's or officer's authority; or
 - (iv) a committee of directors on which Aurizon Network's Executive Officer did not serve in relation to matters within the committee's authority and;
 - (A) the reliance was made:
 - (1) in good faith; and
 - (2) after making an independent assessment of the information or advice, having regard to Aurizon Network's Executive Officer's knowledge of Aurizon Network and the

complexity of the structure and operations of Aurizon Network; and

- (B) the reasonableness of Aurizon Network's Executive Officer's reliance on the information or advice arises in legal proceedings or an arbitration to determine whether Aurizon Network's Executive Officer has performed with due care and diligence in providing the certification,

Aurizon Network's Executive Officer's reliance on the information or advice is deemed to be reasonable unless the contrary is proved.

Part 11: Dispute Resolution and Decision Making

11.1 Dispute Resolution

11.1.1 Disputes

(a) ~~Any~~ ~~Subject to clause 11.1.1(b), any~~ dispute (**Dispute**) arising:

(i) as between Aurizon Network and a Prospective Access Seeker, Access Seeker or a Railway Operator in relation to:

~~(a)~~ _____:

~~(i)~~ _____ in respect of the negotiation of a ~~Standard Access Agreement or a Standard User Funding Agreement, an Access Seeker that is a proposed party to it;~~

~~(ii)~~ _____ in respect of the negotiation of a ~~Standard Train Operations Deed, the Train Operator that is a proposed party to it;~~

~~(iii)~~ _____ in respect of the negotiation of ~~any other Standard Agreement, an Access Seeker, a Customer or a Train Operator that is a proposed party to it; and~~

(A) _____ ~~in all other respects relating to the negotiation or grant of Access, an Access Seeker or a Prospective Access Seeker; or~~

(B) _____; the negotiation of a Train Operations Deed;

(ii) _____ in relation to the operation of, or anything required to be done or not done by Aurizon Network under this Undertaking; or

~~(iv)~~ (iii) _____ in respect of any matters expressly required by this Undertaking to be resolved in accordance with this Part 11.

must be resolved in accordance with this **Part 11** and any party to the Dispute may give to the other party or parties a Dispute Notice.

(b) For clarity, any Dispute in relation to the entry into and completion of schedules for any Standard Agreement, or agreement substantially in the form of a Standard Agreement, is

a Dispute for the purpose of **clause 11.1.1(a)** and must be resolved in accordance with this **Part 11**, but ~~Notwithstanding **clause 11.1.1(a)**~~, a dispute regarding a party refusing to vary the terms of a Standard Agreement is not a Dispute for the purpose of **clause 11.1.1(a)**.

(c) Unless otherwise agreed by the parties in writing, any disputes arising in respect of any right or obligation under (or the enforcement of) an Access Agreement, a Train Operations Deed, a Studies Funding Agreement, a User Funding Agreement or a Rail Connection Agreement must be dealt with in accordance with the provisions of that agreement (even if the Dispute relates to provisions included in that agreement that are similar to, required by, or inconsistent with this Undertaking) and are not to be dealt with under this Undertaking.

~~(e)~~(d) For the avoidance of doubt, disputes between parties to an Access Agreement, a Train Operations Deed, a Studies Funding Agreement, a User Funding Agreement or a Rail Connection Agreement may be dealt with under this Undertaking to the extent the dispute does not relate to any right or obligation under (or the enforcement of) the Access Agreement, the Train Operations Deed, the Studies Funding Agreement, the User Funding Agreement or the Rail Connection Agreement.

~~(e)~~(e) For the purposes of this **clause 11.1**, where:

- (i) a Dispute involves a Prospective Access Seeker, Access Seeker, Access Holder or Customer who is not also a Railway Operator; or
- (ii) a Dispute involves a Railway Operator,

then:

~~(iii)~~ ~~either Aurizon Network must or the other initial party to the Dispute (each an **Inviting Party**) may~~ provide the relevant Railway Operator(s) (where **paragraph (i)** applies) or the relevant Prospective Access Seeker, Access Seeker, Access Holder or Customer (where **paragraph (ii)** applies) ~~(each an **Invited Party**)~~ with a copy of the Dispute Notice and any subsequent notices or correspondence given by Aurizon Network to the Prospective Access Seeker, Access Seeker, Access Holder, Customer or Railway Operator, as applicable, in connection with the Dispute;

~~(iv)~~(iii) ~~the Inviting Party may invite the Invited Party to participate in the Dispute if the Inviting Party is of the reasonable opinion that the Dispute, or the outcome or consequences of the Dispute, may be relevant to the Invited Party; and~~

~~(v)~~(iv) any such ~~Invited Party~~Prospective Access Seeker, Access Seeker, Access Holder, Customer or Railway Operator, as applicable, may elect, by giving notice to Aurizon Network and the other parties to the Dispute within five (5) Business Days after receiving the Dispute Notice under **clause 11.1.1**~~(de)(iii) and the invitation under clause 11.1.1(d)(iv)~~, to become a party to the Dispute for the purposes of **clauses 11.1.2 to 11.1.6**.

~~(e)~~(f) All parties to, and other persons involved in resolving, a Dispute must use reasonable endeavours to facilitate the resolution of the Dispute in a timely manner.

~~(g)~~ ~~Section 122 of the Act will apply to all Disputes to which this Part 41 applies~~Aurizon Network must:

~~(i)~~ unless otherwise agreed with the QCA, promptly provide the QCA with a copy of any Dispute Notice and any subsequent notices or formal correspondence exchanged between the parties in connection with the Dispute;

~~(ii)~~ promptly notify the QCA when the Dispute is referred to mediation under **clause 11.1.3** or an expert under **clause 11.1.4** for resolution or determination; and

~~(f)~~~~(iii)~~ otherwise keep the QCA regularly informed of the progress of the resolution of the Dispute, including its outcome.

11.1.2 Chief executive resolution

- (a) Unless otherwise agreed in writing by the parties to the relevant Dispute, any Dispute must, within five (5) Business Days of the receipt of a Dispute Notice, be referred in the first instance to each party's chief executive (or his or her nominee) for resolution.
- (b) Within ten (10) Business Days after a Dispute Notice is given (or as agreed in writing by the parties to the relevant Dispute), the chief executive (or his or her nominee) of each party referred to in **clause 11.1.2(a)** must meet to resolve the Dispute.
- (c) All communications between the parties to a Dispute, including by, to or through each party's chief executive (or his or her nominee), as part of an attempt to resolve the Dispute under this **clause 11.1.2** are made on a without prejudice and confidential basis.
- (d) Where the Dispute is resolved under this **clause 11.1.2**, Aurizon Network must promptly notify the QCA of the resolution and provide a copy of that notice to the other parties to the Dispute.

- (e) If the Dispute is not resolved within ten (10) Business Days after the chief executive (or his or her nominee) of each party first meet in accordance with **clause 11.1.2(b)**, the parties may agree to refer the Dispute to:
 - (i) mediation to be resolved in accordance with **clause 11.1.3**;
 - (ii) an expert to be resolved in accordance with **clause 11.1.4**; or
 - (iii) the QCA to be resolved in accordance with **clause 11.1.5**,

and, failing agreement under this **clause 11.1.2(e)** within fifteen (15) Business Days after the chief executive (or his or her nominee) of each party first meet in accordance with **clause 11.1.2(b)**, any party may refer the Dispute to the QCA to be resolved in accordance with **clause 11.1.5**.

11.1.3 Mediation

- (a) If the parties agreed to refer the relevant Dispute to mediation, then the mediation must be administered by the Australian Commercial Disputes Centre (**ACDC**) in accordance with ACDC's guidelines for mediation. The costs charged by ACDC for the mediation must be borne equally by the parties and each party must bear its own costs of preparing for and attending the mediation.
- (b) All communications made between the parties to a Dispute, including to or through the mediator, as part of an attempt to resolve the Dispute under this **clause 11.1.3** are made on a without prejudice and confidential basis.
- (c) Where mediation resolves the Dispute, the resolution must be documented in writing and signed by the parties to the Dispute. The mediator must provide a copy of the agreement by which the Dispute was resolved to the QCA. If the mediator fails to do so, Aurizon Network must provide a copy of the agreement to the QCA.
- (d) If the matter is referred to mediation under **clause 11.1.3(a)** and either:
 - (i) the mediator notifies the parties to the mediation that the mediator considers:
 - (A) the parties to the relevant mediation cannot achieve a mediated resolution of the Dispute; or
 - (B) a party to the relevant mediation has failed to participate in the

mediation process in good faith;
or

- (ii) mediation fails to resolve the Dispute within four (4) Months after the matter is referred to mediation under **clause 11.1.3(a)**,

then the parties may agree to refer the Dispute to:

- (iii) an expert to be resolved in accordance with **clause 11.1.4**; or
- (iv) the QCA to be resolved in accordance with **clause 11.1.5**,

and, failing agreement under this **clause 11.1.3(d)** within five (5) Business Days after the notification under **clause 11.1.3(d)(i)** or after the expiry of the period under **clause 11.1.3(d)(ii)**, whichever is relevant, any party may refer the Dispute to the QCA to be resolved in accordance with **clause 11.1.5**.

11.1.4 *Expert determination*

(a) Where

(i) the parties to a Dispute agree to refer a matter to an expert for determination; and

(ii) the Dispute is referred to the chief executives (or their nominee) and has not been resolved under **clause 11.1.2**,

~~(a)~~ the Dispute must be referred to the expert for determination in accordance with this **clause 11.1.4**.

(b) Where a Dispute is referred to an expert:

(i) the expert must be:

(A) appointed by agreement between the parties to the Dispute; or

(B) in default of such appointment within ten (10) Business Days after the requirement or right (as applicable) to refer the matter to an expert arose, the person nominated by (at request of any party to the Dispute):

~~(1) if the parties agree that the Dispute is purely of a financial or accounting nature, the President (for the time being) of The Institute of Chartered Accountants in Australia;~~

~~(2)~~(1) if the parties agree that the Dispute is purely of a technical nature, the President (for the time being) of the Resolution Institute; or

~~(3)~~(2) in any other case (including where the parties are unable to agree on the nature of the Dispute), the President (for the time being) of the Queensland Law Society Incorporated;

- (ii) if the person referred to in **clause 11.1.4(b)(i)(B)** declines to nominate a person as the expert but provides a list of people that could be appointed as the expert, then:
 - (A) the first person specified in that list will be taken to be nominated as the Expert;
 - (B) if the first person specified in that list does not accept the appointment as the Expert, then the next person specified in that list will be taken to be nominated as the Expert; and
 - (C) the process specified in **clause 11.1.4(b)(ii)(B)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the Expert accepts the appointment as the Expert;
- (iii) subject to **clause 11.1.4(b)(ii)**, if the expert is to be nominated by a person referred to in **clause 11.1.4(b)(i)(B)** and the person nominated as the expert does not accept appointment as the expert, then an alternative person is to be nominated as the expert at the request of any party to the Dispute by the relevant person referred to in **clause 11.1.4(b)(i)(B)**;
- (iv) the parties to the Dispute must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated expert (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne by the parties in equal shares)) that must be satisfied or complied with as a condition of that person accepting the appointment as an expert;
- (v) the expert must:
 - (A) have appropriate qualifications and practical experience having regard to the nature of the Dispute;

- (B) have no interest or duty which conflicts or may conflict with their function as expert, the expert being required to fully disclose any such interest or duty by notice to the parties before their appointment;
- (C) not be, or have been in the last five (5) Years, an employee of any of the parties to the Dispute or of a Related Party of any of them;
- (D) not be permitted to act until the expert has given notice to each party that the expert is willing and able to accept the appointment;
- (E) have regard to the provisions of this Undertaking and consider all submissions (including oral submissions by each party provided that such oral submissions are made in the presence of the other parties to the Dispute), supporting documentation, information and data with respect to the matter submitted by the parties;

~~(F)~~ not make a determination in relation to a Dispute that is inconsistent with:

~~(1)~~(F) this Undertaking;

~~(2)~~ the Act;

~~(3)~~ Aurizon Network's Safety Management System; or

~~(4)~~ Aurizon Network's obligations arising under applicable safety or environmental legislation including the Rail Safety Act;

~~(G)~~ only make a determination that the QCA could make if the matter that is in dispute were arbitrated by the QCA under Subdivision 3, Division 5 of Part 5 of the Act;

~~(H)~~(G) have regard to the matters specified in section 120(1)(a) to (l) of the Act;

~~(I)~~(H) provide to the parties a copy of the expert's determination in relation to the Dispute in the form of a report setting out reasonable details of the reasons for the expert's determination within a reasonable time after their appointment;

~~(J)~~(I) be required to undertake to keep confidential all matters coming to their knowledge by reason of their appointment and performance

of their duties (including, if required by a party, by entering into a confidentiality agreement in favour of the parties to the relevant Dispute); and

~~(K)~~(J) be deemed to be and must act as an expert and not an arbitrator and the law relating to arbitration (including the *Commercial Arbitration Act 2013* (Qld)), does not apply to the expert or to the determination or the procedures by which the expert may reach a determination.

- (c) For clarity, an expert may make a determination relating to:
- (i) the interpretation or application of any provision of this Undertaking; or
 - (ii) whether a party has complied with the terms of this Undertaking,

where the interpretation or application of this Undertaking or compliance with this Undertaking is the matter that is in dispute.

- (d) Any Dispute subject to expert determination under this **clause 11.1.4** must be determined in accordance with the Expert Determination Rules of the Resolution Institute to the extent those rules are not inconsistent with the terms of this **clause 11.1.4**.

- (e) If, at any time during the determination, the expert becomes aware of circumstances that might reasonably be considered to adversely affect the expert's capacity to act independently or impartially, the expert must:

- (i) inform the parties to the Dispute immediately;
- (ii) unless the parties to the Dispute agree otherwise in writing, terminate the engagement; and

(iii) in which case any determination of the expert will be of no effect and a new expert must be appointed in accordance with the procedure outlined in this **clause 11.1.4**.

- (f) The parties must do everything reasonably requested by the expert to assist the expert in determining the Dispute, including providing or making available to the expert, as soon as reasonably practicable, all information and materials in their possession or control requested by the expert and attending any hearing convened by the expert.

- (g) If the parties to a Dispute agree it is appropriate ~~to~~ appoint multiple experts to determine the Dispute, each expert must:

- (i) cooperate with the other experts appointed to determine the Dispute;
 - (ii) endeavour to reach a unanimous decision with the other appointed experts; and
 - (iii) agree between the experts the procedure for drafting the written determination.
- (h) Subject to compliance by the expert with **clause 11.1.4(e)** and in the absence of fraud or manifest error, the expert's determination is final and binding as between the parties in relation to the subject matter of the Dispute. If a party believes that there has been a manifest error or fraud in the expert's determination or that the expert has not complied with **clause 11.1.4(e)**, it may refer the matter to the QCA for a determination. If the QCA determines that there has been a manifest error or fraud or that the expert has not complied with **clause 11.1.4(e)**, the expert's determination is not binding and:
- (i) the parties may agree to refer the Dispute to another expert in accordance with this **clause 11.1.4**; or
 - (ii) failing such agreement, any party may request the QCA to resolve the Dispute in accordance with **clause 11.1.5**.
- (i) Unless otherwise agreed by the parties to the Dispute:
- (i) the following must be borne by the parties in equal shares:
 - (A) the costs of the expert (and the costs of any advisers to the expert), including fees and disbursements; and
 - (B) ~~any~~ transcript fees;
 - (ii) each party must bear their own costs of and incidental to participating in the expert determination process, including their own costs of and incidental to the preparation of a confidentiality deed or agreement for the engagement of the expert.
- (j) An expert appointed under this **clause 11.1.4** must not, without the prior written consent of the parties to the Dispute, accept an appointment to act as arbitrator, or act as an advocate or adviser to any party, in any subsequent arbitral or judicial proceedings arising out of or in connection with the Dispute.

11.1.5 Determination by the QCA

- (a) If this Undertaking requires that a Dispute be resolved by the QCA under this **clause 11.1.5**, then that Dispute may only be

referred to the QCA after **clause 11.1.2** has been complied with in relation to that Dispute.

- (b) Despite this Undertaking requiring a Dispute to be resolved by the QCA, the parties may jointly request the QCA to refer the matter to an expert for determination in accordance with **clause 11.1.4** in which case the QCA (having regard to the object of Part 5 of the Act, as set out in section 69E of the Act) may, but is not required to, refer the matter to an expert.

~~(c) Where~~ if a Dispute is referred to the QCA ~~for determination under this Undertaking~~, then:

~~(i) if the Dispute is a dispute for the purposes of Division 5 of Part 5 of the Act,~~ any determination of that Dispute ~~by the QCA~~ must occur subject to, and in accordance with, Division 5 of Part 5 of the Act; ~~and-~~

~~(ii) if the Dispute does not constitute a dispute for the purposes of Division 5 of Part 5 of the Act:~~

~~(A) any determination of the Dispute by the QCA must not commence unless, and can only be made if, all of the parties to the Dispute agree (in a legally binding way) to be bound by the outcome of the Dispute; and~~

~~(B) the QCA may make a determination through any process that it considers appropriate (including making any order it considers appropriate as set out in section 208 of the Act), provided that:~~

~~(e)(1) prior to considering the Dispute, the QCA advises the parties to the Dispute of the process that it intends to use to make the determination, having regard to the processes in Division 5 of Part 5 of the Act, and the parties are given the opportunity to advise the QCA of any concerns with that process; and~~

~~(d) Without limitation to **clause 11.1.5(c)**:~~

~~(f)(2) despite Clause 11.1.5(c)(ii)(B)(1) the QCA must not make a determination that is inconsistent with Division 5 of Part 5 of the Act or, except to the extent of inconsistency with Division 5 of Part 5 of the Act, the provisions of this Undertaking or ~~nothing in this Undertaking is intended to derogate~~~~

~~from~~ section 119 of the Act (unless the parties agree and no party (whether a party to the Dispute or not) is adversely affected).

~~(ii)(d)~~ Any ~~for the~~ referral of a Dispute to the QCA must be accompanied by a ~~the~~ Dispute Notice setting out the information required by section ~~must satisfy the requirements under sections 112 and~~ 113 of the Act; ~~and~~

~~(iii)(e)~~ If a Dispute is referred to the QCA, the QCA in accordance with this Undertaking must provide notices of the Dispute to the parties specified in section 114 of the Act.

(f) If a Dispute is referred to the QCA in accordance with this Undertaking, the QCA must not make a decision or determination in relation to the Dispute which is inconsistent with Aurizon Network's Safety Management System or Aurizon Network's obligations arising under applicable safety or environmental legislation including the Rail Safety Act. The QCA must seek the advice of the Safety Regulator on any aspect of the Dispute that any party to the Dispute or the QCA considers to be a safety related matter and must not make any decision or determination that is inconsistent with advice it receives from the Safety Regulator to the extent that the advice relates to any aspect of safety. The QCA must provide to the parties a copy of any advice it receives from the Safety Regulator.

(g) Notwithstanding any provision in this Undertaking, an access determination made by the QCA will not be inconsistent with this Undertaking if it relates to (without limitation):

(i) the interpretation or application of any provision of this Undertaking;

(ii) whether a party has complied with the terms of this Undertaking;

(iii) any matter not expressly stated in this Undertaking; or

~~(e)~~(iv) any part of a matter that is not expressly covered by this Undertaking even if another part of the matter is expressly covered by this Undertaking.

11.1.6 Procedure

(a) Where a Dispute is referred to either an expert or the QCA (**decision maker**) for determination:

(i) each party to the Dispute must provide written submissions to the decision maker outlining its views on the matter(s) in dispute, including reasons why its views should be preferred and an outline of how it would like to see the Dispute resolved;

- (ii) each party to a Dispute will be provided with a reasonable opportunity to respond to submissions made to the decision maker by each other party; and
 - (iii) where the matter in dispute arises under a provision of this Undertaking which sets out the relevant matters to be taken into account by Aurizon Network or the decision maker in making its determination, the submissions to the decision maker by the parties to the Dispute must address those matters.
- (b) The decision maker's determination is final and binding upon the parties to the Dispute who must comply with the [directions or determinations](#) of the decision maker, unless:
- (i) in the case of an expert, the QCA determines that the expert's determination is not binding under **clause 11.1.4(h)**; or
 - ~~(ii)~~ a determination by the QCA is successfully challenged on the basis of a breach of a requirement in **clause 11.2**.

11.1.7 Application to Part 8 Disputes

- ~~(a)~~ [Part 8 expressly sets out additional requirements in relation to resolution of specified Disputes.](#)
- ~~(ii)~~(b) [Part 8 prevails to the extent of any inconsistency with this Part 11.](#)

11.2 QCA decision-making

- (a) The QCA may not make a decision (**Decision**) under this Undertaking (including a determination under this **Part 11**) that may affect Aurizon Network (including to require Aurizon Network to do, give or submit anything to the QCA, to resolve a Dispute or to refuse to approve, approve or consent to or grant anything), unless:
- (i) the QCA observed the rules of natural justice;
 - (ii) the QCA observed any procedures that were required by law or this Undertaking;
 - (iii) the QCA had jurisdiction to make the Decision under this Undertaking;
 - (iv) the QCA was authorised to make the Decision under this Undertaking;
 - (v) the QCA's Decision would not be an improper exercise of the power conferred by this Undertaking. An improper exercise of power includes a reference to:

- (A) taking an irrelevant consideration into account in the exercise of a power;
 - (B) failing to take a relevant consideration into account in the exercise of a power;
 - (C) an exercise of a power for a purpose other than a purpose for which the power is conferred;
 - (D) an exercise of a discretionary power in bad faith;
 - (E) an exercise of a personal discretionary power at the discretion or behest of another person;
 - (F) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of a particular case;
 - (G) an exercise of a power that is so unreasonable that no reasonable person could so exercise the power;
 - (H) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
 - (I) any other exercise of a power in a way that is an abuse of the power;
- (vi) the QCA's Decision did not involve an error of law (whether or not the error appears on the record of the Decision);
 - (vii) the QCA's Decision was not induced or affected by fraud;
 - (viii) to the extent that any matters were required to be established before the Decision could be made or taken, there was some material or evidence from which the QCA could reasonably be satisfied the matter was established to justify the Decision or, to the extent that the existence of a particular fact forms the basis on which the Decision is made, the fact did or does exist; and

- (ix) the Decision was not otherwise contrary to law or this Undertaking. For the avoidance of doubt, the terms of this **clause 11.2(a)** are intended to have the same meaning as used in the *Judicial Review Act 1991* (Qld).
- (b) If the QCA's Decision or conduct is challenged on the basis of a breach of a requirement in this **clause 11.2**, Aurizon Network and the QCA agree that Aurizon Network may seek an order suspending the operation of the Decision and a stay of any proceedings under the Decision.
- (c) This **clause 11.2** does not affect the right of any party to seek any other form of remedy or relief including relief by way of the equitable remedies of injunction or declaration or to seek review under the *Judicial Review Act 1991* (Qld).

Part 12 Definitions and Interpretation

12.1 Definitions

In this Undertaking these terms have the following meanings:

\$/NT Basis	Converted to a single \$/nt value on the basis of the applicable Nominal Train Payload.
2001 Undertaking	The access undertaking prepared by Queensland Rail and approved by the QCA pursuant to the Act which commenced on 1 March 2002 (as amended during the term of that access undertaking).
2005 Undertaking	The access undertaking prepared by Queensland Rail and approved by the QCA pursuant to the Act which commenced on 30 June 2006 (as amended during the term of that access undertaking).
2008 Undertaking	The access undertaking prepared by Aurizon Network (previously named QR Network Pty Ltd) and approved by the QCA pursuant to the Act which commenced on 23 October 2008 (as amended during the term of that access undertaking).
2010 Undertaking	The access undertaking prepared by Aurizon Network and approved by the QCA pursuant to the Act which commenced on 1 October 2010 (as amended during the term of that access undertaking).
2016 Undertaking	The access undertaking prepared by Aurizon Network and approved by the QCA pursuant to the Act which was approved on 11 October 2016 (as amended during the term of that access undertaking).
Above Rail Delay	<p>A delay to a Train Service from its scheduled Train Path in the DTP, where that delay can be attributed directly to an Access Holder (including, if applicable, its Nominated Railway Operator) in operating its Train Services, but excludes:</p> <ul style="list-style-type: none">(a) cancellations;(b) delays resulting from compliance with a Passenger Priority Obligation; and(c) delays resulting from a Force Majeure Event.
Above Rail Services	Those activities, other than Below Rail Services, required to provide and operate Train Services (which includes Rollingstock provision for providing Train Services, maintenance of that Rollingstock, non Network Control related communications, train crewing, terminal provision and services, freight handling and marketing and

administration of those services) and **Above Rail** has a similar meaning.

Absolute Capacity

The maximum number of Train Paths (calculated on a Monthly and annual basis) that can be provided:

- (a) in each Coal System; and
- (b) for the mainline and each branch line of each Coal System,

using the following assumptions:

- (c) the Rail Infrastructure is not affected by maintenance, renewal or Expansion activities;
- (d) there are no speed restrictions affecting the Rail Infrastructure;
- (e) there are sufficient origins and destinations, and sufficient infrastructure at those origins and destinations, to enable all Train Paths to be utilised;
- (f) there are no delays or failures occurring in the relevant Supply Chain;
- (g) there is sufficient rollingstock and other above rail assets to enable all Train Paths to be utilised; and
- (h) the minimum headway of the relevant Coal System.

Access

The non-exclusive utilisation of a specified section of Rail Infrastructure for the purposes of operating Train Services including, to the extent necessary for the operation of Train Services:

- (a) the use of passing loops and Train queuing and staging including before and after loading and unloading of Trains;
- (b) the loading and unloading of Trains at facilities that are Rail Infrastructure;
- (c) Train marshalling and shunting:
 - (i) in preparation for running of a Train Service;
 - (ii) before or after loading or unloading of a Train; and
 - (iii) before or after maintenance and provisioning of a Train;
- (d) Stowage;
- (e) the benefit of other Below Rail Services essential to the use of the Rail Infrastructure such as:
 - (i) signalling;

- (ii) Network Control Services and associated communication;
 - (iii) access to walkways immediately adjacent to, and crew changeover points connecting to, Track; and
 - (iv) providing the use of electric transmission infrastructure on electrified sections of the Track, and the sale and supply of electric energy, so as to permit the acquisition of electric energy for traction; and
- (f) entry upon land:
- (i) to the extent that entry upon the land is incidental to and essential for the use of Rail Infrastructure; or
 - (ii) for access to walkways and crew changeover points referred to in **paragraph (e)(iii)** of this definition to the same degree as is available to Related Operators,

provided that:

- (i) the land is owned by Aurizon Network, or Aurizon Network has, through a lease, licence or other arrangement with the owners of the land or in accordance with the TIA, the authority to authorise access to that land; and
- (ii) the entry is not inconsistent with the terms of any lease, licence or other arrangement to which Aurizon Network is a party in respect of the land.

Access Agreement

An agreement between Aurizon Network and an Access Holder for the provision of Access.

Access Application

A written request for Access:

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

(except to the extent that the Non-availability Circumstances exist, in which case the Access Application must specify this extent), but does not include a request to enter into a Train Operations Deed.

Access Charge

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

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

Access Charge Rates

For a Train Service Type, the rates specified in the Access Agreement for that Train Service Type.

Access Conditions

~~Conditions which:~~

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

~~(iv) are otherwise deemed by the contracting Access Seeker to be material.~~

~~Access Conditions include conditions requiring:~~

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

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

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

being calculated other than in accordance with the Reference Tariffs.

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

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

(a) a minor variation to payment terms (for example, changing the time period for payment of an invoice to fit with an Access Holder's payment cycle);

(b) an amendment to insurance requirements to take account of a counterparty's existing insurance policies.

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

Access Facilitation Charge	An ongoing charge separate to an Access Charge for the facilitation of Access which is payable irrespective of the actual use of the Rail Infrastructure.
Access Holder	Unless expressed to the contrary, a person that has been granted Access Rights to operate Train Services on all or part of the Rail Infrastructure.
Access Provision Period	A Month or, where the period specified in the relevant Access Agreement in provisions relating to Claims and exclusions in respect of non-provision of Access Agreement is different, that different period.
Access Rights	An entitlement to Access in accordance with a specified Train Service Entitlement.
Access Seeker	Subject to clause 4.9(a) and unless expressed to the contrary, the entity that provides <u>(on a bona fide basis)</u> Aurizon Network with a properly completed Access Application, but does not include a request to enter into a Train Operations Deed.
Access Seeker Nomination	The meaning given to that term in clause 8.4.3(b)(i)(B)(2) .
Acknowledgement Notice	A notice given to an Access Seeker under clause 4.4(a) acknowledging the receipt of an Access Application.
Act	<i>Queensland Competition Authority Act 1997 (Qld).</i>

Ad Hoc Train Service	A Train Service: <ul style="list-style-type: none"> (a) which is additional to the number of Train Services permitted to operate in a Month under a Train Service Entitlement for that Train Service but which is otherwise in accordance with the Train Service Entitlement under the relevant Access Agreement; or (b) where paragraph (a) does not apply, that varies from the Train Service Entitlement under the relevant Access Agreement but which Aurizon Network permits to operate.
Additional Information	The information required to be provided by Aurizon Network to an Access Seeker under clause 2 of Schedule A .
Adjusted Allowable Revenue	The amount described as such under clause 4.3(c) of Schedule F .
Adjustment Amount	The meaning given to that term in clause 6.1(a) of Schedule F .
Adjustment Charge	For a Billing Period, the amount calculated in accordance with clause 6.1 of Schedule F .
Adjustment Date	1 July 2015.
Advice Date	In respect of the Change in Reference Tariff Provisions for the purposes of Schedule F , the date on which the QCA's decision making or approving the Change in Reference Tariff Provisions is first published by the QCA.
Affected Access Holder	An Access Holder whose Access Rights are affected by a Capacity Shortfall.
Affected Person	The meaning given to that term in clause 7A.2.4(c)(i) .
Allotted Time Threshold	The threshold within which a Train Service is considered to be on time as follows, for a Train Service operated for the purpose of: <ul style="list-style-type: none"> (a) transporting coal, 30 minutes; (b) transporting bulk minerals (other than coal), 60 minutes; (c) transporting freight products, 60 minutes; and (d) providing long distance passenger transport, 30 minutes.
Allowable Revenue	In relation to a Reference Tariff for a Year, the amount described as such in accordance with clause 4.2 of Schedule F .
Alternative	The Capacity assessment, if any, undertaken by the QCA

Baseline Capacity Assessment	under the 2016 Undertaking in accordance with clause 7A.4.1(g) of the 2016 Undertaking.
Alternative Baseline Capacity Assessment Report	The report entitled Alternative Baseline Capacity Assessment Report, if any, published by the QCA under the 2016 Undertaking in accordance with clause 7A.4.1(f) of the 2016 Undertaking.
<u>Ancillary Access Rights</u>	<u>Has the meaning given in clause 7.4.2(a)(iii)(C).</u>
Ancillary Revenues	Charges for services that are ancillary to other services supplied under an Access Agreement (including, for example, repositioning, and license arrangements) to the extent that the QCA determines from time to time should be included in this definition.
Applicable Undertaking	This Undertaking, the 2016 Undertaking, the 2010 Undertaking, the 2008 Undertaking, the 2005 Undertaking or the 2001 Undertaking that applied at the relevant time.
Approval Date	The date on which this Undertaking was approved by the QCA.
Approval Date of the 2016 Undertaking	11 October 2016.
Approved Capital Expenditure	All capital expenditure approved by the QCA in accordance with Schedule E .
Approved PIC	For the purposes of clause 6.3 , Private Incremental Costs that have been approved by the QCA as prudently and efficiently incurred in accordance with clause 6.3.2 .
Approved Undertaking	This Undertaking, the 2016 Undertaking, the 2010 Undertaking, the 2008 Undertaking, the 2005 Undertaking and the 2001 Undertaking.
Approved WACC	The post-tax nominal (vanilla) weighted average cost of capital of 6.78%.
Assessor	The meaning given to that term in clause 10.4.3(b) .
Asset Management Plan	The asset management plan accepted by the QCA under clause 3 of Schedule E , as amended from time to time.

Asset Replacement and Renewal	Capital projects required to maintain the Existing Capacity of the Rail Infrastructure including: <ul style="list-style-type: none"> (a) the replacement of life expired or obsolete assets; and (b) the replacement of assets which are lost, damaged or destroyed as a result of a Force Majeure Event, and which are required for Aurizon Network to meet its existing contractual obligations under Access Agreements.
Asset Replacement and Renewal Expenditure	Expenditure on Asset Replacement and Renewal.
AT₁	The meaning given in clause 2.2 of Schedule F .
AT₂	The meaning given in clause 2.2 of Schedule F .
AT₂₋₄	The aggregate of the AT ₂ , AT ₃ and AT ₄ components of Access Charges.
AT₂₋₄ Revenue Adjustment Amount	For a Coal System, the amount calculated under clause 4.3(a) of Schedule F for that Coal System.
AT₃	The meaning given in clause 2.2 of Schedule F .
AT₄	The meaning given in clause 2.2 of Schedule F .
AT₅	The meaning given in clause 2.2 of Schedule F .
AT₅ Revenue Adjustment Amount	For a Coal System, the amount calculated under clause 4.3(b) of Schedule F for that Coal System.
Auditor	An auditor appointed under clause 10.6.4(a) and compliant with the requirements of that clause 10.6.4(b) .
Aurizon Group	The group of companies for which the holding company (as defined under the Corporations Act) is the Ultimate Holding Company.
Aurizon Holdings	Aurizon Holdings Limited ACN 146 335 622.
Aurizon Network	Aurizon Network Pty Ltd ACN 132 181 116.
Aurizon Network Cause	Where Aurizon Network is unable to make Rail Infrastructure available for the operation of Train Services in accordance with any Access Holder's Train Service Entitlement, as a result of: <ul style="list-style-type: none"> (a) Planned Possessions, Emergency Possessions or Urgent Possessions; (b) a Force Majeure Event; or (c) any other action by Aurizon Network which directly

resulted in the Rail Infrastructure not being so available,

where such inability by Aurizon Network is not attributable:

- (a) to the Access Holder (or its nominated Train Operator);
- (b) to Aurizon Network complying with its Passenger Priority Obligations;
- (c) to the unavailability of the relevant Access Holder's loading facility or an unloading facility;
- (d) to the failure to load a Train at the relevant Access Holder's loading facility within the maximum time at loading facility (as specified in the relevant Access Agreement) for that Train Service, or unload a Train at the relevant Access Holder's unloading facility within the maximum time at unloading facility (as specified in the relevant Access Agreement) for that Train Service; or
- (e) in respect of a Train Service that will operate on Private Infrastructure prior to entering and/or after exiting the Rail Infrastructure as part of its journey, to the unavailability of, or cancellation of train services on, that Private Infrastructure.

Aurizon Network Personnel

The:

- (a) directors and officers of Aurizon Network; and
- (b) employees, contractors and agents of Aurizon Network and any other person under the control or supervision of Aurizon Network (including secondees working in the business of Aurizon Network) who are involved in the provision of Below Rail Services.

Aurizon Network's Executive Officer

The person who is, from time to time, the chief executive of Aurizon Network.

Aurizon Operations

Aurizon Operations Limited ACN 124 649 967.

Aurizon Party

A Related Party of Aurizon Network other than a Related Party of Aurizon Network who is a User Funding Trustee.

Australian Taxation Office

The Australian Government's principal revenue collection agency.

Authority

The Crown (in right of the State or the Commonwealth), a minister of the Crown, a federal, state or local government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority, a court, a tribunal and any officer or agent of

	the foregoing acting as such.
Average Annual Payload	Has the meaning given to that term in the Standard Access Agreement.
Available Capacity	Capacity, excluding all Committed Capacity.
Baseline Capacity Assessment	The Capacity assessment undertaken by Aurizon Network under the 2016 Undertaking in accordance with clause 7A.4.1 of the 2016 Undertaking.
Baseline Capacity Assessment Report	The report entitled Baseline Capacity Assessment Report published by the QCA under the 2016 Undertaking in accordance with clause 7A.4.1(a) of the 2016 Undertaking.
Below Rail Delay	<p>A delay to a Train Service from its scheduled Train Path in the DTP, where that delay can be attributed directly to Aurizon Network, but excludes:</p> <ul style="list-style-type: none"> (a) cancellations; (b) delays resulting from compliance with a Passenger Priority Obligation; and (c) delays resulting from a Force Majeure Event.
Below Rail Services	The activities required to supply the declared services contemplated by section 250(1)(a) of the Act, including those activities associated with the provision and management of Rail Infrastructure and Access and which include the construction, maintenance and renewal of Rail Infrastructure assets, and the network management services required for the safe operation of Train Services on the Rail Infrastructure, including Network Control Services and the implementation of Safeworking Procedures and Below Rail has a similar meaning.
Below Rail Transit Time	<p>For a Train Service travelling between its origin and destination, the sum of:</p> <ul style="list-style-type: none"> (a) the relevant nominated section running times (in the direction of travel) as specified in the Train Service Entitlement; (b) identified Below Rail Delays for that Train Service; (c) the time taken in crossing other Trains to the extent that such time is not contributed to by Above Rail causes or Force Majeure Events or otherwise included in paragraph (a) of this definition; and (d) delays due to Operational Constraints directly caused by the activities of Aurizon Network in maintaining the Rail Infrastructure, provided such delays are not contributed to by Above Rail causes or Force Majeure Events or otherwise included in paragraphs (b) and

(c) of this definition.

Below Rail Transit Time Percentage	For a type of Train Service specified in a Train Service Entitlement, the proportion (expressed as a percentage) calculated by dividing the Below Rail Transit Time by the maximum sectional running times (as set out in the relevant Access Agreement) for all relevant sections (as set out in the relevant Access Agreement).
Billing Period	The meaning given to that term in the relevant Access Agreement.
Blackwater System	The Rail Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory, Minerva and Rolleston mines, and all branch lines directly connecting coal mine loading facilities to those corridors with the exception of the corridor to Oaky Creek (and beyond) and the corridor to Moura mine (and beyond).
Business Day	A day which is not a Saturday, Sunday or special or public holiday in Brisbane or, if and to the extent that this Undertaking expressly refers to another place, in that other place.
Capacity	The aggregate of Existing Capacity and Planned Capacity.
Capacity Analysis	<p>A simulation modelling assessment of the Available Capacity of the Rail Infrastructure, based on the Network Management Principles, System Operating Parameters, System Rules, Train Operator's Operating Plans and any requested Access Seeker's Access Rights, to determine, as the context requires:</p> <ul style="list-style-type: none">(a) Available Capacity;(b) whether there is sufficient Capacity to accommodate Committed Capacity;(c) whether there is sufficient Available Capacity to accommodate the requested Access Rights not yet considered to be Committed Capacity;(d) if there is insufficient Capacity to accommodate Committed Capacity, the Expansions required to provide the Shortfall Capacity to accommodate Committed Capacity (and an indicative estimate of the cost of such works and timing for completion);(e) if there is insufficient Available Capacity to accommodate requested Access Rights not yet considered to be Committed Capacity, whether Expansions are required to provide the additional Capacity to accommodate the requested Access

Rights (and an indicative estimate of the cost of such works and timing for completion); and

- (f) the operational impacts of the requested Access Rights including the impact of the requested Access Rights on the, Network Management Principles, System Operating Parameters, System Rules and Train Operator's Operating Plans,

and which:

- (g) provides a sufficient basis to enable Aurizon Network to finalise the relevant Train Service Entitlement, initial timetable, applicable Access Charges and associated funding arrangements (subject to other variations identified in the negotiation process); and
- (h) for information purposes only:
 - (i) includes the Monthly available tonnes based on Nominal Train Payloads outlined in Schedule F; and
 - (ii) identifies the assumed split of traffic to different destinations serviced by the relevant Coal System.

Capacity Assessment

An assessment undertaken under **clause 7A.4.2(a)(i)**.

Capacity Assessment Notice

A notice given under **clause 8.9.5(b)(i)**.

Capacity Assessment Report

The Preliminary Capacity Assessment Report, as amended in accordance with **clause 7A.4.2(f)** (if applicable).

Capacity Deficit

The meaning given to that term in **clause 7A.4.3(a)** or **clause 7A.4.3(b)** as applicable.

Capacity Information

The information required to be provided by Aurizon Network to an Access Seeker under **clause 3** of **Schedule A**.

Capacity Notification Register

The register maintained by Aurizon Network under **clause 7.2.2**.

Capacity Shortfall

A circumstance where the Capacity is:

- (a) less than the Committed Capacity of the relevant Coal System, Track Segment, Segment or other part of the Rail Infrastructure, as the context requires; or
- (b) less than the Committed Capacity of an Expansion where the Access Rights are conditional on that Expansion being completed and commissioned.

Capacity Shortfall Access Application	An Access Application that is taken to have been lodged with Aurizon Network in accordance with clause 8.9.3 .
Capital Expenditure Carryover Account	The account maintained by Aurizon Network recording the difference between Approved Capital Expenditure and the Capital Indicator in the manner specified in clause 5 of Schedule E .
Capital Indicator	The annual capital expenditure allowance approved by the QCA, from time to time, for the purpose of assessing the relevant Reference Tariffs.
CDMP	The meaning given to that term in clause 1.2 of Schedule J .
Change in Law	Any of the following: <ul style="list-style-type: none"> (a) any amendment, repeal or enactment of any Law; (b) any change in the interpretation or application, including by the exercise of delegated authority, of any Law resulting from a decision of a court or Authority; (c) the making of any new directive, or any change in an existing directive, of any Authority; (d) the imposition of a requirement for authorisations not required as at the Commencing Date; (e) after the date of grant of any authorisation, a change in the terms and conditions attaching to that authorisation or the attachment of any new terms or conditions; or (f) any such authorisation as has been granted ceasing to remain in full force and effect or, if granted for a limited period, not being renewed on a timely basis on application therefore being duly made, or being renewed on conditions which are materially less favourable than those attached to the original authorisation.
Change in Reference Tariff Provisions	Any change (including variation, repeal or replacement) of: <ul style="list-style-type: none"> (a) the Reference Tariff Provisions; or (b) the Reference Tariffs (including the creation of a new Reference Tariff), <p>made or approved by the QCA from time to time.</p>

Change in Relevant Taxes	Any of the following: <ul style="list-style-type: none"> (a) the imposition of a new Relevant Tax; (b) an increase in the rate of a Relevant Tax; or (c) a change in the basis of calculation of a Relevant Tax.
<u>CIT Access Rights</u>	<u>Has the meaning given in clause 7.4.7(b)(ii)(i).</u>
<u>CIT Date</u>	<u>Has the meaning given in clause 7.4.7(b)(i).</u>
<u>CIT Notice</u>	<u>Has the meaning given in clause 7.4.7(b).</u>
Claim	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.
Changes in Market Circumstances	Changes in circumstances which have occurred in any market and which have had, or will have, a material effect on an Access Holder's ability to pay the Access Charges.
Coal Loss Mitigation Provisions	The provisions set out in Schedule J .
Coal System	Any one of the following: <ul style="list-style-type: none"> (a) the Newlands System; (b) the Goonyella System; (c) the Blackwater System; (d) the Moura System; or (e) the Goonyella to Abbot Point System.
Commencing Date	1 July 2017.
Committed Capacity	That portion of the Capacity that is required: <ul style="list-style-type: none"> (a) to meet Train Service Entitlements; (b) to satisfy Aurizon Network's obligations under clause 7.3(d) in respect of a Renewing Access Seeker; (c) to comply with any Passenger Priority Obligation or Preserved Train Path Obligation; (d) to provide Access Rights where Aurizon Network has, in relation to those Access Rights, contractually committed to construct an Expansion; and (e) to provide Access Rights where Aurizon Network has, in relation to those Access Rights, contractually committed to construct a Customer Specific Branch Line.

Committed Capacity Register	The register maintained by Aurizon Network under clause 7.2.3 .
Common Corridor	That part of the Rail Infrastructure that: <ul style="list-style-type: none"> (a) either: <ul style="list-style-type: none"> (i) would be utilised by a Railway Operator to operate Train Services for the Access Holder utilising the Nominated Access Rights; or (ii) if the Access Holder has not nominated a Railway Operator to operate Train Services utilising the Nominated Access Rights, would have been utilised by a Railway Operator had the Access Holder nominated a Railway Operator to operate the relevant Train Services; and (b) will also be utilised by the Transferee's Train Services.
Common Costs	Those costs associated with provision of Rail Infrastructure that are not Incremental Costs for any particular Train Service using that Rail Infrastructure.
Comparative Length	In respect of a Train, the length of that Train calculated as: <ul style="list-style-type: none"> (a) the Static Length of that Train multiplied by 1.02; plus (b) 125mm multiplied the number of items of Rollingstock comprising or to comprise that Train (including the locomotive/s).¹
Competing Applications	The Access Applications of two or more Access Seekers that are seeking Access Rights relating to the same traffic task and are either: <ul style="list-style-type: none"> (a) the Access Applications of two or more Access Seekers who are competing in order to provide Train Services under a rail haulage agreement with the same Customer for the same Train Services; or (b) the Access Applications of an Access Seeker who is seeking Access Rights in order to provide Train Services under a rail haulage agreement with a Customer and the Access Application of that Customer for the same Train Services.
Compliance Officer	The Aurizon Network employee designated as such by the Aurizon Network's Executive Officer.
Complainant	The meaning given to that term in clause 3.20(a) .

¹ By way of explanation, this comparative Train length comprises the following: static Train length (which is the straight addition of individual Rollingstock lengths) plus an allowance of 2% of this static Train length for train handling accuracy plus 125mm per vehicle for slack movement in drawgear (includes free slack in the drag box, compression of the draftgear, clearance/free slack due to coupler wear and pin clearance at the yoke).

Completion Date	The meaning given to that term in clause 8.6(a)(i)(C) .
Concept Study	<p>A study that enables a preliminary assessment of the potential costs, benefits and risk involved in providing the capacity required in respect of a potential Expansion and includes:</p> <ul style="list-style-type: none"> (a) identification of a possible technical solution to provide the capacity required for the potential Expansion; (b) unless otherwise agreed by Aurizon Network and an Access Seeker, includes an indicative assessment of: <ul style="list-style-type: none"> (i) project objectives; (ii) a broad cost estimate of the potential solution with a +/-50% accuracy; (iii) preliminary financial analysis; (iv) preliminary risk assessment; and (v) indicative timeframes for the development and delivery of the project; (c) a Pre-feasibility Study execution plan, including a proposed scope of work (taking into account the scope of work required by the definition of “Pre-feasibility Study” in this Undertaking), budget, time schedule and deliverables; and (d) a written report on the outcome of the analysis and the reasons for the selection(s) made and the preliminary scope, cost and program details of the selected alternatives.
Conditional Access Holders	The meaning given to that term in clause 8.9.2 .
Conditional Access Provisions	The provisions set out in clause 8.9.5 .
Conditional Access Rights	The meaning given to that term in clause 8.9.2 .
Condition Based Assessment	The meaning given to that term in clause 10.4.3 .
Confidential Information	<p>Any information, data or other matter (“information”) disclosed to a party by, or on behalf of, another party where:</p> <ul style="list-style-type: none"> (a) the disclosure of the information by the recipient might reasonably be expected to affect the commercial affairs of the owner of the information; or (b) the information is marked confidential by a party when

disclosed,

provided that such information:

- (c) is not already in the public domain;
- (d) does not become available to the public through means other than a breach of the confidentiality provision in this Undertaking or any confidentiality deed contemplated in **clause 3.12(a)(vi)**;
- (e) was not in the other party's lawful possession prior to such disclosure; and
- (f) is not received by the other party independently from a third party free to disclose such information, data or other matter,

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

- (g) the information is now in the public domain through means other than a breach of the confidentiality provisions in this Undertaking or any confidentiality deed contemplated in **clause 3.12(a)(vi)**; or
- (h) the information has been received by the recipient independently from a third party free to disclose the information,

but does not include:

- (i) information which relates solely in material respects to matters other than the supply of the declared services contemplated by section 250(1)(a) of the Act;
- (j) information which relates to matters other than the seeking of access to the declared services contemplated by section 250(1)(a) of the Act by a Related Operator or Related Competitor, or to the provision by Aurizon Network of access to such party;
- (k) if a document or discussion is comprised of information only some of which would be Confidential Information as a result of **paragraph (i)** of this definition, the remainder of the information in the document or discussion to the extent that Aurizon Network can clearly separate the remainder of the information from the Confidential Information.

**Confidential
Information
Register**

The register established and maintained under **clause 3.14**.

Connecting

The rail transport infrastructure (including track, signalling

Infrastructure	and overhead electric traction (if applicable)) which connects the Private Infrastructure to the Rail Infrastructure and that on completion forms part of the Rail Infrastructure and, where Connecting Infrastructure is the subject of a Rail Connection Agreement, is more particularly defined in the relevant Rail Connection Agreement.
Connection Milestone	The meaning given to that term in clause 9.1(e) .
Construction Agreement	The meaning given to that term in the Standard Rail Connection Agreement.
Contested Train Path	A Train Path in respect of which more than one Access Holder has expressed an interest in operating a Train Service in the week in question.
Corporations Act	The <i>Corporations Act 2001</i> (Cth) and the regulations made under it, as amended from time to time.
Costing Manual	The cost allocation manual either: <ul style="list-style-type: none"> (a) prepared by Aurizon Network and approved by the QCA; or (b) prepared by the QCA under section 159(1) of the Act, as revised by the QCA from time to time under sections 159(2) and (3) of the Act.
CPI	The Consumer Price Index: All Groups – Brisbane (Australian Bureau of Statistics Publication No.6401.0).
Cross Subsidy	Where the Access Charges payable in respect of one Train Service or combination of Train Services are insufficient to meet: <ul style="list-style-type: none"> (a) the Incremental Cost imposed on the Rail Infrastructure by that Train Service or combination of Train Services; and (b) in respect of a combination of Train Services, the Common Costs related specifically to sections of Rail Infrastructure that are used solely for the purpose of Train Services within that combination of Train Services, <p>and the shortfall is contributed to by another Train Service or combination of Train Services.</p>
Cross System Train Service	A coal carrying Train Service that requires Access in respect of more than one Coal System (excluding any Train Service that operates solely within the Goonyella to Abbot Point System even though it might otherwise require Access to more than one Coal System – for example, the Goonyella System and the Newlands System).

Customer	A person in respect of which an Access Holder or an Access Seeker is or is intending to use Access Rights to provide Train Services for that person (in that Access Seeker's or Access Holder's capacity as a Railway Operator).
Customer Access Seeker	<p>(a) Where:</p> <ul style="list-style-type: none"> (i) two or more Access Seekers have submitted Access Applications for the same Access Rights; and (ii) one of those Access Seekers (Principal Access Seeker) is the Customer for one of the other Access Seekers, <p>the Principal Access Seeker; or</p> <p>(b) in all other cases, an Access Seeker who is not and will not be the Train Operator in relation to the Access Rights sought.</p>
<u>Customer Initiated Transfer</u>	<u>Has the meaning given in clause 7.4.7(a).</u>
Customer Specific Branch Line	<p>An extension, enhancement, expansion, augmentation, duplication or replacement of all or part of the Rail Infrastructure:</p> <ul style="list-style-type: none"> (a) to be constructed solely to connect an Access Holder's or a Customer's loading facility to Rail Infrastructure; and (b) that on completion will form part of the Rail Infrastructure, <p>excluding:</p> <ul style="list-style-type: none"> (c) Connecting Infrastructure; and (d) any capital expenditure project to the extent that it involves Asset Replacement and Renewal Expenditure.
Cyclic Traffic	A traffic, the Train Service Entitlements in respect of which are defined in terms of a number of Train Services within a particular period of time, for example, a year, Month, week or day. Coal traffic is an example of such traffic.
Daily Train Plan or DTP	The meaning given to that term in clause 5.1 of Schedule G .
Decision	The meaning given to that term in clause 11.2(a) .
Demand Assessment	<p>An estimation (acting reasonably) of:</p> <ul style="list-style-type: none"> (a) the demand for Capacity beyond Available Capacity

	and Committed Capacity; and
	(b) the estimated time for which the Capacity referred to in paragraph (a) is required,
	having regard to the relevant information in accordance with clause 8.2.4(b) .
Depreciated Optimised Replacement Cost or DORC	The value of assets determined in the following manner: <ul style="list-style-type: none"> (a) the replacement value of the assets will be assessed as the cost of the modern engineering equivalent replacement asset; (b) optimisation of the asset base will occur, but such optimisation will only consider whether or not the infrastructure standard and infrastructure capacity are excessive, given the current and likely future requirements of Access Holders; and (c) depreciation of the optimised replacement asset value will be undertaken over the useful life of the assets.
Destination System	<ul style="list-style-type: none"> (a) For any Train Service which originates in the Blackwater System and uses the Goonyella Newlands Connection, the Goonyella to Abbot Point System; or (b) in all other cases, the Coal System on which the Nominated Unloading Facility is located.
Destination Tariff	The relevant Reference Tariff applying to the relevant Cross System Train Service in the Destination System.
Discount Rate	The rate equivalent to the ROA, as defined in clause 6.6.3(c) .
Dispute	The meaning given to that term in clause 11.1.1(a) .
Dispute Notice	A notice given under clause 11.1.1 specifying the nature of the Dispute and the proposed resolution.
Distribution Entities	The meaning given to that term in the <i>Electricity Act 1994</i> (Qld).
Draft System Rules	The meaning given to that term in clause 7A.2.3(b) .
DTMR	The Department of Transport and Main Roads for the State of Queensland or other department from time to time responsible for the administration of the TIA.
Dwell	Where a Train stops for a short period on Rail Infrastructure at locations specified by Aurizon Network as required for crew changes, meal breaks and maintenance, examination and provisioning of that Train.
EC	The electric energy charge defined as “EC” in clause 2.2(a)

	of Schedule F .
Efficient Cost	The cost for each Year during the Evaluation Period, that reflects the cost that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices in the provision of the Rail Infrastructure to the required service standard, having regard to any matters particular to the environment in which Aurizon Network operates, and including any transitional arrangements agreed between Aurizon Network and the QCA to reflect the transition from Aurizon Network’s actual cost to that efficient cost.
egtk	The electric gross tonne kilometres attributed to the relevant Train Service, being: <ul style="list-style-type: none"> (a) the gtk for the Train Service, if that Train Service uses electric traction; and (b) zero, if the Train Service does not use electric traction.
Emergency Possession	A Possession required to rectify a serious fault with the Rail Infrastructure that Aurizon Network (acting reasonably) considers dangerous to any person, or where severe speed restrictions have been imposed affecting the scheduled Train Services of Railway Operators and that Aurizon Network, complying with the Possession Protocols, will use reasonable endeavours to carry out within seven days after the detection of the fault giving rise to the need for that Possession.
Emergency Response Plan	The meaning given to that term in clause 12(a)(i)(B) of the Standard Train Operations Deed.
Endorsed Variation Event	The occurrence of any of the events listed in clause 5.2 of Schedule F .
Environment Compliance Charge	A charge determined by Aurizon Network equal to the aggregate of any fine, penalty, cost, impost or other amount incurred by, or imposed on, Aurizon Network by an Authority under any Environmental Law (including the EP Act) in relation to any non-compliance with the CDMP: <ul style="list-style-type: none"> (a) as a result of or in connection with any act or omission of the Access Holder (excluding good faith acts and omissions in accordance with an express request by Aurizon Network in relation to compliance); or (b) where the Access Holder fails to do, or not do, anything requested by Aurizon Network that would have avoided or reduced the amount incurred by, or imposed on, Aurizon Network.
Environmental	(a) A “development approval” or “registration certificate”

Authorities	for a chapter 4 activity or an “environmental authority”, as those terms are defined under the EP Act; or (b) any approval (however described) which is deemed by the EP Act to be a “development approval”, “registration certificate” or “environmental authority” referred to in paragraph (a) of this definition.
Environmental Harm	Serious environmental harm, material environmental harm or environmental nuisance as those terms are defined in the EP Act.
Environmental Laws	A Law relating to the environment (as defined under the EP Act), including: (a) a Law relating to planning, health, toxic or contaminating materials, dangerous goods, waste disposal or pollution; and (b) environmental protection policies, guidelines, regulations and relevant approved codes of practice, and the conditions of all licences, notices, directions, approvals, consents, permissions or permits, issued under any such Law.
Environmental Management Plan	The meaning given to that term in clause 12.1(f) of the Standard Train Operations Deed.
Environmental Risks	All risks to the environment (as defined under the EP Act) arising or potentially arising from the Access Seeker’s or Access Holder’s proposed operations (including risks associated with the matters identified in clause 2.2 of Schedule C).
EP Act	<i>Environmental Protection Act 1994 (Qld).</i>
Evaluation Period	(a) When in reference to an individual Train Service, the period which is equal to the length of the expected duration of the existing or proposed Access Right under the Access Agreement in respect of the relevant Train Service; (b) when in reference to a combination of Train Services for the purpose of determining a Reference Tariff to apply for some or all of those Train Services, the period for which that Reference Tariff will apply; or (c) when in reference to a combination of Train Services other than referred to in paragraph (b) of this definition, the period which is equal to the length of the expected duration of the longest existing or proposed Access Right under an Access Agreement in respect of any of the Train Services comprising the combination of Train Services, provided that such period does not

exceed 10 years.

Existing Capacity

Absolute Capacity, net of:

- (a) Aurizon Network's reasonable requirements for the exclusive or partial utilisation of the Rail Infrastructure for the purposes of performing activities associated with the maintenance and repair of the Rail Infrastructure, including the operation of work Trains; and
- (b) Aurizon Network's allowances for "day of operations" losses, speed restrictions and other operational losses or restrictions applicable to the Rail Infrastructure as set out in the System Operating Parameters.

Expanding User

The meaning given to that term in **clause 6.4.1(a)**.

Expansion

An extension, enhancement, expansion, augmentation, duplication or replacement of all or part of the Rail Infrastructure that on completion forms part of the Rail Infrastructure, excluding:

- (a) Customer Specific Branch Lines;
- (b) Connecting Infrastructure;
- (c) Asset Replacement and Renewal; and
- (d) any extension, enhancement, expansion, augmentation, duplication or replacement of all or part of the Rail Infrastructure which is delivered as part of a project the primary objective of which is the improvement of operational safety;
- (e) any extension, enhancement, expansion, augmentation, duplication or replacement of all or part of the Rail Infrastructure that is delivered as part of a project the primary objective of which is the improvement of operational performance and that project (**Operational Performance Project**):
 - (i) has a de minimus impact on capacity; and
 - (ii) involves a total capital expenditure of either:
 - (A) in respect of a single Operational Performance Project, under \$10 million; or
 - (B) where there has been more than one Operational Performance Project within the same Coal System within a Year, the cumulative total capital expenditure of all Operational Performance Projects within that Coal System within that Year

is under \$20 million; or

- (iii) has otherwise been approved by the QCA in writing as a project which is not an Expansion for the purposes of this Undertaking.

Expansion Costs	The meaning given to that term in clause 6.4.4(a)(ii) .
Expansion Funder	An Access Seeker, Access Holder or its Customer who has entered into a User Funding Agreement with Aurizon Network and includes the Preference Unit Holder nominated by the Access Seeker or Access Holder if it has nominated another party to hold the preference units created under the User Funding Agreement.
Expansion Tariff	The tariff determined in accordance with Part 6 for a specified Reference Train Service in relation to an Expansion.
Expected Access Revenue	<ul style="list-style-type: none">(a) For an individual Train Service, the revenue reasonably expected from the Access Charge from that Train Service; and(b) for a combination of Train Services, the aggregate revenue reasonably expected from the Access Charges for all Train Services comprising that combination of Train Services, where the expected Access Charges for different Train Services will be developed on a basis consistent with:<ul style="list-style-type: none">(i) if a Reference Tariff is to be developed for a Train Service, the proposed Reference Tariff;(ii) the terms of the relevant Standard Access Agreement; and(iii) if paragraph (b)(i) of this definition does not apply, current applicable Access Charges, except as provided in clause 6.7.1(b)(iv).
Feasibility Funder	An Access Seeker or a Customer who is a party to a Studies Funding Agreement with Aurizon Network in respect of a Feasibility Study for an Expansion.
Feasibility Study	A study with the following scope of work: <ul style="list-style-type: none">(a) detailed assessment of technical and operating requirements of the proposed Expansion (utilising the preferred alternative identified in the Pre-feasibility Study but having regard to the options identified in that Pre-feasibility Study);(b) all necessary survey and geotechnical investigations to support the level of design and cost accuracy commensurate with the procurement strategy

developed as part of the Feasibility Study;

- (c) detailed design of the proposed Expansion solution to a level commensurate with the procurement strategy developed as part of the Feasibility Study;
- (d) independent design verification, if required by the Feasibility Funders; and
- (e) a written report.

The written report referred to above must include:

- (a) the outcome of the analysis, decisions and specifications referred to above (with reasons, where applicable);
- (b) the project objectives for the proposed Expansion;
- (c) a “for construction level” specification for the proposed Expansion;
- (d) definition of an optimised project configuration that will provide the target capacity for an Expansion in accordance with the capacity requirements specified as part of the Feasibility Study scope of works;
- (e) confirmation of the technical and economic feasibility of the preferred alternative identified in the Pre-feasibility Study;
- (f) financial evaluation of the proposed Expansion, including:
 - (i) the estimated impact on the System Reference Tariff and Expansion Tariff (including an appropriate Common Cost contribution);
 - (ii) the anticipated Expansion Tariff; and
 - (iii) an estimate of the Common Cost contribution,(determined in accordance with this Undertaking);
- (g) Capacity Analysis for the proposed Expansion to identify the target Capacity of the Expansion;
- (h) a detailed cost estimate for the proposed Expansion with a +/-10% level of accuracy (or a lower accuracy if agreed with the Feasibility Funders);
- (i) detailed design and construct project schedule for the proposed Expansion that includes:
 - (i) a fully statused program showing critical path;
 - (ii) time tolerances and project budget with a +/-10% margin (or lower accuracy if agreed with the

- Feasibility Funders);
- (iii) an estimate of time and cost contingency supported by risk assessment and cost analysis;
 - (iv) probabilistic risk assessment analysis to establish the basis of project contingency; and
 - (v) a fully developed procurement methodology (including a report on previous approaches to the construction market undertaken by Aurizon Network, whether for the proposed Expansion or other works); and
- (j) a fully developed project management plan which includes:
- (i) resource management plan;
 - (ii) cost management plan;
 - (iii) design management plan;
 - (iv) quality management plan;
 - (v) safety management plan;
 - (vi) schedule management plan;
 - (vii) risk management plan;
 - (viii) project packaging and delivery strategy;
 - (ix) procurement management plan;
 - (x) interface management plan;
 - (xi) change management plan;
 - (xii) environmental plan;
 - (xiii) project phases, milestones and deliverables;
 - (xiv) project risk assessment report; and
 - (xv) regulators notification, if needed.

Field Incident Management

The field management of incidents and accidents occurring on or affecting the Rail Infrastructure.

Force Majeure Event

Any cause, event or circumstance or combination of causes, events or circumstances which:

- (a) is beyond the reasonable control of the affected party; and
- (b) by the exercise of due diligence the affected party was not reasonably able to prevent or is not reasonably able to overcome,

and, provided that the requirements in **paragraphs (a) and**

(b)of this definition are satisfied, includes:

- (c) compliance with a lawful requirement, order, demand or direction of an Authority or an order of any court having jurisdiction other than where that requirement, order, demand or direction results from any act or omission of the affected party;
- (d) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the affected party is a party to 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 or quarantine restriction; and
- (n) delay of a supplier due to any of the foregoing whether any such cause of delay exists before or after the Commencing Date.

**General Track
Maintenance**

Includes maintenance of Track, structures, civil, signalling, electrical overhead and telecommunication systems.

**Good Engineering
Practices**

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.

Goonyella Newlands Connection	The Rail Infrastructure between the North Goonyella mine junction and the Newlands mine junction.
Goonyella System	<p>The Rail Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Hail Creek mine, Blair Athol mine, North Goonyella mine and the junction with the Gregory mine branch line and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of:</p> <p>(a) the branch line to Gregory mine; and</p> <p>(b) the corridor beyond North Goonyella mine to Newlands mine (and beyond).</p>
Goonyella to Abbot Point System	<p>The Rail Infrastructure comprising:</p> <p>(a) the Goonyella Newlands Connection; and</p> <p>(b) that part of any other Coal System which is used by a Train Service that also uses or connects to any part of the Goonyella Newlands Connection, except where that Train Service originates or terminates south of Gregory.</p> <p>(c)</p>
GST	The meaning given to that term in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
gtk	<p>For an operated Train Service (whether loaded or empty) for a Train Service Type, gross tonne kilometres attributed to that Train Service being the amount which is the gross tonnes for the Train Service for the Train Service Type multiplied by:</p> <p>(a) if the Train Service was operated from the origin to destination for the Train Service Type, the number of kilometres of the loaded distance from origin to destination for the Train Service Type as specified in the Train Service Description for that Train Service Type; or</p> <p>(b) if the Train Service was operated from the destination to origin for the Train Service Type, the number of kilometres of the empty distance from the destination to origin for the Train Service Type as specified in the Train Description for that Train Service Type.</p>
Gtk Forecast	The amount indicated as the 'Gtk Forecast' for the relevant Reference Tariff in Schedule F .
High-Risk Personnel or	The meaning given to that term in clause 3.16(b) .

High-Risk Persons

High-Risk Personnel Register

The register established and maintained under **clause 3.16**.

Incremental Costs

Those costs of providing Access, including capital (renewal and expansion) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Train Service or combination of Train Services (as appropriate) did not operate, where those costs are assessed as the Efficient Costs and based on the assets reasonably required for the provision of Access.

Indicative Access Proposal or IAP

The meaning given to that term in **clause 4.6**.

Information Request Notice

The meaning given to that term in **clause 7.6(a)**.

Infrastructure Enhancement

Expansions and Customer Specific Branch Lines but excluding:

- (a) Asset Replacement and Renewal; or
- (b) Maintenance Work,

required to deliver Committed Capacity.

Infrastructure Service Providers

Those parties who provide maintenance, construction and other related services in respect of the Rail Infrastructure.

Initial Capacity Assessment

A preliminary Capacity Analysis limited to:

- (a) an indicative assessment of whether there is sufficient Available Capacity (provided that where the Access Application relates to a Transfer, the Nominated Access Rights in the Transfer Notice are deemed to be Available Capacity) to accommodate Committed Capacity and requested Access Rights; and
- (b) if there is not sufficient Available Capacity, to accommodate the requested Access Rights either:
 - (i) an outline of the Expansions required to provide additional Capacity to accommodate the requested Access Rights (and an indicative estimate of the cost of such works and the timing for completion); or
 - (ii) if Aurizon Network has not carried out the investigations required to provide the information in **paragraph (i)**, an outline of the requirements for an investigation into the works required to

accommodate the requested Access Rights.

Insolvency Event

Where one of the following events has happened in relation to the Access Seeker:

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) a meeting is convened to pass a resolution to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within 10 Business Days or the resolution fails to pass;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within 10 Business Days after it is made;
- (d) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets if that appointment is not revoked within 10 Business Days after it is made;
- (e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement; or
- (f) any similar event occurs in respect of the Access Seeker under the laws of any jurisdiction other than Australia.

Inspecting Party

The meaning given to that term in **clause 4.1(c)** of **Schedule C**.

Issues Register

The register maintained by Aurizon Network under **clause 10.5.3(c)**.

Interested Participant

The meaning given to that term in **clause 4.2(a)** of **Schedule E**.

Interface Coordination Arrangement

An arrangement that identifies the procedures to be followed and the responsible officers from both Aurizon Network and the Access Holder, in respect of all regular operational interfaces between the parties that arise in the exercise of rights and the performance of obligations under a Train Operations Deed other than those specified in the Network Management Principles.

Interface Risk Assessment

An assessment to:

- (a) identify all reasonably foreseeable Interface Risks and Environmental Risks;

- (b) assess:
 - (i) the likelihood of those Interface Risks and Environmental Risks occurring;
 - (ii) the consequences (including commercial consequences) of those Interface Risks and Environmental Risks occurring; and
 - (iii) any factors relevant to the effective management of those Interface Risks and Environmental Risks;
- (c) identify appropriate measures to effectively manage those Interface Risks and Environmental Risks within a risk management framework, including:
 - (i) an audit, inspection and review regime; and
 - (ii) applicable Safeworking Procedures and Safety Standards having regard to existing Aurizon Network and industry practices; and
- (d) identify the party responsible for implementing, complying with and/or ensuring compliance with the measures referred to in **paragraph (c)** of this definition and ensuring the ongoing effectiveness of such measures.

Interface Risks

All risks to the safety of persons or property arising or potentially arising from the interaction between the Access Seeker's, Access Holder's or a Train Operator's proposed operations and:

- (a) the Rail Infrastructure;
- (b) any land relating to the Rail Infrastructure;
- (c) activities on the Rail Infrastructure (including other Train Services) or any land relating to the Rail Infrastructure; or
- (d) persons on, using or near the Rail Infrastructure or any land relating to the Rail Infrastructure.

Intermediate Train Plan or ITP

A plan that details the indicative scheduled times for all Train Services and Planned Possessions, Urgent Possessions and Emergency Possessions on a specified part of the Rail Infrastructure on each day of the Relevant Period.

IRMP

An interface risk management plan which sets out each of the matters required to be identified and assessed during an Interface Risk Assessment.

JORC Code

The current edition of the *Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore*

Reserves prepared by the Australasian Joint Ore Reserves Committee, from time to time.

Law

- (a) Any statute, rule, regulation, code, proclamation, ordinance or by-law, present or future, whether State, Commonwealth or otherwise; and
- (b) any requirement, condition, notice, consent, accreditation, order or direction or similar thing of any statutory, public or other competent authority (including the State in any of its regulatory capacities), present or future, given or imposed pursuant to anything specified in **paragraph (a)** of this definition.

Line Diagrams

A diagrammatical representation of the rail network identifying:

- (a) the configuration of the rail network; and
- (b) the parts of the rail network which are managed by Aurizon Network, a Related Operator or a person other than Aurizon Network.

Load Variation Table

A table published by Aurizon Network in respect of a nominated Reference Train Service or type of Train Service identifying allowable overloads for wagons and bogies and specifying relevant Operational Constraints and additional charges, where applicable, for such overloads.

~~(c)~~

Loading Time

The time between a Train Service arriving at a Nominated Loading Facility and that same Train departing the Nominated Loading Facility, and for the purpose of clarity, this time runs from when a Train Service arrives at the entry signal to the Nominated Loading Facility until it has completed loading, presented at the exit signal, is ready to depart the Nominated Loading Facility and has advised the relevant Network Controller accordingly.

Long Term Transfer

[Any Transfer which is not a Short Term Transfer.](#)

Maintenance Work

Any work involving maintenance or repairs to, or renewal, replacement and associated alterations or removal of, the whole or any part of the Rail Infrastructure (other than Infrastructure Enhancements) and includes any inspections or investigations of the Rail Infrastructure.

Major Periodic Maintenance

Activities that renovate the Rail Infrastructure to retain it in a functional condition completed on Track sections at intervals of more than one year, and includes activities such as re-railing, rail grinding, resurfacing, re-signalling, communications upgrades, renovating structures, ballast

	cleaning and re-sleeping.
Mainline Path	That part of any Train Path (in relation to a Coal System) as shown in the Preliminary Information.
Major Yards	The yards at Callemondah, Jilalan, Coppabella, and Pring.
Master Train Plan or MTP	That document detailing the distribution of Train Service Entitlements as advised by Aurizon Network from time to time for all Train Services and any Planned Possessions on a specified part of the Rail Infrastructure.
Material Default	<p>(a) Failure on more than one occasion to comply with any terms or conditions of a relevant agreement where that breach would not lawfully justify termination; or</p> <p>(b) a breach of a term or condition of a relevant agreement where that breach would lawfully justify termination,</p> <p>where a “relevant agreement” is an agreement described in clause 4.13(b)(ii).</p>
Material Variation	<p>A variation to the relevant Access Application that will be detrimental to another Access Holder or Access Seeker’s Capacity allocation as a result of either (or both):</p> <p>(a) the relevant Access Rights, if granted, being allocated more Capacity including any increase in tonnages to be carried by Train Services or in the required number of Train Paths; or</p> <p>(b) changes:</p> <ul style="list-style-type: none"> (i) in the Capacity consumed by Train Services relating to the Access Rights being sought as a result of the variation – except to the extent that the changes are to make the Train Service consistent with the description of the relevant Reference Train Service (if any); (ii) the period for which the Access Rights are required, whether shorter or longer; (iii) the nature or type of Access Rights (for example, from Cyclic Traffic to Timetabled Traffic); or (iv) the origin or destination relevant to the Access Rights.
Maximum Allowable Revenue	The maximum revenue that Aurizon Network should be entitled to earn by way of Access Charges from the provision of Access to the relevant Train Service(s) over the Evaluation Period, as determined in accordance with clause 6.6.3 .
Maximum Payload	Has the meaning given to that term in the Standard Access

	Agreement.
MCI	The maintenance cost index developed by Aurizon Network for the purposes of the escalation of Reference Tariffs and which has been approved by the QCA (and as adjusted from time to time to replace any index used in the calculation of the maintenance cost index that ceases to be published with the CPI, or an appropriate substitute index approved by the QCA).
Minimum Revenue Contribution	For the purposes of clause 6.3 , the amount calculated under clause 6.3.1(c)(ii) .
Month	A calendar month.
Moura System	The Rail Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine and the loading facility for Baralaba mine in the vicinity of Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor but excluding the corridor to Blackwater (and beyond).
Mutually Exclusive Access Applications	<p>Access Applications where if Aurizon Network grants Access Rights in respect of one or more of those Access Applications then Aurizon Network will have insufficient Available Capacity to grant Access Rights in respect of the remaining Access Applications.<u>In respect of:</u></p> <p><u>(a) two or more Access Applications where if Aurizon Network grants Access Rights in respect of one or more of those Access Applications then Aurizon Network will have insufficient Available Capacity to grant Access Rights in respect of the remaining Access Applications; and</u></p> <p><u>(a)(b) an Access Application(s) and a proposed Transfer which requires Ancillary Access Rights, where if Aurizon Network grants Access Rights in respect of the Access Application(s) then Aurizon Network will have insufficient Available Capacity to grant the Ancillary Access Rights in respect of the Transfer.</u></p>
Negotiation Cessation Notice	A notice issued by Aurizon Network in accordance with Part 4 .
Negotiation Period	The period during which the terms and conditions of an Access Agreement will be negotiated, as described in clause 4.11.1 .
Negotiation Process	The meaning given to that term in clause 5.1(a) .
Network	A person performing Network Control Services from within

Controller	a Network Control centre.
Network Control Services	<p>The management and monitoring of all Train Movements and of all other operation of Rollingstock on the Rail Infrastructure and of any activities affecting or potentially affecting such Train Movements or Rollingstock operation including:</p> <ul style="list-style-type: none"> (a) recording Train running times on Train diagrams and in Aurizon Network's information systems; (b) reporting of incidents occurring on the Rail Infrastructure; (c) managing incidents occurring on the Rail Infrastructure from within a Network Control centre; (d) Field Incident Management and Yard Control services; and (e) exchanging information with Railway Operators, and Network Control has a related meaning.
Network Development Plan	A plan setting out options and indicative plans relating to the short and medium term development, extension, use, or improvement of, or capital investment in, or interaction with, the Coal Systems to promote increased Capacity, which contains the information outlined in clause 7A.6 .
Network Incident	<p>Any derailment, disablement or breakdown of Rollingstock, accident, collision or other unplanned occurrence, on or affecting the use of the Rail Infrastructure which causes or contributes to, or could cause or contribute to:</p> <ul style="list-style-type: none"> (a) the death of, or injury to, any person; (b) damage to any property; (c) Environmental Harm; or (d) a disruption to, or cancellation by Aurizon Network of any Train Movement.
Network Management Principles	The principles set out in Schedule G and all System Rules existing from time to time.
New Access Agreement	An Access Agreement to the extent entered into or varied for the purpose of a Transfer from an Old Access Agreement.
New Expansion	The meaning given to that term in clause 6.4.5(b) .

Newlands System	The Rail Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor, with the exception of the corridor between the Newlands mine and the North Goonyella mine (and beyond).
Nominal Payload	Has the meaning given to that term in the Standard Access Agreement.
Nominal Train Payload	The nominal nt that applies to the Train Service as specified under the System Reference Tariff or Expansion Tariff (such as, for the System Reference Tariffs under clause 7.2(e), 8.2(d), 9.2(d), 10.2(c) and 11.2(b) of Schedule F), as applicable.
Nominated Access Rights	As applicable: (a) in clause 7.4.2 (Transfers), the meaning given to that term in clause 7.4.2(b)(i)(A) ; and (b) in clause 7.4.3 (Relinquishments), the meaning given to that term in clause 7.4.3(b)(i) .
Nominated Infrastructure	That Rail Infrastructure over which the relevant Reference Train Service travels between the Nominated Loading Facility/ies and Nominated Unloading Facility/ies.
Nominated Monthly Operational Rights	Has the meaning given to that term in the Standard Access Agreement.
Nominated Monthly Train Services	Has the meaning given to that term in the Standard Access Agreement.
Nominated Loading Facility	A loading facility specified for a nominated Reference Train Service in Schedule F .
Nominated Network	The meaning given to that term in the Standard Access Agreement.
Nominated Railway Operator	For an Access Holder, a Railway Operator nominated or appointed by that Access Holder in accordance with an Access Agreement for the purpose of operating Train Services for that Access Holder for specified periods in accordance with that Access Holder's Access Rights.
Nominated Unloading Facility	An unloading facility specified for a nominated Reference Train Service in Schedule F .
Nominee Operator	The meaning given to that term in clause 4.10.1(a) .
Non-availability	The following requirements:

Circumstances	<ul style="list-style-type: none"> (a) the relevant person has notified Aurizon Network that the evidence or information is not available and is not reasonably able to be produced, procured or otherwise obtained, including providing the relevant supporting facts or circumstances. (For example, the relevant facts or circumstances may relate to the development of the project being at too early a stage for the person to be able to produce or procure the relevant evidence or information.); and (b) having regard to the information provided under paragraph (a) of this definition, Aurizon Network (acting reasonably) is satisfied that: <ul style="list-style-type: none"> (i) the evidence or information is not available and is not reasonably able to be produced, procured or otherwise obtained; and (ii) the failure or inability does not indicate a lack of genuine intention to obtain the requested Access Rights or a reasonable likelihood that the Access Rights will not be utilised at the level sought.
Notice Date	The meaning given to that term in clause 7A.4.2(g)(iii) .
Notice of Intention to Relinquish	The meaning given to that term in clause 7.4.3(a) .
Notice of Intention to Transfer	The meaning given to that term in clause 7.4.2(a) .
nt	Unless otherwise specified, the net tonnes attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rollingstock when loaded utilised in the relevant Train Service (including all goods, product, persons or matter carried) less the weight of such Rollingstock (in tonnes) when empty.
ntk	The net tonne kilometres attributed to the relevant Train Service, being the nt for the Train Service multiplied by the distance (in kilometres) from origin to destination for the Train Service as set out, from time to time, in the Access Agreement relating to that Train Service or, where there is no Access Agreement or the Access Agreement does not set out that distance, as determined by Aurizon Network (acting reasonably).
Old Access Agreement	In relation to a New Access Agreement, the pre-existing Access Agreement to which the relevant Transfer relates.
Operating Plan	A description specifying reasonable details of how the proposed Train Services are to be operated, including the matters required in Schedule C .

Operational Constraint	Any restriction on the use of any part of the Rail Infrastructure that impacts adversely on Train Services, including speed restrictions, load restrictions, Possessions or signalling or overhead restrictions.
Origin System	The Coal System on which the Nominated Loading Facility is located.
Origin Tariff	The relevant Reference Tariff applying to the relevant Cross System Train Service in the Origin System.
OTCI	The Overall Track Condition Index for Aurizon Network's Below Rail network for each Coal System, and provides a quality measure of Aurizon Network's track.
Out-Of-Course Running	The circumstance that occurs when the actual running of one or more Train Service/s differs by more than the relevant agreed threshold/s as set out in the relevant Access Agreement, from that provided in the DTP.
Overload Charges	Charges that penalise the overloading of train wagons.
Part 8 Dispute	The meaning given to that term in clause 11.1.7(a) .
Passenger Priority Obligation	The obligations of a Railway Manager pursuant to sections 265 and 266 of the TIA.
Payload	Of a Train Service means the weight of product loaded onto any Train used in operating that Train Service.
Performance Delay	The meaning given to that term in clause 8.6(a)(i)(C) .
Planned Capacity	<p>The additional Train Paths (calculated on a Monthly and annual basis) that is expected to result from an Expansion that Aurizon Network is contractually committed to construct, taking into account:</p> <ul style="list-style-type: none"> (a) Aurizon Network's reasonable requirements for the exclusive or partial utilisation of the Rail Infrastructure resulting from that Expansion for the purposes of performing activities associated with the maintenance and repair of the Rail Infrastructure resulting from that Expansion, including the operation of work Trains; and (b) Aurizon Network's allowances for "day of operations" losses, speed restrictions and other operational losses or restrictions applicable to the Rail Infrastructure resulting from that Expansion as set out in the System Operating Parameters.
Planned Possession	A Possession that is entered into the MTP and may adversely impact upon the operation of Train Services and is notified to Access Holders at least twenty-one (21) days

prior to taking effect and, for clarity, includes Maintenance Work.

Possession

The temporary closure and/or occupation by Aurizon Network on part of the Rail Infrastructure (including closure of Track or isolation of any electrical overhead traction system) for the purposes of carrying out Planned Possession, Urgent Possession or Emergency Possession on or in the proximity of the Rail Infrastructure which may affect the safety of any person or property.

Possession Protocols

The protocols developed and advised by Aurizon Network from time to time (as varied in accordance with any Access Agreement) for managing and scheduling Possessions.

Potential Feasibility Funders

In respect of a proposed Feasibility Study, the Access Seekers (or if applicable, Customers or Conditional Access Holders) who are required to be given an opportunity to fund that Feasibility Study as determined in accordance with **clause 8.4.3(a)**.

Potential Pre-feasibility Funders

In respect of a proposed Pre-feasibility Study, the Access Seekers (or if applicable Customers or Conditional Access Holders) who are required to be given an opportunity to fund that Pre-feasibility Study as determined in accordance with **clause 8.4.2(c)**.

Pre-30 June 2006 Coal Access Agreements

- (a) Access Agreements in place on the day immediately prior to 30 June 2006; or
- (b) new Access Agreements entered as part of transferring Access Rights from such Access Agreements but only to the extent that the terms of the Access Agreement described in **paragraph (a)** apply in respect of the relevant Access Rights.

Pre-1 October 2010 Coal Access Agreements

- (a) Access Agreements in place on the day immediately prior to 1 October 2010; or
- (b) new Access Agreements entered as part of transferring Access Rights from such Access Agreements but only to the extent that the terms of the Access Agreement described in **paragraph (a)** apply in respect of the relevant Access Rights,

but does not include a Pre-30 June 2006 Coal Access Agreement.

Pre-Approval Date Coal Access Agreements

- (a) Access Agreements in place on the day immediately prior to the Approval Date; or
- (b) new Access Agreements entered as part of transferring Access Rights from such Access Agreements but only to the extent that the terms of the Access Agreement

described in **paragraph (a)** apply in respect of the relevant Access Rights,

but does not include a Pre-30 June 2006 Coal Access Agreement.

**Pre-feasibility
Funder**

An Access Seeker or a Customer who is a party to a Studies Funding Agreement with Aurizon Network in respect of a Pre-feasibility Study for an Expansion.

**Pre-feasibility
Study**

A study with the following scope of work:

- (a) identification and assessment of all technical solutions that a prudent engineering consultant would identify and assess, to deliver the required Capacity, taking into account the full Supply Chain;
- (b) assessment of technical and operating requirements of the proposed Expansion;
- (c) Capacity Analysis of:
 - (i) the proposed Expansion; and
 - (ii) any alternatives identified in **paragraph (b)** above, based on the most recent Capacity Analysis undertaken by Aurizon Network;
- (d) all necessary survey and geotechnical investigations to support the level of design and cost accuracy required in **paragraph (g)** below;
- (e) identification of a single preferred solution for the proposed Expansion (to be studied in detail during the Feasibility Study phase);
- (f) high level value engineering assessment of the preferred solution to lower the total cost of ownership, after allowing for risk, of the proposed Expansion; and
- (g) a written report.

The written report referred to above must include:

- (a) the project objectives for the proposed Expansion;
- (b) the outcome of the analysis, decisions and specifications referred to above (with reasons, where applicable);
- (c) evaluation of all of the project configuration alternatives that would provide the Capacity requirements of the proposed Expansion;
- (d) preliminary risk assessment of the proposed Expansion, including the alternatives identified in

paragraph (b) above;

- (e) identification of the project configuration alternative (referred to in **paragraph (b)** above) that has the lowest total cost of ownership, after allowing for risk;
- (f) analysis of the technical and economic feasibility of the preferred alternative and provides reasons why it is the preferred alternative;
- (g) design and construct project schedule for preferred alternative for the proposed Expansion that includes time tolerances and project budget with a+/-20% margin;
- (h) potential benefits, including capacity, maintenance and operating benefits of the proposed Expansion;
- (i) the design, estimate and schedule of the preferred alternative for the proposed Expansion, including;
- (j) details of any variation to the budgeted costs to undertake the Pre-feasibility Study; and
- (k) a Feasibility Study execution plan, including the scope of work (taking into account the scope of work required by the definition of “Feasibility Study” in this Undertaking), budget, time schedule and deliverables.

Preference Unit Holder

The holder of a preference unit created under a User Funding Agreement.

Preliminary Capacity Assessment Report

The meaning given to that term in **clause 7A.4.2(ed)(i)**.

Preliminary Information

The information referred to in **clause 1** of **Schedule A** (as applicable) and, where that information is published on the Website, that information as published on the Website from time to time.

[Preliminary System Capacity Assessment Report](#)

[The meaning given to that term in clause 7A.4.2\(d\)\(ii\)](#).

Preserved Train Path Obligations

The obligations of a Railway Manager under section 266A of the TIA.

Pricing Proposal

The meaning given to that term in **clause 6.4.4(a)**.

Private Efficient Cost	For the purposes of clause 6.3 , the cost for each Year, during the period for which the relevant Reference Tariff will apply, that reflects the costs that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices in the provision of the relevant Private Infrastructure to the required service standard.
Private Incremental Costs	<p>For the purposes of clause 6.3, those costs of providing access to the relevant Private Infrastructure, including capital (renewal and expansions) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Train Service or combination of Train Services (as appropriate) did not operate, where those costs:</p> <ul style="list-style-type: none"> (a) are assessed as Private Efficient Costs and based on the assets reasonably required for the provision of access to the relevant Private Infrastructure; (b) have been reviewed and endorsed by the QCA; and (c) have been submitted to Aurizon Network by the owner or operator of the relevant Private Infrastructure for the purpose of calculating the relevant tariffs.
Private Infrastructure	The rail transport infrastructure (as defined under the TIA), including track, signalling and electrical overhead traction system (if applicable), that is not Rail Infrastructure.
Private Infrastructure Owner	A person who owns, or proposes to construct and own, Private Infrastructure which will connect to the Rail Infrastructure in order to allow Trains operating on that Private Infrastructure to enter or exit from the Rail Infrastructure for the purposes of Access.
Projected Cost	The projected cost, including capital, maintenance and operating costs, (on a “most likely case” basis) of an Expansion applying the costing details and approach specified in the Pre-feasibility Study report for the Expansion to the capacity requirements of the Feasibility Funders in relation to the Feasibility Study for the Expansion.
Proposed Amendments	The meaning given to that term in clause 7A.2.4(c)(i)(F) .
Proposed System Rules	The meaning given to that term in clause 7A.2.5(a) .
Prospective Access Seeker	A person who (in good faith and on a bona fide basis) notifies Aurizon Network that the person wants Access, or increased Access, but has not yet provided Aurizon Network with a properly completed Access Application.

Provisional Capacity Allocation	The meaning given to that term in clause 8.5(a) .
Publication Date	The meaning given to that term in clause 7A.4.3(a)(iv) or clause 7.6(b)(ii) as applicable.
PV Amount	The meaning given to that term: <ul style="list-style-type: none"> (a) in respect of clause 7.4.2 (Transfers), in clause 7.4.6(c); and (b) in respect of clause 7.4.3 (Relinquishments), in clause 7.4.3(e)(ii).
QCA	The Queensland Competition Authority as established by the Act.
QCA Levy	The fee allocated to the nominated Train Services to cover the fees imposed by the QCA on beneficiaries of its regulatory services and, for a Reference Train Service, is that amount specified as such for that Reference Train Service in Schedule F .
Quarter	Each period of three consecutive Months commencing each 1 July, 1 October, 1 January and 1 April in each year.
Queensland Rail	Queensland Rail Limited ACN 132 181 090.
Queue	The meaning given to that term in clause 7.5.2(b) .
QTH	Queensland Treasury Holdings Pty Ltd ABN 52 011 027 295.
Rail Connection Agreement	An agreement by which Aurizon Network agrees to the connection of Private Infrastructure to the Rail Infrastructure.
Rail Infrastructure	Rail transport infrastructure (as defined under the TIA) for which Aurizon Network is the owner or lessee, the use of which is taken to be a service declared for the purposes of Part 5 of the Act pursuant to section 250(1)(a) of the Act.
Rail Infrastructure Manager	The meaning given to that term in the Rail Safety Act.
Rail Safety Act	<i>Transport (Rail Safety) Act 2010</i> (Qld).
Railway Manager	The meaning given to that term in the TIA.
Railway Operator	The meaning given to that term in the TIA and, for clarity, includes an Access Holder's nominated Train Operator.
Rapid Capacity Assessment	A Capacity Analysis which is limited to an analysis of Available Capacity having regard to the Baseline Capacity Assessment or most recent Capacity Assessment (if any) and any subsequent changes to the Available Capacity to

	determine if there is sufficient Available Capacity (if the Nominated Access Rights are deemed to be Available Capacity for the purposes of the Rapid Capacity Assessment) for the Transferred Access Rights.
Recipient	A person or entity to whom access to or disclosure of Confidential Information is made.
Reduced Conditional Access Rights	The Access Rights for a Segment of an Expansion, as determined in accordance with the formula in clause 8.9.5(b) .
Reduction Factor	The amount calculated in accordance with clause 7.4.4(d) .
Reduction Factor Provisions	The provisions set out in clause 7.4.4(d) .
Reference Tariff Provisions	The provisions set out in Schedule F .
Reference Tariffs	System Reference Tariffs and Expansion Tariffs.
Reference Train Service	A notional Train Service described in clause 1.3 of Schedule F .
Regulatory Asset Base	The asset value for the Rail Infrastructure accepted by the QCA for the purpose of developing Reference Tariffs for coal carrying Train Services.
Rejection Notice	The meaning given to that term in clause 4.4(d) .
Related Competitors	Functional units within the Aurizon Group or an Aurizon Party that has a direct or indirect interest (whether as owner, lessee, trust unit holder, operator, manager or otherwise and whether alone or together with others) in a: <ul style="list-style-type: none"> (a) port; or (b) coal mine or coal-extraction project, that is an origin or destination for any good conveyed over the Rail Infrastructure.
Related Operators	Functional units within the Aurizon Group that provide Above Rail Services.
Related Party	A related body corporate as defined in the Corporations Act.
Relevant Period	The relevant seven day period commencing at 12:00 am on Monday and ending immediately prior to 12:00 am on the following Sunday or such other period as expressly specified in the relevant System Rules.
Relevant Tax	Any tax, charge, levy, duty, impost, rate, royalty or imposition which is imposed on Aurizon Network by, or payable by Aurizon Network to, any Authority but does not include any

	income tax, fringe benefits tax, capital gains tax or any tax that replaces any of those taxes.
Relinquishment Date	The meaning given to that term in clause 7.4.3(b)(ii) .
Relinquishment Fee	The relinquishment fee determined in accordance with clause 7.4.3(e) .
Relinquishment Provisions	The provisions set out in clauses 7.4.3 and 7.4.4 .
Renewal	The meaning given to that term under clause 7.3(a) .
Renewing Access Seeker	The meaning given to that term under clause 7.3(a) .
Resumed Access Rights	For a Train Service Type, the meaning given to that term in clause 7.6(e)(ii)(A) .
Resumption Date	The meaning given to that term in clause 7.6(e)(ii)(B) .
Resumption Notice	The meaning given to that term in clause 7.6(d) .
Resumption Provisions	The provisions set out in clause 7.6 .
Resumption Trigger Event	The meaning given to that term clause 7.6(a) .
Revenue Adjustment Amounts	Collectively the AT ₂₋₄ Revenue Adjustment Amount and the AT ₅ Revenue Adjustment Amount and Revenue Adjustment Amount means one of them.
Review Date	in respect of a Change in Reference Tariff Provisions, the first day of the Month during which the Change in Reference Tariff Provisions takes effect.
Review Event	The occurrence of any of the events listed in clause 5.3 of Schedule F .
ROA	The meaning given to that term in clause 6.6.3(c) .
Rollingstock	Locomotives, carriages, wagons, rail cars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicle that operates on or uses the Track.
Rollingstock Configuration	The description of the combination of Rollingstock comprising a Train including identification number and gross mass of individual items of Rollingstock and the order in which those Rollingstock items are placed in the Train.

Rollingstock Interface Standards	The minimum standards relating to Rollingstock and Rollingstock Configurations specified in Aurizon Network’s document entitled “Interface Standards” published on the Website (as amended and replaced from time to time).
rtp	The number of reference Train Paths used by the relevant Train Service calculated in accordance with clause 6.2.3(c) .
Safety Management System	Aurizon Network’s safety management system as required under the Rail Safety Act.
Safety Regulator	The rail safety regulator as defined under the Rail Safety Act.
Safety Standards	All standards relating to safety, including occupational health and safety, established in published guidelines, industry practice or Aurizon Network policies and all standards relating to safety, including occupational health and safety, prescribed by any Laws.
Safeworking Procedures	<p>The procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of worksites on the Infrastructure specified in Aurizon Network’s document entitled Safeworking Procedures as:</p> <p>(a) notified by Aurizon Network to the relevant Train Operator; or</p> <p>(b) published on the Website,</p> <p>(as amended and replaced from time to time).</p>
Scheduled Train Path	For a Timetabled Traffic, the entitlement of an Access Holder, as identified in its Train Service Entitlement, to use a specified portion of the Rail Infrastructure at the times and between the locations specified in the relevant MTP, so as to allow the passage of one Train.
Second Year Allowable Revenue	The meaning given to that term in clause 4.4(a)(i) of Schedule F .
Segment	Each segment of the Expansion specified as such in the Train Description for the Conditional Access Rights in the relevant Access Agreement which are conditional upon the completion and commissioning of the Expansion.
Self-Insurance	Any funds set aside by Aurizon Network for the purpose of allowing Aurizon Network to manage its own financial risks, including all claims that may be made against Aurizon Network or its relevant Access Holders for which Aurizon

	Network self-insures.
Shortfall Expansion	The meaning given to that term in clause 8.9.4(a) .
Short Term Transfer	<p><u>A Transfer:</u></p> <p><u>(a) for a term of less than or equal to 2 years; and</u></p> <p><u>(b) in respect of which the Transferee (or its Customer) has an existing Access Agreement under which the Transferred Access Rights can be added in accordance with clause 7.4.2(a)(v)(A); and</u></p> <p><u>(c) the origin for the Transferred Access Rights is on the same Mainline Path as the Nominated Access Rights, but excluding a Customer Initiated Transfer.</u> The meaning given to that term in clause 0.</p>
Short Term Transfer Period	The meaning given to that term in clause 0.
Stand Alone Costs	<p>Those costs that Aurizon Network would incur if the relevant Train Service(s) was (were) the only Train Service(s) provided Access by Aurizon Network, where those costs are assessed:</p> <p>(a) as the Efficient Costs; and</p> <p>(b) on the basis of the assets reasonably required for the provision of Access,</p> <p>and includes an allowable rate of return expressed in nominal post tax terms (with the cost of debt expressed on a before tax basis), as agreed by Aurizon Network and the QCA or, failing such agreement, as determined by the QCA, and Stand Alone has a similar meaning.</p>
Standard Access Agreement	The standard form Access Agreement set out in Volume 3.
Standard Agreement	Any agreement that is in the form of a Standard Access Agreement, Standard Rail Connection Agreement, Standard User Funding Agreement, Standard Studies Funding Agreement or Standard Train Operations Deed.
Standard Rail Connection Agreement	The standard form of Rail Connection Agreement set out in Volume 3.
Standard Studies Funding Agreement	The standard form of Studies Funding Agreement set out in Volume 3.
Standard Train	The standard form of Train Operations Deed set out in

Operations Deed	Volume 3.
Standard User Funding Agreement or SUFA	The standard form of User Funding Agreement set out in Volume 3.
State	The State of Queensland.
Static Length	In respect of a Train, the length of that Train calculated as the aggregate of the lengths of each item of Rollingstock comprising or to comprise that Train (including the locomotive/s).
Stowage	<p>(a) Dwell; and</p> <p>(b) the short-term storage of Trains on the Rail Infrastructure at locations specified by Aurizon Network where an Access Holder cannot operate its Train Service in accordance with its Train Service Entitlement as the result of a breakdown or other temporary outage of the Access Holder, the loading facility or the unloading facility, and/or the unavailability of Rail Infrastructure, but does not include storage of individual items of Rollingstock or the long-term storage of Trains.</p>
Studies Funding Agreement	In respect of Pre-feasibility Study or a Feasibility Study, as applicable, an agreement with Aurizon Network in relation to the provision of funding to Aurizon Network for that Pre-feasibility Study or Feasibility Study.
Subsidiary	The meaning given to that term in the Corporations Act.
Supply Chain	All aspects that affect the transportation of coal from a mine to the end customer, including loading facilities, Rail Infrastructure, Railway Operators, load out facilities and coal export terminal facilities. For clarity, a number of supply chains can exist within a Coal System and can be denoted by reference to the destination coal export terminal.
Supply Chain Group	<p>A group:</p> <p>(a) that has been established as a supply chain coordination group for the purpose of coordinating some or all aspects of the planning or operation of a Supply Chain;</p> <p>(b) which has the support of sufficient participants in the Supply Chain to effectively perform that coordination purpose; and</p> <p>(c) which includes consideration of the service taken to be</p>

declared under section 250(1)(a) of the Act.

**Supply Chain
Master Plan**

An integrated plan identifying feasible investment options for increasing the capacity of a Supply Chain (including variations to Supply Chain operating assumptions for the Supply Chain) and evaluating those investment options from a total cost, risk and timing perspective.

**Supply Chain
Rights**

The following rights:

- (a) where any Supply Chain infrastructure is required to be accessed or used to operate Train Services, rights on the Rail Infrastructure;
- (b) in respect of Train Services that will operate on Supply Chain infrastructure prior to entering and/or after exiting the Rail Infrastructure as part of its journey, rights which are sufficient to allow the Train Services to enter or exit (as applicable) the Rail Infrastructure from or to (as applicable) that Private Infrastructure; and
- (c) if the Train Services are to be operated to an unloading facility or loading facility, rights which are sufficient to allow:
 - (i) in relation to an unloading facility:
 - (A) access to the relevant unloading facility with a fully loaded Train which complies with the proposed Train Service Entitlement for the Train Services; and
 - (B) the unloading of all coal from the Train at the relevant unloading facility; and
 - (ii) in relation to a loading facility:
 - (A) access to the relevant loading facility with a Train which complies with the proposed Train Service Entitlement for the Train Services; and
 - (B) the loading of coal onto the Train at the relevant unloading facility,

assuming, in either case, 100% utilisation of the Access Rights for the relevant Train Services in accordance with the proposed Train Service Entitlement.

**Surplus Access
Rights**

Has the meaning given to that term in the Standard Access Agreement.

**Suspension
Period**

The meaning given to that term in **clause 4.5(l)**.

<u>System Available Capacity</u>	<u>System Capacity, excluding all Committed Capacity.</u>
<u>System Capacity</u>	<p>(a) <u>The maximum number of Train Paths (calculated on a Monthly and annual basis) that can be provided; plus</u></p> <p>(b) <u>the number of Train Paths (calculated on a Monthly and annual basis) that are expected to result from an Expansion that Aurizon Network is contractually committed to construct,</u></p> <p><u>in respect of each Coal System and for the mainline and each branch line of each Coal System, using the following assumptions:</u></p> <p>(c) <u>reasonable requirements in respect of maintenance and repair of each element of the Supply Chain (including loading facilities, load out facilities and coal export terminal facilities);</u></p> <p>(d) <u>reasonably foreseeable delays or failures occurring in the relevant Supply Chain (including mine, port and rolling stock associated losses);</u></p> <p>(e) <u>the Supply Chain operating mode; and</u></p> <p>(f) <u>[insert others]</u></p>
<u>System Capacity Analysis</u>	<p><u>A simulation modelling assessment of the System Available Capacity to determine, as the context requires:</u></p> <p>(a) <u>System Available Capacity;</u></p> <p>(b) <u>whether there is sufficient System Capacity to accommodate Committed Capacity; and</u></p> <p>(c) <u>whether there is sufficient System Available Capacity to accommodate the requested Access Rights not yet considered to be Committed Capacity.</u></p>
<u>System Capacity Assessment</u>	<u>An assessment undertaken under clause 7A.4.2(a)(ii).</u>
<u>System Capacity Assessment Report</u>	<u>The Preliminary System Capacity Assessment Report, as amended in accordance with clause 7A.4.2(f) (if applicable).</u>
System Discount	The amount specified as such, in Schedule F , for the relevant Reference Train Service.
System Operating Parameters	Aurizon Network’s assumptions on the operation of each element of the coal Supply Chain and the interfaces between those elements including in relation to the Supply Chain operating mode, seasonal variations and live run losses, as published on its Website from time to time.

System Path	A path that can be taken by a Train Service from a specific origin to a Nominated Unloading Facility.
System Premium	The amount specified as such, in Schedule F , for the relevant Reference Train Service.
System Reference Tariff	The tariffs set out in clauses 7, 8, 9, 10 and 11 of Schedule F for a specified Reference Train Service in relation to a Coal System (as amended, varied or escalated in accordance with this Undertaking or the Act from time to time).
System Rules	<p>Rules specifying the way in which Aurizon Network will plan, schedule and control the operation of Train Services on a one or combination of Coal Systems:</p> <p>(a) which:</p> <ul style="list-style-type: none"> (i) are approved for a Coal System under clause 7A.2.5; or (ii) existed under the 2016 Undertaking immediately prior to the Approval Date, <p>as amended from time to time under clause 7A.2.4; and</p> <p>(b) which may include, for example:</p> <ul style="list-style-type: none"> (i) the declaration of System Paths for a Coal System; (ii) the procedures for Access Holders to submit Train Orders and for Aurizon Network to schedule Train Services in the ITP; (iii) the procedures for Aurizon Network to schedule the DTP from the ITP, provided that these procedures must be consistent with the matters referred to in clauses 5.2 and 5.4(c) of Schedule G; (iv) the relevant critical objectives for Train Services operating in one or a combination of Coal Systems to assist decision-making for Network Control under clause 7 of Schedule G; (v) a methodology for defining path availability/use for the purpose of calculating TOP Charges; and (vi) the identification of any circumstances where a full Initial Capacity Assessment or Capacity Analysis is not required for the purposes of clause 4.6(c) or clause 4.11.2(a)(v).
Take or Pay	A charge payable to Aurizon Network in circumstances

	where contracted Train Services are not operated by or for the relevant Access Holder. For a Reference Tariff, the Take or Pay requirements and calculations are set out in clause 3 of Schedule F .
Target Capacity	The meaning given to that term in clause 8.3.3(b) .
Tariff Based Access Agreement	In relation to a Reference Tariff, an Access Agreement to the extent that the Access Charges under that Access Agreement are set by reference to that Reference Tariff.
Tariff Gtk	In respect of a Train Service Type, the aggregate of the gtk for all coal carrying Train Services that are subject to the same type of Reference Tariff as the that Train Service Type.
Tariff Take or Pay	Take or Pay in relation to Train Service Entitlements for which Access Charges are set by reference to the same Reference Tariff.
Tax Act	The <i>Income Tax Assessment Act 1997</i> (Cth) and regulations made under it, as amended from time to time.
Term	The period between the Approval Date and the Terminating Date.
Terminating Date	The earlier of: <ul style="list-style-type: none"> (a) 30 June 2021; (b) the date on which the service to which this Undertaking relates, ceases to be a service declared for the purposes of Part 5 of the Act; and (c) the date on which this Undertaking is withdrawn in accordance with the Act.
Third Party	A person other than an Aurizon Party.
Third Party Access Seeker	A Third Party which is an Access Seeker and, for the purposes of Part 3 , includes a Third Party who wants Access, or increased Access whether or not an Access Application has been lodged.
TIA	<i>Transport Infrastructure Act 1994</i> (Qld).
Timetabled Traffic	A traffic, the Train Service Entitlement in respect of which, is defined in terms of a specified Train Path on a particular day and/or week (but excluding any traffic that is a coal carrying Train Service).
TOP Charges	The charge for contracted Train Services where the contracted Train Services are not operated by, or by a Railway Operator for, the relevant Access Holder under the relevant Access Agreement and is the amount determined under clause 3.2 and 3.3 of Schedule F .

Total Actual Revenue	<p>(a) For AT₂₋₄ in relation to an Coal System, the amount calculated in accordance with clauses 4.3(d) to (f) of Schedule F; and</p> <p>(b) for the AT₅ component of Access Charges in relation to a Coal System, the amount calculated in accordance with clause 4.3(g) of Schedule F.</p>
Track	That part of the Rail Infrastructure comprising the rail, ballast, sleepers and associated fittings.
Track Segment	A part of the Rail Infrastructure comprising a rail corridor shown as a specified "Track Segment" as shown in the Preliminary Information including all branch lines directly connecting coal mine loading facilities to that "Track Segment".
Train	Any configuration of Rollingstock operating as a unit on Track.
Train Description	The meaning given to that term in the relevant Access Agreement.
Train Movement	Any operation of a Train on the Rail Infrastructure by a Train Operator or any other Railway Operator.
Train Orders	Railing requests for a nominated period of time submitted to Aurizon Network, by or on behalf of an Access Holder or a Train Operator, after taking into account any restrictions on or unavailability of loading or unloading facilities, Private Infrastructure, Rollingstock or other Above Rail Services, to assist in the scheduling of Train Services.
Train Operations Deed	A Train Operations Deed agreed (or otherwise entered into) between Aurizon Network and the relevant Train Operator under clause 5.3(c) of this Undertaking.
Train Operator	A person nominated by an Access Seeker or an Access Holder to operate Train Services for that Access Seeker or Access Holder under the terms of a Train Operations Deed.
Train Path	The occupation of a specified portion of Rail Infrastructure, which may include multiple sections in sequential order, for a specified time.
Train Service	A Train operating on the Rail Infrastructure from a specified origin to a specified destination.
Train Service Change	<p>A change to:</p> <p>(a) for Timetabled Traffic, the time or times at which; or</p> <p>(b) for Cyclic Traffic, the Train Path or Train Paths for which,</p> <p>one or more Train Services are planned or scheduled to</p>

	operate, as applicable, (and not the other terms under which a person has an entitlement to run those Train Services, for example, the Rollingstock or Rollingstock Configuration for those Train Services or the Rail Infrastructure on which those Train Services may operate).
Train Service Commitment Date	The date specified as such for a Train Service Type in the relevant Access Agreement.
Train Service Entitlement	An Access Holder's entitlement pursuant to an Access Agreement to operate or cause to be operated a specified number and type of Train Services over the Rail Infrastructure including within a specified time period, in accordance with specified scheduling constraints and for the purpose of either carrying a specified commodity or providing a specified transport service.
Train Service Type	In respect of an Access Holder, a 'Train Service Type' as defined in that Access Holder's Access Agreement.
Transfer	The transfer of all or part of an Access Holder's Access Rights (or the Access Rights held for the benefit of the Customer) for a term which is no longer than the remaining term of the Access Agreement but excluding: (a) a Customer Initiated Transfer; or (a)(b) a change in the nomination of a Train Operator by an Access Holder under clause 7.4.2.
Transfer Cancellation Notice	The meaning given to that term in clause 7.4.2(v) .
Transfer Date	The meaning given to that term in clause 7.4.2(b)(i)(C) .
Transferee	The meaning given to that term in clause 7.4.2(a) .
Transfer Fee	An amount payable to Aurizon Network under clause 7.4.6(c) .
Transfer Notice	The meaning given to that term in clause 7.4.3(a).
Transferor	The meaning given to that term in clause 7.4.2(a) .
Transfer Period	The period commencing on the Transfer Date and ending on the date on which the transfer of the Nominated Access Rights is terminated (if any).
Transfer Provisions	The provisions outlined in clauses 7.4.2 and 7.4.4 .
Transferred Access Rights	The meaning given to that term in clause 7.4.2(b)(ii)(A) .
Transmission	The meaning given to that term in the <i>Electricity Act 1994</i>

Entities	(Qld).
Ultimate Holding Company	The holding company (as defined in the Corporations Act) of Aurizon Network, which is the ultimate owner of Aurizon Network – being as at the Approval Date, Aurizon Holdings.
Ultimate Holding Company Support Deed	The deed required under clause 2.5(a) .
Unallocated Delay	A delay to a Train Service from its Train Path scheduled in the DTP that is neither an Above Rail Delay nor a Below Rail Delay.
Undertaking	This document (including all volumes and schedules) which is an access undertaking for the purposes of the Act.
Unloading Time	The time between a Train Service arriving at a Nominated Unloading Facility and that same Train departing the Nominated Unloading Facility, and for the purpose of clarity, this time runs from when a Train Service arrives at the entry signal to the Nominated Unloading Facility until it has completed unloading, presented at the exit signal, is ready to depart the Nominated Unloading Facility and has advised the relevant Network Controller accordingly.
Urgent Possession	<p>A Possession:</p> <ul style="list-style-type: none"> (a) required to correct problems that Aurizon Network (acting reasonably) considers potentially dangerous to any person, or property; (b) notified to Access Holders less than twenty-one (21) days in advance of taking effect; and (c) that Aurizon Network, complying with the Possession Protocols, will use reasonable endeavours to carry out between seven (7) days and three (3) Months after the detection of the fault giving rise to the need for that Possession.
User Funded Expansion	An Expansion that is funded wholly or partly by Expansion Funders under a User Funding Agreement.
User Funding	The provision of funding to Aurizon Network by an Expansion Funder (including indirectly through a User Funding Trustee or other person) in accordance with a User Funding Agreement.
User Funding Agreement	An agreement, or a number of related agreements, to which Aurizon Network is a party under which, among other things, Access Seekers (and/or their Customers) agree to provide funding for the construction of an Expansion (including agreements in the form of the Standard User

	Funding Agreement).
User Funding Trust	The trust established under a User Funding Agreement.
User Funding Trustee	An entity that is the trustee of a User Funding Trust.
Users	Access Seekers, Access Holders and/or their Customers (if any).
Varied WACC	A weighted average cost of capital different to that of the Approved WACC.
Volume Risk	The meaning given to that term in clause 6.4.4(a)(iv) .
Website	www.aurizon.com.au.
Yard Control	The control of Train Movements and other activities affecting Train Movements at those locations that are not under the direct control of a Network Controller.
Year	A period of twelve (12) Months commencing 1 July.

12.2 Interpretation

- (a) Unless expressed to the contrary, in this Undertaking:
- (i) a reference to:
- (A) a specified position name is a reference to that position name as it changes during the Term, provided that the position retains responsibility for the same or substantially the same tasks;
 - (B) a person includes a partnership, an unincorporated joint venture, an unincorporated association, a corporation, a government or statutory body or authority and any other entity recognised by law;
 - (C) 'dollars' or '\$' means a reference to Australian dollars;
 - (D) any parties by their defined terms includes that party's executors, administrators, permitted assigns or permitted subcontractors or, being a company, its successors, permitted assigns or permitted subcontractors and the obligation

- of any party extends to those persons;
- (E) a right includes a benefit, remedy, discretion, authority or power;
 - (F) conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
 - (G) 'includes' means includes without limitation;
 - (H) time is to local time in Brisbane, Queensland;
 - (I) this or any other document or agreement includes the document or agreement as varied, amended or replaced from time to time;
 - (J) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (K) this Undertaking includes this Undertaking as amended from time to time in accordance with the Act or this Undertaking;
 - (L) an input of a Reference Tariff or an Access Charge is reference to each amount that is a tariff or input which is applied in the calculation for that Reference Tariff or Access Charge – for example, the amounts for AT₁, AT₂, AT₃, AT₄, AT₅, EC and the QCA Levy specified in **clauses 7.2, 8.2, 9.2, 10.2 and 11.2 of Schedule F**, as applicable for each Reference Tariff, are each inputs for the Reference Tariff; and
 - (M) a component of a Reference Tariff or an Access Charge is a reference to each sub-calculation

for that Reference Tariff or Access Charge that involves an input being multiplied by an applicable multiplier – for example, in the formula under **clause 2.2(a) of Schedule F** each individual bracketed calculation comprised in that formula is a separate component of the Reference Tariff;

- (ii) words importing the singular number includes the plural number and vice versa;
- (iii) words importing any gender include the other gender;
- (iv) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (v) clause headings are for reference purposes only and do not affect the interpretation of this Undertaking;
- (vi) where:

- (A) a group of persons are in a partnership, an unincorporated joint venture, an unincorporated association or other similar arrangement; and
- (B) that group of persons together execute or seek to execute an agreement (including an Access Agreement or a rail haulage agreement) or such an agreement is executed or is sought to be executed for or on behalf of that group of persons,

then:

- (C) that group of persons is deemed to constitute a single person, Customer, Access Seeker or Access Holder (as applicable); and
- (D) where a notification required to be given under this Undertaking is given by one member of that group of persons it will be deemed to have been given on behalf of all members of that group persons;

(vii) every agreement or undertaking expressed or implied by which more than one person agrees or undertakes any obligations or derives any benefit binds or ensures for the benefit of those persons jointly and each of them severally;

(viii) subject to **clause 12.2(a)(ix)**, a reference to:

(A) a part or clause is a reference to the corresponding part or clause found in **Part 1 to Part 12** of this Undertaking;

(B) a volume is a reference to the corresponding volume of this Undertaking; or

(C) a schedule is a reference to the corresponding schedule to this Undertaking,

as amended or replaced from time to time;

(ix) in a schedule to this Undertaking, a reference to:

(A) a part or clause, is a reference to a part or clause of that schedule unless otherwise stated; and

(B) a part or clause of this Undertaking, is a reference to a part or clause found in **Part 1 to Part 12** of this Undertaking; and

(x) Subject to **clause 12.2(b)**, if there is any inconsistency between matters contained in a schedule and **Part 1 to Part 12** of this Undertaking, the provisions in **Part 1 to Part 12** of this Undertaking prevail.

(b) A term that is used in this Undertaking but not defined in this **Part 12** and which is defined in a Standard Access Agreement, will have the meaning given to that term in the Standard Access Agreement.

(c) Where a provision of this Undertaking includes a reference to preventing or hindering an Access Seeker's or Access Holder's Access:

(i) that reference is solely a reflection of Aurizon Network's obligations under sections 104 and 125 of the Act (as applicable) and does not expand those obligations; and

(ii) must be given the same meaning as in sections 104 and 125 of the Act (as applicable).

- (d) To the extent that Aurizon Network's obligations under this Undertaking are or become inconsistent with Aurizon Network's obligations under any Law, this Undertaking does not apply to the extent of that inconsistency.
- (e) If this Undertaking obliges Aurizon Network to provide any information, reports, documents or other material (in whatever form) (**Information**) to the QCA or any other person (including an Auditor) then, despite any other provision in this Undertaking, Aurizon Network is not required to comply with that obligation if Aurizon Network claims:
 - (i) on the ground of self-incrimination a privilege Aurizon Network would be entitled to claim against providing the Information were Aurizon Network a witness in a prosecution for an offence in the Supreme Court of Queensland; or
 - (ii) that legal professional privilege applies in respect of that Information.

But if Aurizon Network does not comply with an obligation on that basis, Aurizon Network must notify the QCA of this and Aurizon Network or the QCA may apply to the Supreme Court of Queensland for a determination of the validity of such a claim of privilege.

- (f) Despite any other provision in this Undertaking, this Undertaking does not expressly or impliedly waive any claim that Aurizon Network may have to legal professional privilege in respect of any information, reports, documents or other material (in whatever form).

12.3 Notices

- (a) A notice, consent, approval, undertaking or any other communication or document (**Notice**) connected with this Undertaking has no legal effect unless it is in writing.
- (b) Where this Undertaking requires a Notice be given to a person, the Notice may, in addition to any other lawful means be given by being hand delivered, sent by pre-paid post, facsimile or, if agreed by Aurizon Network, email.
- (c) Unless a later time is specified in it, any Notice takes effect and, subject to **clause 12.3(d)**, is given from the earlier of the time it is actually given or is taken to be given.
- (d) A Notice is taken to be given, in the case of a Notice given by:
 - (i) hand delivery, at the time of delivery;
 - (ii) post:
 - (A) three Business Days after the date of posting – if posted within

Australia to an Australian address; and

- (B) 10 Business Days after the date of posting – in any other case;
 - (iii) facsimile, on the sender's facsimile machine producing a transmission report indicating that the facsimile was sent in full to the facsimile number of the addressee (and that report is conclusive evidence that the addressee received the facsimile in full at the time indicated on that report); and
 - (iv) email, on the next Business Day after being sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.
- (e) If a Notice is given:
- (i) after 5:00 pm in the place of receipt; or
 - (ii) on a day which is not a Business Day in the place of receipt,

it is taken as having been given at 9:00 am on the next Business Day in the place of receipt.

12.4 Transitional

- (a) All acts, applications, approvals, approval processes, arrangements, circumstances, conduct, decisions, determinations, dispute resolution processes, events, Force Majeure Events, matters, negotiations, notices, omissions, queues, registers, requests, time periods, votes, warranties or any other process or thing whatsoever (**Matter**) done, agreed, arising, given, received, undertaken, commenced or established (**Done**) or deemed to be Done under the 2016 Undertaking are deemed to be Done and, as applicable, continue under this Undertaking as though the Matter was Done under this Undertaking to the extent that this Undertaking provides for equivalent Matters to be Done.
- (b) For the purposes of this Undertaking, the date of execution for an Access Agreement executed in accordance with Subparagraph 2.5.2(f) of the 2008 Undertaking is deemed to be the date when the Internal Access Agreement (as defined under the 2008 Undertaking) it replaced was put in place.
- (c) If this Undertaking requires Aurizon Network to report to the QCA on a Quarter or a Year that began prior to the Approval Date, then:

- (i) the relevant report will include information in respect of the period prior to the Approval Date; and
 - (ii) Aurizon Network is only obliged to provide information for the period prior to the Approval Date as would have been required to be provided under the 2016 Undertaking in respect of that same type of report.
- (d) If the Approval Date is not the first day of a Year, then this Undertaking will apply in respect of any calculation of Revenue Adjustment Amounts, adjustments to Second Year Allowable Revenue and other relevant revenue cap calculations in relation to the whole of the Year within which the Approval Date falls.
- (e) If the Approval Date occurs prior to the calculation of Revenue Adjustment Amounts, adjustments to Second Year Allowable Revenue and other revenue cap calculations for the preceding Year being undertaken and submitted to the QCA for approval, then those calculations may still be undertaken, and submitted to the QCA, by Aurizon Network as though the provisions under the 2016 Undertaking still applied in respect of those calculations and their approval by the QCA.
- (f) If a transitional matter is not otherwise dealt with under **clauses 12.4(a) – (e)**, the QCA and Aurizon Network may agree in writing the arrangements that apply to manage the transition between the undertaking in place on the day immediately prior to the Approval Date and this Undertaking.

Schedule A

Preliminary, Additional and Capacity Information

1 Preliminary Information

The following preliminary information will be made available on the Website for Access Seekers:

- (a) **(Introduction)** The criteria for the use of data and the purpose of the preliminary information.
- (b) **(Civil Infrastructure)** A description of the railway and Track and any operational constraints, e.g. grades and curves.
- (c) **(Telecommunications)** A description of the communication system used.
- (d) **(Electric Traction)** A general system description.
- (e) **(Interface Requirements)** Information on track gauge, axle loads, train speeds, Rollingstock gauge and noise limits.
- (f) **(Locality Information)** Terrain information and climatic conditions and resultant system disruptions.
- (g) **(Committed Corridor Upgrades)** Identification of any relevant committed corridor upgrades.
- (h) **(Maps and Drawings)** Corridor maps and Line Diagrams including plans specifying Track Segments and Mainline Paths.
- (i) **(Level Crossings)** The number of public and occupational level crossings and the type of protection used.
- (j) **(Train Operations)** Sectional running times (calculated based on the projected average sectional running times), maximum Train lengths incident recovery times, crew change locations and facilities forming part of the Rail Infrastructure² and stowage infrastructure locations.
- (k) **(Systems)** A description of operational, safeworking and signalling systems.
- (l) **(Rollingstock Interface Standards)** A copy of the relevant Rollingstock Interface Standards.
- (m) **(Description of entitlements)** Information relating to the description of, and calculations in respect of, Train Service Entitlements and Capacity.
- (n) **(Commercial Information)** The applicable Reference Tariffs and Standard Access Agreement and System Rules together with a

² For example, safety matting next to Track to help people safely walk on the ballast.

sample IRMP listing Interface Risks and Environmental Risks that should, at a minimum, be addressed during an Interface Risk Assessment, along with suggested control measures that are at least industry standard or otherwise required by Aurizon Network's accreditation requirements under the Rail Safety Act.

However, the sample IRMP is not exhaustive of the matters that should be considered as part of an Interface Risk Assessment. An IRMP may set out additional or different matters depending on the circumstances (including additional safety and/or Rollingstock issues and associated controls) as long as those additional matters are industry standard or otherwise required by Aurizon Network's accreditation requirements under the Rail Safety Act.

2 Additional Information

For the purpose of **clause 4.11.2(a)(ii)** of this Undertaking, Aurizon Network is required to provide the following information to an Access Seeker:

<p>Access to rail corridor</p>	<p>Where Aurizon Network does not have authority to authorise the Access Seeker to access land on which Rail Infrastructure on a route nominated by the Access Seeker is situated, the following information in relation to access to that land:</p> <ul style="list-style-type: none"> (a) the name, address and contact details of the person (Landholder) that the Access Seeker needs approval from to access that land, where this information is reasonably available to Aurizon Network without breaching its confidentiality obligations under this Undertaking, an Access Agreement or any lease, licence or other agreement with the Landholder; (b) advice as to the nature and extent of the rights, if any, that Aurizon Network holds in relation to the relevant land without breaching its confidentiality obligations under this Undertaking, an Access Agreement or any lease, licence or other agreement with the Landholder; and (c) a notice that may be provided to that person indicating that Aurizon Network has no objection to the Access Seeker negotiating for access to that land.
<p>Compliance information</p>	<p>Subject to the Access Seeker having entered into an applicable confidentiality agreement with Aurizon Network, the protocols, standards and procedures an Access Holder is required to comply with under the terms of the relevant Standard Access Agreement.</p>

Other information	<p>(a) Information required under section 101(2) of the Act, to the extent not already provided.</p> <p>(b) Other information that is reasonably required by the Access Seeker in accordance with Aurizon Network's obligation under section 101(1) of the Act, provided such information cannot reasonably be obtained from another source.</p>
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3 Capacity Information

- (a) This **clause 3** only applies in respect of information which can be provided by Aurizon Network without breaching either Aurizon Network's obligations under **Part 3** of this Undertaking, an Access Agreement or any relevant confidentiality agreement.
- (b) The following information will be provided to an Access Seeker by Aurizon Network on request by that Access Seeker:
- (i) in addition to the Preliminary Information, the Master Train Plan; and
 - (ii) in addition to the Additional Information, the Daily Train Plan (as assessed under **clause 3(c)**) for the relevant part of the Rail Infrastructure,

subject to:

- (iii) the identity of other Access Holders not being detailed; and
- (iv) the terms of other Access Holders' Train Service Entitlements not being detailed.

In addition, the Master Train Plan and the Daily Train Plan may not show all parts of the Rail Infrastructure, and as such may not show all Train Services that may impact on the Existing Capacity detailed. However, Aurizon Network will note those other parts of the Rail Infrastructure where interaction with other Train Services is most likely to impact on the Existing Capacity detailed.

- (c) The relevant current Daily Train Plan will be assessed as, for an Access Application in respect of:
- (i) a Timetabled Traffic, the current Daily Train Plan for the relevant day (or days) of the week; or
 - (ii) a Cyclic Traffic, the current Daily Train Plans for a week, unless Aurizon Network reasonably believes that provision of Daily Train Plans for a longer period of time is required in order that the Daily Train Plans show a use of Existing Capacity that is representative of current utilisation.
- (d) Aurizon Network will also provide access to Network Control diagrams, indicating actual running of Train Services against the

relevant Daily Train Plan, for those days for which the Daily Train Plan has been provided under **clause 3(b)(ii)**.

Schedule B

Access Application information requirements

1 Application

- (a) Without limiting the information requirements that an Access Application must satisfy in accordance with this Undertaking, an Access Application must satisfy the information requirements set out in this **Schedule B**.
- (b) This **Schedule B** applies as follows:
 - (i) where the proposed Access Application is solely for a Transfer in respect of Transferred Access Rights, **clause 6** applies (and, except as expressly referred to in **clause 6**, **clauses 2 to 5** and **clause 7** do not apply);
 - (ii) where the proposed Access Application is solely for a Renewal, **clause 7** applies (and, except as expressly referred to in **clause 7**, **clauses 2 to 6** do not apply); and
 - (iii) subject to **clauses 1(b)(i) and (ii)**, for all other proposed Access Applications, **clauses 2 to 5** apply.

2 Access Seeker and Customer

Relevant contact details including:

- (a) the Access Seeker's name and contact details;
- (b) if the Access Seeker has a Customer (or prospective Customer), that Customer's (or prospective Customer's) name and contact details; and
- (c) if the Access Seeker or its Customer (or prospective Customer) is an unincorporated joint venture, the names and contact details for all joint venture participants.

3 Ability to use Access Rights

Information needed to assess matters referred to in **clause 4.13(c)** of this Undertaking, including the following information about matters to be taken in account under **clause 4.13(c)** of this Undertaking:

- (a) where an Access Seeker is seeking Access Rights that will be used for a person other than the Access Seeker (that is, a person who is the Access Seeker's Customer or prospective Customer), the identity of the Customer or prospective Customer for those Access Rights are sought is to be confirmed along with information evidencing that the Access Seeker has or is reasonably likely to have such a Customer,

and that the Customer or prospective Customer has authorised the Access Seeker to apply for the relevant Access Rights. Aurizon Network will disregard for this purpose the effect that granting the Access Rights to the Access Seeker will have on the Access Seeker's ability to attract a Customer in the future;

- (b) for a Train Operator, the identity of the relevant Access Seeker or Access Holder for whom they are the Train Operator;
- (c) whether the Access Seeker has secured, or is reasonably likely to secure, Supply Chain Rights;
- (d) whether the Access Seeker, or its Customer (if any), has secured or is reasonably likely to secure a rail haulage agreement for the operation of the proposed Train Services within the timeframes and in the manner contemplated by the Access Application, if applicable;
- (e) whether the Access Seeker or its Railway Operator is reasonably likely to have facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Services to fully utilise the Access Rights sought;
- (f) where the Access Rights are sought to transport the output of a mine, whether the anticipated output of the mine is sufficient to support full utilisation of the Access Rights sought and all relevant existing Access Rights relevant to that mine; and
- (g) where the Access Rights sought require a Customer Specific Branch Line for the relevant Train Services, whether the Customer Specific Branch Line has been constructed and commissioned or is reasonably likely to be constructed and commissioned prior to the date on which the relevant Train Services are to commence.

4 Coal and freight Train Services

4.1 Train Service description

Information describing the Train Services, including:

- (a) the route of operation (including a diagram if necessary) including origin, destination, loading facility, unloading facility and depot;
- (b) the proposed commencement date for Train Services;
- (c) the proposed term of the Access Agreement;
- (d) the method of transporting freight (e.g. containers, louvered wagons, bulk wagons);
- (e) a description of freight/ commodity;
- (f) the Coal System(s) in which the Train Service will operate;
- (g) the net tonnes of product per annum each Year of operation, represented on a Monthly basis, or where Monthly railings are not even, the proposed distribution of the net tonnes;

- (h) the proposed sectional run times;
- (i) the proposed maximum Dwell times, time at loading facility, time at unloading facility and time at depot;
- (j) the proposed non-standard operating modes or methods (if applicable); and
- (k) the proposed Stowage requirements.

4.2 Timetable requirements

Information setting out the timetabling requirements, including:

- (a) whether the Access Rights sought are for a new Train Service, or a variation to an existing Train Service, for the Access Seeker;
- (b) whether the Access Rights sought are for a new Train Service or variation to an existing Train Service on the Rail Infrastructure;
- (c) the required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the proposed Access Agreement term;
- (d) the preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys, where relevant; and
- (e) the requirements for shunting or Dwell times en route, separately for forward and return journeys.

4.3 Rollingstock details

For all Access Seekers, information describing the Rollingstock and Rollingstock Configurations, including:

- (a) the proposed number of locomotives per Train;
- (b) the proposed number of wagons per Train;
- (c) the type and class of locomotive;
- (d) the mass of each locomotive (includes full sand and fuel load);
- (e) the type and class of wagons;
- (f) the nominal gross mass of wagons;
- (g) the tare mass of each wagon;
- (h) the tare mass per container;
- (i) the average number of containers per wagon;
- (j) the average proposed load (of product) per wagon;
- (k) the maximum proposed gross tonnes per wagon;
- (l) the maximum axle load of locomotives and wagons;
- (m) locomotive traction type;

- (n) where the traction type is electric traction, the regenerative braking capability and relevant details relating to that regenerative braking capability including electricity metering;
- (o) the gross tonnes per Train Service, separately for forward and return journeys;
- (p) the nominal payload per Train Service, separately for forward and return journeys; and
- (q) the Static Length and Comparative Length for the proposed Train.

4.4 Infrastructure requirements

Details of any Expansions or Customer Specific Branch Lines that may be necessary for operation of service, where known.

5 Passenger Train Services

5.1 Train Service description

Information describing the Train Services, including:

- (a) the route of operation (including a diagram, if necessary);
- (b) the proposed term of the Access Agreement; and
- (c) the type of passenger traffic (e.g. long distance, commuter, tourist).

5.2 Timetable requirements

Information setting out the timetabling requirements, including:

- (a) whether the Access Rights sought are for a new Train Service, or a variation to an existing Train Service, for the Access Seeker;
- (b) whether the Access Rights sought are for a new Train Service, or a variation to an existing Train Service, for the Rail Infrastructure;
- (c) the required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the proposed Access Agreement term;
- (d) the preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys; and
- (e) the requirements for shunting or Dwell times en route, separately for forward and return journeys.

5.3 Rollingstock details

Information describing the Rollingstock, including:

- (a) the total number of locomotives per Train;
- (b) the total number of carriages per Train;
- (c) the total number of passenger multiple units (**PMU**) per Train;
- (d) the type and class of locomotive;

- (e) the mass of each locomotive (including full sand and fuel load);
- (f) the type and class of carriage;
- (g) the nominal gross mass of each carriage;
- (h) the type and class of PMU;
- (i) the average gross mass of PMU;
- (j) the maximum number of vehicles including locomotives, wagons or units within PMU;
- (k) the maximum axle load of locomotives and wagons;
- (l) locomotive traction type;
- (m) the total length of Train (including locomotives);
- (n) the gross tonnes per Train Service, separately for forward and return journeys; and
- (o) the maximum operation speed separately for loaded and empty Trains.

5.4 Infrastructure requirements

Details of any Expansions or Customer Specific Branch Lines that may be necessary for operation of service, where known.

6 Transfers

Information relating to the Transfer including:

- (a) relevant contact details including:
 - (i) the Transferee's name and contact details;
 - (ii) if the Transferee has a Customer, that Customer's name and contact details;
 - (iii) if the Transferee or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants; and
 - (iv) the relevant Access Agreement (if applicable) held by the Transferee;
- (b) where the Transferee is not the current Access Holder (**Transferor**) who intends to undertake the relevant Transfer, relevant contact details for the Transferor including:
 - (i) the Transferor's name and contact details;
 - (ii) if the Transferor has a Customer, that Customer's name and contact details; and
 - (iii) if the Transferor or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;

- (c) details identifying the Transferor's Access Agreement, and the Access Right under it (including by reference to origin and destination), to which the Transfer relates;
- (d) details referred to in **clause 3** with reference to the proposed Transfer;
- (e) the proposed date and term for the Transfer;
- (f) the information referred to in **clauses 3, 4.1 to 4.3** or **clauses 5.1 to 5.3** (as applicable);
- (g) evidence that the Transferor's Customer and the Transferee's Customer have been notified of, and have agreed to, the Transfer (except where the Transferor's Customer initiated the Transfer by notice to Aurizon Network); and
- (h) except to the extent that the Non-availability Circumstances exist, any other information that:
 - (i) it is necessary to provide under this Undertaking; or
 - (ii) is otherwise necessary and has been notified to the Access Seeker by Aurizon Network.

7 Renewals

Information relating to the Renewal including:

- (a) relevant contact details including:
 - (i) the Renewing Access Seeker's name and contact details;
 - (ii) if the Renewing Access Seeker has a Customer, that Customer's name and contact details; and
 - (iii) if the Renewing Access Seeker or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;
- (b) where the Renewing Access Seeker is not the current Access Holder, relevant contact details for the current Access Holder including:
 - (i) the current Access Holder's name and contact details;
 - (ii) if the current Access Holder has a Customer, that Customer's name and contact details; and
 - (iii) if the current Access Holder or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;
- (c) a description identifying the current Access Agreement to which the Renewal relates;
- (d) details referred to in **clause 3** with reference to the proposed Renewal;

- (e) whether the Renewal is for all or part of the relevant existing Access Rights and, where for part only, details of the relevant part;
- (f) details of all changes (if any) in:
 - (i) the information referred to in **clauses 3, 4.1 to 4.3** or **clauses 5.1 to 5.3** (as applicable)³; and
 - (ii) the Operating Plan,from that relating to the relevant existing Access Agreement.

³ A Renewal will not require any Expansion or Customer Specific Branch Line therefore **clauses 4.4** and **5.4**, as applicable, are not relevant.

Schedule C

Operating and other plan requirements

1 Operating Plan

- (a) The following matters must, amongst others, be included in an Operating Plan.
- (b) An Operating Plan will adopt a three tiered presentation of information with information for the following categories:
 - (i) whole of network information that applies generally to the Train Services of the Access Seeker or the Access Holder (see **clause 1.1 below**);
 - (ii) Coal System specific information that applies to the Train Services of the Access Seeker or the Access Holder operating in that Coal System (see **clause 1.2 below**) but was not provided under **clause 1.3**; and
 - (iii) origin/destination pair specific information that applies to the Train Services of the Access Seeker or Access Holder for that origin/destination pair (**clause 1.3 below**) but was not provided under **clauses 1.1 or 1.2**.

1.1 Umbrella Central Queensland Coal Network information

The following information must be provided in an Operating Plan on a whole of network basis.

Area of Operation	<ul style="list-style-type: none">• Depot locations
Operation	<ul style="list-style-type: none">• Type of service (passenger, freight) or commodity• Dangerous goods details• Overload management system• Stowage locations held by the operator• Timing of scheduled servicing/provisioning activities• The maximum Rollingstock operational speed separately for loaded and empty Trains
Train Information	<ul style="list-style-type: none">• Safety systems• Communication systems
Information in compliance with	<ul style="list-style-type: none">• Rollingstock Interface Standard• Rollingstock and Rollingstock configuration details (number

standards and protocols	<ul style="list-style-type: none"> • of wagons, locomotives, carriages/self-propelled units) • Overload management standard • Load tables (including loads for Train Services and all relevant requirements and information in relation to the specification of those loads)
Crewing Plan	<ul style="list-style-type: none"> • Train Service crew requirements: • Location of crew depots • Crew change points • Dwell times at change points (minimum and maximum)
Recovery Methods	<ul style="list-style-type: none"> • Recovery of marked off Rollingstock at loading/unloading locations/en route • Recovery of derailments • Recovery of failed locomotive
Environmental impacts	<ul style="list-style-type: none"> • Profiling and veneering

1.2 Coal System specific information

- (a) The requirement for the information under this **clause 1.2** is in addition to **clause 1.1**.
- (b) The following information must be provided in an Operating Plan on Coal System basis, so that the information is provided separately for each relevant Coal System (as applicable).
- (c) For clarity, it is not necessary to repeat information already provided under **clause 1.1**.

Area of operation	<ul style="list-style-type: none"> • Origin and destination • Cycle description (including nominated stops en route) • Entry and exit points onto or off of Rail Infrastructure • Details regarding repositioning of Rollingstock (prior to, during and after operation of the Train Service) • Authority from Private Infrastructure manager to enter and/or exit the Private Infrastructure to enable use of Access Rights (where applicable)
Operation	<ul style="list-style-type: none"> • Description of any activities that may negatively impact main line running (e.g. shunting and reversing) • Dwell times at loading facility (minimum and maximum) • Dwell times at unloading facility (minimum and maximum)

- Dwell times en route and operational requirements (minimum and maximum)
- Indicative timetable requirements or sectional running times
- Type, class and number of locomotives per Train
- Maximum and average gross tonnage of loaded Train (including locomotives)
- Tare of empty Train
- Method of operation
- Traction type
- Train length
- Rollingstock and Rollingstock Configuration details (number of wagons/locomotives/carriages/self-propelled units)

1.3 Origin/destination pair specific information

- (a) The requirement for the information under this **clause 1.3** is in addition to **clauses 1.1** and **1.2**.
- (b) The following information must be provided in an Operating Plan on an origin/destination pair basis, so that the information is provided separately for each origin/destination pair of the relevant Train Services (as applicable).
- (c) For clarity, it is not necessary to repeat information already provided under **clauses 1.1** or **1.2**.

- Area of operation**
 - Authority from Private Infrastructure manager to enter and/or exit the Private Infrastructure to enable use of Access Rights (where applicable)

- Operation**
 - Special operating parameters (e.g. key arrival and departure windows)
 - Any critical timings at specified locations
 - Description of any activities that may negatively impact main line running (e.g. shunting and reversing)
 - Load tables (including the loads for Train Services and all relevant requirements and information in relation to the specification of those loads)
 - Additional information applying to the requested Train Service which differs from other Train Services on the same Coal System

2 Interface Risk Management Plan

2.1 General

- (a) As a Railway Manager, Aurizon Network is responsible for ensuring that the Interface Risks associated with the operation of Train Services on the Rail Infrastructure are managed appropriately.
- (b) For the purpose of identifying the Interface Risks posed by the operation of a particular Train Service on the Rail Infrastructure, and agreeing an IRMP for managing those Interface Risks, Aurizon Network, the Access Holder and the Train Operator must participate in a process that commences with an Interface Risk Assessment and culminates in an IRMP (**Interface Risk Management Process**).
- (c) In progressing the Interface Risk Management Process, Aurizon Network, the Access Holder and the Train Operator must:
 - (i) ensure that their representatives involved in the process have the appropriate competence to conduct the process in a diligent manner;
 - (ii) ensure that all relevant information, that is reasonably available, is provided to the other party on a timely basis to facilitate the process; and
 - (iii) ensure that all information provided is accurate.
- (d) The Interface Risk Management Process must be conducted for all new Train Services and for any variation to Train Services (including changes in the Operating Plan or Rollingstock specification). For the avoidance of doubt, a variation to an existing Train Services will not require a new IRMP and varying the existing IRMP for those Train Services will be satisfy the Interface Risk Management Process.
- (e) The IRMP must reflect the outcome of the Interface Risk Assessment. In particular, the IRMP will detail the controls agreed between Aurizon Network, the Access Holder and the Train Operator for the Interface Risks identified and assessed during the Interface Risk Assessment.
- (f) The IRMP must incorporate the audit, inspection and review regime under **clause 4** below and must specify:
 - (i) the Safeworking Procedures and Safety Standards are applicable to the proposed operation;
 - (ii) the additional controls, including Rollingstock Interface Standards, agreed between the parties for the proposed operation; and

- (iii) the particular party responsible for ensuring that the various elements of the IRMP are implemented and that the IRMP remains effective in addressing the Interface Risks it was developed to address.
- (g) The IRMP must be a schedule to the Train Operator's Train Operations Deed. If a Train Operations Deed has been negotiated before the finalisation of the IRMP, the implementation of the IRMP may require changes to the terms and conditions of the Train Operations Deed, and the parties must agree those changes.
- (h) If Aurizon Network and an Access Holder or a Train Operator agree that training of the Access Holder's or Train Operator's personnel (as applicable) is required as a control, or part of a control, for a particular Interface Risk identified in the Interface Risk Assessment, and the Access Holder or Train Operator (as applicable) can only obtain that training from Aurizon Network, Aurizon Network must provide the Access Holder or Train Operator (as applicable) with that training (and Aurizon Network may recover its reasonable costs for providing such training).

2.2 Environmental matters

- (a) General
 - (i) The matters identified in this **clause 2.2** are the minimum environmental matters that must be addressed by the parties in an Interface Risk Assessment. The parties' assessment of Environmental Risks in an Interface Risk Assessment should not be restricted to an assessment of the matters referred to in this **clause 2.2**.
- (b) Water quality management
 - (i) The Train Operator must comply with all relevant water quality standards when carrying out activities under or in connection with the Train Operations Deed.
 - (ii) The Interface Risk Assessment must include an assessment of the impact of the Train Operator's proposed activities under or in connection with the Train Operations Deed on stormwater systems and natural waterways.
- (c) Air pollution management
 - (i) The Train Operator must consider the impact of its operations on air quality. In doing so, all relevant air quality standards and regulations should be met.
 - (ii) The Train Operator must undertake an Interface Risk Assessment which must consider the impact of the proposed operations on air quality. In doing so, all relevant air quality

standards and regulations (including all requirements for coal train operators in Aurizon Network's 'Coal Dust Management Plan' (as published on the Website from time to time) must be met.

- (iii) The Interface Risk Assessment must assess the likelihood:
 - (A) for dust and/or exhaust emissions from the proposed operations (including by reference to the type and chemical composition of the commodity being transported); and
 - (B) of those dust and/or exhaust emissions causing nuisance at any dwelling or home, library, childcare centre, kindergarten, school, college, university or other educational institution and hospital surgery or other medical institution.
- (d) Management of land contamination
 - (i) The Train Operator must comply with all relevant Laws, standards and guidelines in relation to land contamination when carrying out activities under or in connection with the Train Operations Deed.
 - (ii) The Interface Risk Assessment must include an assessment of the likelihood that the Train Operator's proposed activities under or in connection with the Train Operations Deed (including the Train Operator's activities during accidents, incidents and emergencies) will cause or contribute to land contamination.⁴
 - (iii) The Interface Risk Assessment must include all practicable control measures to prevent and manage land contamination.
- (e) Nature conservation
 - (i) The Interface Risk Assessment must include an assessment of:
 - (A) the impact of the Train Operator's proposed activities under or in connection with the Train Operations Deed on flora and fauna, including sensitive receptors in the vicinity of the Train Operator's proposed activities; and
 - (B) the risks and controls associated with wildfires being caused by exhaust or sparks from the Train Operator's Rollingstock.
- (f) Management of dangerous goods

⁴ Land contamination is a reference to the 'contamination' of land by a 'hazardous contaminant' as those terms are defined under the EP Act.

- (i) The Train Operator must comply with Aurizon Network's requirements for the management of hazardous contaminants (as defined in the EP Act) and Dangerous Goods.
 - (ii) The Interface Risk Assessment must include an assessment of the risks associated with the management of "Dangerous Goods" (as defined in the Standard Train Operations Deed) by the Train Operator.
 - (iii) The Interface Risk Assessment must address any risks associated with the management of Dangerous Goods that are not specifically addressed by the requirements of **clause 22.7** of the Standard Train Operations Deed.
- (g) Waste management
- (i) The Train Operator must comply with all relevant Laws and the requirements of any Authority in relation to the collection, removal, transport and disposal of any waste generated by the activities of the Train Operator under or in connection with the Train Operations Deed.
 - (ii) The Interface Risk Assessment must include an assessment of the impact of any waste produced by the Train Operator's proposed activities under or in connection with the Train Operations Deed.
- (h) Environmental noise management
- (i) The Interface Risk Assessment must include an assessment of:
 - (A) The likely noise impacts attributable to the Train Operator's proposed activities under or in connection with the Train Operations Deed; and
 - (B) Whether the Train Operator's proposed activities under or in connection with the Train Operations Deed will comply with the "Noise Code" (as defined in the Train Operations Deed) or cause or contribute to any non-compliance with the Noise Code and detail all measures that will be taken to ensure that the Train Operator's proposed activities under or in connection with the Train Operations Deed do not cause or contribute to any non-compliance with the Noise Code.
- (i) Complaint management
- (i) The interface Risk Assessment must detail the Train Operator's procedure for handling complaints that are received by the Train Operator as per the requirements of **clause 22.9** of the Standard Train Operations Deed.

- (j) Refuelling
 - (i) The Interface Risk Assessment must include an assessment of the impacts associated with refuelling activities (including mobile refuelling) undertaken in connection with the Train Operator's proposed activities under or in connection with the Train Operations Deed.

3 Environmental Management Plan

The Environmental Management Plan must specify (as a minimum):

- (a) the Environmental Risks identified in the IRMP from time to time and the measures in respect of those Environmental Risks specified in the IRMP from time to time of which the Train Operator is responsible for implementing, complying with, ensuring compliance with and/or ensuring the ongoing effectiveness;
- (b) processes for ensuring that the Train Operator at all times complies with all requirements imposed on it under Environmental Laws from time to time;
- (c) processes for ensuring that the Train Operator at all times complies with any requirements of the Environmental Authorities held by Aurizon Network from time to time that are notified by Aurizon Network to the Train Operator as relevant to the Train Operator's Train Services;
- (d) processes for ensuring that the Train Operator, its Rollingstock, Rollingstock Configurations and Train Services at all times comply with the requirements of this Agreement, including the IRMP and the Emergency Response Plan;
- (e) systems (including audit systems) and procedures to address and monitor all relevant Environmental Risks identified in the IRMP and to ensure compliance with all Environmental Laws;
- (f) the relevant roles, responsibilities and training of the Train Operator's staff involved in the implementation of the Environmental Management Plan; and
- (g) the following sections:

Introduction

- (i) Description of Operational Activities
- (ii) Purpose and Objectives of the Environmental Management Plan
- (iii) Description of Environmental Management Plan
- (iv) Operator's Environmental Policy

Environmental Management

- (v) Environmental Risks identified in the Interface Risk Assessment
- (vi) Legislation and Other Requirements
- (vii) Target/s

Implementation and Operation

- (viii) Responsibilities, Accountabilities & Authorities
- (ix) Competence, Training and Awareness
- (x) Internal and External Communication (including liaison with regulatory agencies)
- (xi) Document Control and Information / Record Management
- (xii) Emergency Preparedness and Management
- (xiii) Specific Procedures for identified environmental risks

Operational Activities Review Process

- (xiv) Monitoring and Measurement
- (xv) Evaluation of Compliance / Audit
- (xvi) Management Review

Environmental Complaints & Incidents

- (xvii) Managing Environmental Incidents
- (xviii) Notification of Environmental Incidents
- (xix) Managing Environmental Complaints

4 Inspection and Audit Provisions

4.1 Rights of inspection and audit

- (a) The IRMP must include a right for a party to conduct, or require the conduct of, an inspection or audit in accordance with this **clause 4** to assess the other party's compliance with the IRMP, the "Applicable Safeworking Procedures" and "Applicable Safety Standards" (each as defined by the Train Operations Deed) periodically as specified in the IRMP.
- (b) If a party reasonably believes that the other party has not complied, or is not complying, with any aspect of the IRMP, then that party may conduct, or require the conduct of, an inspection or audit in accordance with this **clause 4** and the process in the IRMP to assess the other party's compliance with the IRMP.
- (c) The party conducting, or requiring the conduct of, an inspection or audit (**Inspecting Party**) must give the other party at least five (5) Business Days prior notice of such inspection or audit (except that

such notice is not required in the case of emergencies) and that notice must include:

- (i) details of the inspection or audit to be carried out;
- (ii) the name of the person conducting the inspection or audit;
- (iii) the timing and expected duration of the inspection or audit;
- (iv) the location of the inspection or audit;
- (v) the grounds upon which the party requires the inspection or audit; and
- (vi) the party's requirements of the other party in relation to the inspection or audit.

4.2 Conduct of inspection or audit

- (a) Any inspection or audit may be conducted by the Inspecting Party, its appointed representative or by a suitably qualified person reasonably acceptable to both parties, but if the inspection or audit requires access to commercially sensitive information, then:
 - (i) person conducting the inspecting or audit must be independent of both parties; and
 - (ii) that person must, prior to being given access to the commercially sensitive information by the party the subject of the inspection or audit, execute a confidentiality deed on terms similar to the document in **Schedule I** in favour of the party the subject of the inspection or audit.
- (b) Aurizon Network, the Access Holder and/or the Train Operator (as applicable) must use reasonable endeavours to ensure that the Inspecting Party, its appointed representative or the person appointed to conduct an inspection or audit are entitled to enter and be upon its land and premises (whether or not owned or leased) for the purposes of carrying out any inspection or audit.
- (c) In exercising any inspection or audit, the Inspecting Party:
 - (i) must not interfere unreasonably with the Rail Infrastructure and the other party's Trains and Rollingstock or Train Movements on the Nominated Network; and
 - (ii) must use its reasonable endeavours to avoid damage or injury and to minimise any disruption to the other party's business activities.
- (d) The Inspecting Party is not liable for any delays or cancellation of Train Services or Claims suffered or incurred by or made or brought by or against the other party as a result of conducting the inspection or audit provided the Inspecting Party complies with this **clause 4.2**.
- (e) Aurizon Network, the Access Holder and/or the Train Operator (as applicable) must provide all reasonable assistance to the Inspecting

Party in conducting any inspection or audit including allowing the Inspecting Party, its appointed representative or person appointed to conduct an inspection or audit to discuss any relevant matter with its staff. A member of the "Staff" (as defined in the Train Operations Deed) of the party the subject of the inspection or audit may be present at the inspection or audit.

- (f) The parties must provide each other with a copy of any report of any inspection or audit in respect of its compliance with the IRMP.

4.3 Costs of inspection or audit

- (a) The Inspecting Party bears the reasonable costs of conducting the inspection or audit unless the inspection or audit confirms the stated grounds for the conduct of an inspection or audit of a party's operations have been demonstrated to exist, in which case the party whose operations are inspected or audited (**Audited Party**) must:
 - (i) bear the reasonable costs of conducting such inspection or audit; and
 - (ii) to the extent that the Inspecting Party has paid any costs of conducting such inspection or audit, reimburse the Inspecting Party such reasonable amounts paid by the Inspecting Party in conducting the inspection or audit.
- (b) Unless otherwise agreed, whether the Inspecting Party requires the conduct of an inspection or an audit, the Inspecting Party is liable to the other party in respect of any reasonable loss or damage suffered or incurred by the audited party arising from the conduct of the inspection or audit if, and only if, no reasonable person in the position of the Inspecting Party could have formed the view that the stated grounds for such inspection or audit existed.
- (c) The Inspecting Party bears the burden of establishing that a reasonable person in its position could have formed that view.
- (d) Notwithstanding clauses **4.3(b)** and **4.3(c)**, Aurizon Network will not be liable to a Train Operator for any third party claims (including a claim for Consequential Loss) made against the Train Operator in relation to an inspection or audit where the third party is the Access Holder and the Access Holder has a direct contractual relationship with Aurizon Network in respect to the Access Rights to which the inspection or audit relates.

Schedule D

Ultimate Holding Company Deed

Aurizon Holdings Limited

Ultimate Holding Company Support Deed

Date:

2017

Party

Aurizon Holdings Limited ACN 146 335 622 of Level 15, 175 Eagle Street, Brisbane in the State of Queensland (**Aurizon Holdings**)

Background

- A Aurizon Network is the railway manager of certain rail transport infrastructure, access to which is provided in accordance with the Undertaking.
- B In order to comply with certain obligations imposed on Aurizon Network in accordance with the Access Undertaking, Aurizon Network seeks the cooperation of members of the Aurizon Corporate Group.
- C As required by **clause 2.5** of the Undertaking and the QCA's decision to approve the Undertaking, Aurizon Network has requested that Aurizon Holdings, as Aurizon Network's ultimate holding company, enter into this Deed in favour of the QCA. Aurizon Holdings has agreed to do so.
-

Agreed terms

1 Definitions

In this Deed the following terms will have the meanings set out below. All other terms have the meaning ascribed to them in the Access Undertaking.

Access Undertaking	The current access undertaking submitted by Aurizon Network to the Queensland Competition Authority and approved by the Queensland Competition Authority under the <i>Queensland Competition Authority Act 1997</i> (Qld) as at the date of this Deed and as amended or replaced from time to time.
Aurizon Corporate Group	Aurizon Holdings and each of its related bodies corporate (as that term is defined in the <i>Corporations Act 2001</i> (Cth)).
Aurizon Network	Aurizon Network Pty Ltd (ACN 132 181 116).
QCA	Queensland Competition Authority.

2 Term

Aurizon Holdings' obligations under this Deed will terminate upon the earlier of:

- (a) any new ultimate holding company of Aurizon Network providing a deed poll in substantially similar form to this Deed; or
- (b) expiry of the Access Undertaking.

3 Procuring Compliance by Aurizon Corporate Group

3.1 Procuring compliance with Access Undertaking

- (a) Aurizon Holdings must, and must use reasonable endeavours to procure that each other member of the Aurizon Corporate Group:
 - (i) take such reasonable steps as required to enable Aurizon Network to comply with the arrangements prescribed in **Part 3** of the Undertaking;
 - (ii) not direct or request Aurizon Network to act in contravention of **Part 3** of the Undertaking;
 - (iii) does not otherwise engage in any conduct which may prevent or hinder Aurizon Network from complying with **Part 3** of the Undertaking;
 - (iv) in relation to Confidential Information, not disclose Confidential Information received from Aurizon Network to any Third Party other than as permitted by the Undertaking or with the consent of the Access Seeker or Access Holder to which the Confidential Information belongs or relates;
 - (v) has the authority to provide or authorise access to land that an Access Seeker or Access Holder requires access to in accordance with the provision of Access under the Undertaking, where that land is owned by a member of the Aurizon Corporate Group, or where a member of the Aurizon Corporate Group has a lease, licence or other arrangement with the owners of the land or in accordance with the TIA (except that if a member of the Aurizon Corporate Group has entered into a lease, licence or other arrangement that does not permit Aurizon Network or Access Seekers onto the land, and access is otherwise required to provide the service taken to be declared under section 250(1)(a) of the Act, that member of the Aurizon Corporate Group may provide the QCA with details of the specific provisions and seek a waiver of this requirement);
 - (vi) takes steps required to allow Aurizon Network to sell or supply electric energy; and
 - (vii) enable or assist Aurizon Network to comply with its obligations in respect of the Undertaking.

- (b) No Aurizon Corporate Group member, including Aurizon Holdings, will take any action that would cause Aurizon Network to be in breach of its obligations in the Undertaking.

3.2 Benefit of Deed

This Deed is provided in favour of the QCA.

3.3 Non-compliance

The consequences of non-compliance with the obligations in clause 3.1 of this Deed will be limited to those described in clause 2.5(b) of the Access Undertaking.

4 New Ultimate Holding Company

To the extent that Aurizon Holdings ceases to be the ultimate holding company of Aurizon Network, Aurizon Holdings will use its best endeavours to procure that the new ultimate holding company of Aurizon Network enters a deed poll in substantially similar form to this Deed as soon as reasonably practicable.

Execution

Executed as a deed.

**Executed by Aurizon Holdings
Limited**

.....

Director Signature

.....

Company Secretary Signature

.....

Name of Director (print)

.....

Name of Company Secretary (print)

Schedule E

Regulatory Asset Base

1 Maintenance of Regulatory Asset Base

1.1 Roll-forward principles

On an annual basis, Aurizon Network will roll forward the asset values in its Regulatory Asset Base applying the following principles:

- (a) the opening asset value, being for:
 - (i) the first Year of the Term, the value in the Regulatory Asset Base at the expiry of the 2016 Undertaking; and
 - (ii) each other Year in the Term, the value in the Regulatory Asset Base at the end of the immediately prior Year, will be indexed for the Year using the change in the forecast CPI value that was used for the purpose of determining the relevant Reference Tariff for the relevant year;
- (b) depreciation of the assets will be calculated for the Year using asset lives and a depreciation profile as endorsed by the QCA;
- (c) if an asset is disposed of during the Year, the value of that asset recorded in the Regulatory Asset Base will be removed from the Regulatory Asset Base unless:
 - (i) the disposal necessarily results from an Expansion of or Maintenance Work on the Rail Infrastructure, in which case the Regulatory Asset Base will be reduced only by the net proceeds, if any, of the sale (on an arm's length basis) by Aurizon Network of the disposed asset; or
 - (ii) if **clause 1.1(c)(i)** does not apply, Aurizon Network can demonstrate to the QCA's satisfaction that less than that amount should be removed from the Regulatory Asset Base (in which case the amount approved by the QCA will be removed from the Regulatory Asset Base);
- (d) prudent and efficient capital expenditure for an asset will be added to the Regulatory Asset Base, where that expenditure has been approved by the QCA for inclusion into the Regulatory Asset Base in accordance with **clause 2**; and
- (e) the value of the assets in the Regulatory Asset Base will be adjusted in accordance with **clauses 1.2** and **1.4**, but only where that adjustment is approved by the QCA in accordance with those clauses.

1.2 Adjusting the value of assets in the Regulatory Asset Base

- (a) Subject to Aurizon Network obtaining the QCA's approval, the value of assets contained in the Regulatory Asset Base may be increased by including:
- (i) all or part (as appropriate) of the value of assets previously removed from the Regulatory Asset Base as a result of the operation of **clause 1.2(b)(ii)** if Aurizon Network can show to the QCA's satisfaction that demand for the declared service utilising those assets has increased sufficiently, or the factors giving rise to the removal have been sufficiently reduced or modified by new circumstances to justify including the value of the assets in the Regulatory Asset Base;
 - (ii) all or part (as appropriate) of the value of assets previously removed from the Regulatory Asset Base as a result of the operation of **clause 1.2(b)(iii)** where the deterioration of the Rail Infrastructure has been successfully addressed by Aurizon Network to the satisfaction of the QCA,

In making its determination, the QCA may:

- (iii) consult with, or seek submissions from, persons in relation to any consideration by the QCA of increasing the value of assets contained in the Regulatory Asset Base;
 - (iv) consider any relevant submissions made to the QCA; and
 - (v) request additional information from Aurizon Network that is reasonably required to make its determination in accordance with **clause 2.3(b)**.
- (b) The QCA may require the value of assets contained in the Regulatory Asset Base to be reduced if:
- (i) the QCA made its decision to approve the relevant capital expenditure into the Regulatory Asset Base on the basis of information provided by Aurizon Network that was inaccurate or misleading, but only to the extent that were the information not inaccurate or misleading, the QCA's decision would have been different;
 - (ii) where the QCA determines that:
 - (A) actual demand for the declared service utilising an asset has deteriorated and that deterioration will be long term and sustained; and
 - (B) applying existing regulated pricing to those reduced volumes utilising that asset will result in a further material deterioration in demand for the declared service utilising that asset (including, without

limitation, by reason of mine closures, curtailing of mine production, or long term suspension of mine operations); but

- (C) the reduction in the RAB may be made only to the extent necessary to address the circumstances set out in **clause 1.2(b)(ii)(A) and (B)**; ~~and~~

(iii) where:

(A) a Condition Based Assessment demonstrates that:

- (1) the Rail Infrastructure has deteriorated as a result of Aurizon Network's failure to implement good operating practice and pursue prudent and effective maintenance and asset replacement policies and practices; and
- (2) the deterioration of the Rail Infrastructure will be long term and sustained; and

(B) Aurizon Network has no plan to remedy that deterioration; but

(C) The reduction in the RAB may be made only to the extent of the deterioration of the Rail Infrastructure described in **clause 1.2(b)(iii)(A)**; and

(iv) where, in respect of an Expansion:

(A) after the QCA made its decision to approve the relevant capital expenditure into the Regulatory Asset Base, Aurizon Network determines there is a Capacity Shortfall in respect of that Expansion; and

~~(B)~~ in light of that Capacity Shortfall, the QCA's decision to approve the relevant capital expenditure would have been different.

(c) Where the QCA requires the value of the assets in the Regulatory Asset Base to be reduced:

(i) it must have regard to section 138(2) of the Act in:

- (A) considering any proposal that may be provided by Aurizon Network (including a draft amending access undertaking) to address a deterioration in demand; and
- (B) acting reasonably, determining whether the proposal will be effective to avoid a reduction in the Regulatory Asset Base;

(ii) it must identify those specific assets including the class and location of those assets;

- (iii) in reaching its decision it:
 - (A) must consult with, or seek submissions from, persons affected or likely to be affected by the decision;
 - (B) may disclose any relevant information in respect of the specific assets to persons while seeking submissions;
 - (C) must consider all submissions made to it in relation to a reduction of the Regulatory Asset Base including any alternative proposal submitted by Aurizon Network that would avoid a Regulatory Asset Base reduction;
 - (D) may request any additional information from Aurizon Network that is reasonably required to make its determination; and
 - (E) may consider asset removal only if it determines, acting reasonably, that no other alternative mechanism which is appropriate having regard to the factors in s138(2) of the Act will be effective in addressing the circumstances set out in **clause 1.2(b)(ii)**.
- (iv) it must publish its draft decision and consult with, or seek submissions from persons in relation to its draft decision and consider all submissions made to it;
- (v) it must have regard to section 138(2) of the Act in making its decision; and
- (vi) it must publish its decision.

1.3 Reports on capital expenditure and Regulatory Asset Base roll-forward

- (a) Unless otherwise agreed between Aurizon Network and the QCA, Aurizon Network will, as soon as reasonably practicable and no later than four Months after the end of each Year in the Term, provide to the QCA the details for capital expenditure that Aurizon Network considers should be included in the Regulatory Asset Base with sufficient supporting evidence that the QCA may require to determine the prudence and efficiency of the capital expenditure under **clause 2**, including, as applicable:
 - (i) any relevant business case or Feasibility Study;
 - (ii) evidence of actual expenditure of the capital expenditure and commissioning of the associated asset; and

- (iii) capacity modelling, if any, undertaken as part of the business case or Feasibility Study and on commissioning of the asset.
- (b) Unless otherwise agreed between Aurizon Network and the QCA, to the extent that the QCA, under **clause 2.2**, has accepted the capital expenditure in the report under **clause 1.3(a)** into the Regulatory Asset Base, Aurizon Network (as soon as reasonably practicable and no later than one Month after the QCA's acceptance of the capital expenditure report under **clause 1.3(a)**) will provide to the QCA for approval Aurizon Network's roll-forward of the Regulatory Asset Base under **clause 1.1**, subject to **clause 1.2**, including details of:
 - (i) the opening value of the Regulatory Asset Base for the relevant Year;
 - (ii) indexation of the Regulatory Asset Base;
 - (iii) depreciation of the Regulatory Asset Base;
 - (iv) capital expenditure that is included in the Regulatory Asset Base;
 - (v) disposals and transfers from the Regulatory Asset Base; and
 - (vi) the closing value of the Regulatory Asset Base for the relevant Year (which will be the opening value of the Regulatory Asset Base for the following Year),

separately reported for each Coal System (including for each Reference Tariff and each User Funded Expansion).
- (c) If the information set out in a report provided to the QCA under this **clause 1.3** is insufficient, the QCA may request additional relevant information in accordance with **clause 2.3(b)**.
- (d) Information provided to the QCA under this **clause 1.3** :
 - (i) will be accompanied by a statement signed by Aurizon Network's Executive Officer confirming that, to the best of their knowledge, information is, in all material respects, correct; and
 - (ii) in respect of the report referred to in **clause 1.3(b)**, must be based on the roll forward principles in **clause 1.1**.
- (e) The QCA must approve the roll-forward of the Regulatory Asset Base submitted to it by Aurizon Network in accordance with **clause 1.3(b)**, if the QCA is satisfied that it has been conducted in accordance with the roll-forward principles in **clause 1.1**.

1.4 Equity raising costs

- (a) During or after the end of the Term, the value of assets contained in the Regulatory Asset Base may be increased by Aurizon Network by including an amount for any equity raising costs for the Approved

Capital Expenditure over the Term which are reasonably required to maintain the benchmark capital structure of 55% debt and 45% equity (**Reasonable Equity Raising Costs**). Aurizon Network may increase the value of assets contained in the Regulatory Asset Base if the Reasonable Equity Raising Costs are calculated in accordance with this **clause 1.4** and approved by the QCA.

:

- (b) The amount approved by the QCA in **clause 1.4(a)** will be allocated amongst the Coal Systems (including allocations amongst Reference Tariffs), on a pro-rated basis by reference to Aurizon Network's Approved Capital Expenditure over the Term that will, subject to the QCA's approval, be applied in determining Reference Tariffs for the next regulatory period.
- (c) If the Expansion is a User Funded Expansion, references to Aurizon Network in this **clause 1.4** will be deemed to be references to Expansion Funders.

2 Approval of capital expenditure by the QCA

2.1 Overview

- (a) This **clause 2** refers to various determinations that the QCA may be requested to make for capital expenditure to be included in the Regulatory Asset Base.
- (b) These determinations may be made:
 - (i) in response to a report provided to it under **clause 1.3**; or
 - (ii) in advance of the capital expenditure being incurred.
- (c) Aurizon Network must obtain the QCA's approval under this **clause 2** of any capital expenditure prior to including that capital expenditure in the Regulatory Asset Base.
- (d) Failure by Aurizon Network to obtain the QCA's approval of any matters under this **clause 2** in relation to a capital expenditure project or part of the capital expenditure for a project, does not affect its right to seek approval under this **clause 2** at a later time in respect of part or all of that capital expenditure.
- (e) Subject to **clause 2.1(f)**, Aurizon Network must promptly seek approval of capital expenditure for a project under this **clause 2** following receipt of a request to do so by:
 - (i) an Access Seeker (or its Customer) requiring the capital expenditure project to be able to secure Access Rights;
 - (ii) an Expansion Funder for the Expansion; or
 - (iii) an Interested Participant,

who requires Aurizon Network to obtain the QCA's approval of capital expenditure for a project or part of the capital expenditure for a project prior to incurring expenditure on the construction of that project.

- (f) Aurizon Network must promptly seek approval of capital expenditure for a project under this **clause 2** following acceptance of a Voting Proposal in respect of that capital expenditure project under **clause 4**.
- (g) If the capital expenditure for an Expansion is pre-approved for inclusion into the Regulatory Asset Base by the QCA:
 - (i) the actual expenditure of the Expansion up to the total of the pre-approved proposed expenditure under this **Schedule E** will be included into the Regulatory Asset Base if the process in **clause 2.2(e)** of this **Schedule E** is complied with; and
 - (ii) the amount of any actual expenditure above the pre-approved proposed expenditure must be approved by the QCA prior to it being included into the Regulatory Asset Base.
- (h) For the purpose of **clause 2.2(a)** and related provisions in this **Schedule E**, a reference to capital expenditure includes expenditure for a Concept Study, Pre-feasibility Study, Feasibility Study or other study in connection with a capital expenditure project.

2.2 Prudency and efficiency

- (a) The QCA must approve including capital expenditure into the Regulatory Asset Base if that capital expenditure is for the prudent and efficient value of the assets that are used or intended to be used by Aurizon Network to provide the service taken to be declared under section 250(1)(a) of the Act.
- (b) In determining the prudency and efficiency of capital expenditure, the QCA must have regard to the following:
 - (i) the scope of works for the project (including whether the requirement for the works is prudent and efficient) which must include having regard, where relevant, to:
 - (A) any relevant Network Development Plan;
 - (B) the need to accommodate what is reasonably required to comply with Access Agreements;
 - (C) the need for new capital expenditure projects to accommodate the current contracted demand and potential future demand that Aurizon Network, acting reasonably, considers is required within a reasonable timeframe;
 - (D) the age and condition of existing assets, the need for asset replacement capital expenditure projects

- and the extent of consistency with the Asset Management Plan;
- (E) the extent to which the capital expenditure project promotes the economically efficient operation of, use of or investment in the Rail Infrastructure, whether present or future (for example, in relation to extending the life of assets whose economic and/or functional life would otherwise have expired, reducing future operating and maintenance costs or improving the capability or capacity of existing assets, systems and processes);
 - (F) Aurizon Network's legislative and tenure requirements, including relating to rail safety, workplace health, safety and environmental requirements;
 - (G) the outcomes of consultation (if any) about the capital expenditure project, with Access Seekers and Access Holders whose Access Charges (or likely Access Charges) would be affected by including the amount of capital expenditure for the capital expenditure project into the Regulatory Asset Base; and
 - (H) any other matters in submissions to the QCA by Aurizon Network or Funding Users;
- (ii) the standard of works for the project (including whether the standard could be expected to deliver the requirements for that project without it being overdesigned or likely to deliver a capital works project which is beyond the requirements of its scope) which must include having regard, where relevant, to:
- (A) the requirements of Railway Operators and what is reasonably required to comply with Access Agreements;
 - (B) current and likely future usage levels;
 - (C) the requirements of relevant Australian design and construction standards;
 - (D) if applicable, the extent of consistency with the Asset Management Plan;
 - (E) Aurizon Network's design standards contained within the Safety Management System;
 - (F) all relevant Laws and the requirements of any Authority (including the Safety Regulator); and

- (G) any other matters in submissions to the QCA by Aurizon Network or Funding Users; and
- (iii) whether the costs of that project are prudent and efficient, having regard to the scope and standard of work undertaken or to be undertaken for the project which must include having regard, where relevant, to:
- (A) any relevant Network Development Plan;
 - (B) the level of such costs relative to the scale, nature, cost and complexity of the project;
 - (C) the circumstances prevailing in the markets for:
 - (1) engineering, equipment supply and construction;
 - (2) labour; and
 - (3) materials;
 - (D) the Asset Management Plan;
 - (E) Aurizon Network's actions, or proposed actions, in relation to:
 - (1) safety during construction and operation;
 - (2) compliance with environmental requirements during construction and operation;
 - (3) compliance with Laws and the requirements of Authorities;
 - (4) minimising disruption to the operation of Train Services during construction;
 - (5) accommodating reasonable requests of Access Holders to amend the scope and sequence of works undertaken to suit their needs;
 - (6) minimising total project cost which may at times not be consistent with minimisation of individual contract costs;
 - (7) aligning other elements in the Supply Chain; and
 - (8) meeting contractual timeframes and dealing with external factors; and
 - (F) any other matters in submissions to the QCA by Aurizon Network or Funding Users.

- (c) When Aurizon Network submits information to the QCA for the QCA's assessment of whether capital expenditure is prudent and efficient, nothing in **clause 2** obliges Aurizon Network to submit such information to address all of the requirements of scope of work, standard of work and costs set out at **clauses 2.2(b)(i) to (iii)**, but where one of those requirements is addressed by Aurizon Network, it must submit all of the information set out in **clauses 2.2(b)(i) to (iii)**, as applicable, as is reasonably relevant to the submission.
- (d) The QCA's acceptance of the prudence and efficiency of any of the scope of works, standard of works or costs of the capital expenditure project does not imply that it accepts other aspects of that project or approves of the inclusion of the capital expenditure in the Regulatory Asset Base.
- (e) If the QCA is requested to determine the prudence and efficiency of capital expenditure before the capital expenditure is incurred, the QCA may include as conditions of its approval for any capital expenditure for a project:
- (i) the assumptions relevant to its approval including:
 - (A) cost to construct;
 - (B) time for completion of, and
 - (C) estimated capacity to be delivered by, the project;
 - (ii) other matters considered by the QCA to be material to its approval; and
 - (iii) the period of time in which the approval has effect (and if the project is not completed within the nominated time, the QCA may decide the approval ceases to have effect).
- (f) Despite **clause 2.3(d)**:
- (i) if the QCA approves capital expenditure under this clause 2 prior to that capital expenditure is incurred (**pre-approval capital expenditure**), that capital expenditure must not be included in the Regulatory Asset Base until it is incurred; and
 - (ii) once pre-approval capital expenditure is incurred, then Aurizon Network must obtain the QCA's approval under this **clause 2** prior to including the capital expenditure in the Regulatory Asset Base, and the QCA must approve the capital expenditure if the QCA confirms the capital expenditure has been incurred and Aurizon Network has satisfied the conditions required by the QCA as part of its pre-approval under **clause 2.2(e)**.

- (g) The QCA must, in assessing under **clause 2.2(b)** whether capital expenditure is prudent and efficient, consider only the circumstances relevant
- at the time of making the decision to incur the capital expenditure (or in relation to assessing prudence of costs, at the time when the costs were incurred or the capital expenditure project was undertaken, as applicable):
- In assessing the prudence of capital expenditure on the basis of those circumstances, the QCA may take advice as it considers necessary from independent advisors using appropriate benchmarks and experience, and consult as it considers necessary with relevant stakeholders.
- (h) If Interested Participants vote in respect of whether to accept capital expenditure under **clause 4**:
- (i) Aurizon Network must provide the QCA with the outcome of that vote promptly after the completion of the vote;
 - (ii) the QCA must take that vote into account when approving whether the capital expenditure is prudent and efficient; and
 - (iii) the vote by the Interested Participants under **clause 4** does not limit the QCA's review of the prudence and efficiency of the capital expenditure.
- (i) If Interested Participants accept a Voting Proposal under **clause 4** in respect of capital expenditure:
- (i) the QCA may audit Aurizon Network's compliance with **clause 4** in accordance with **clause 10.6.3** of the Undertaking;
 - (ii) if that audit identifies any non-compliance with **clause 4** then:
 - (A) the QCA may require Aurizon Network to remedy the non-compliance; or
 - (B) if the non-compliance cannot be remedied, the QCA must deem the Interested Participants' vote to be invalid;
 - (iii) the QCA must take that vote into account when approving whether the capital expenditure is prudent and efficient; and
 - (iv) if the Interested Participant's vote is found or deemed to be invalid, Aurizon Network may elect to:
 - (A) withdraw its request to the QCA to approve the capital expenditure project under this **clause 2** and commence a new Voting Proposal in respect of that capital expenditure project under **clause 4**; or

- (B) not commence a new Voting Proposal but to seek the approval of the QCA under this **clause 2** in respect of the capital expenditure project.

2.3 Approval by the QCA

- (a) To make its determination under **clause 2.2**, the QCA:
 - (i) must consult with, or seek submissions from, persons in relation to any consideration by the QCA of the prudence and efficiency of capital expenditure;
 - (ii) may disclose any Feasibility Study in respect of a capital expenditure project or the Asset Management Plan provided to it under **clause 3** to persons while seeking submissions; or
 - (iii) must consider any relevant submissions made to the QCA, provided that without limiting the principles in **clause 11.2** of this Undertaking, the QCA must provide Aurizon Network with a reasonable opportunity to respond to any such submissions.
- (b) The QCA may request additional information from Aurizon Network that is reasonably required to make any determination under this **clause 2**.
- (c) The QCA must notify Aurizon Network if it approves capital expenditure for inclusion into the Regulatory Asset Base.
- (d) If the QCA is considering refusing to approve all or part of any capital expenditure into the Regulatory Asset Base:
 - (i) the QCA must give Aurizon Network (and the User Funding Trustee and User Funders, if the capital expenditure is a User Funded Expansion) a draft of the QCA's decision (including a statement of reasons for reaching its decision);
 - (ii) Aurizon Network may, within twenty (20) Business Days after being given that draft decision (or such longer period as agreed by the QCA), revise the capital expenditure and/or provide additional information supporting its view that the capital expenditure or the revised amount should be included in the Regulatory Asset Base; and
 - (iii) the QCA must consider that revision and/or additional information when deciding whether to approve or refuse to approve the inclusion of the capital expenditure into the Regulatory Asset Base.
- (e) If the QCA refuses to approve all or part of any capital expenditure for inclusion in the Regulatory Asset Base, the QCA must give Aurizon Network (and the User Funding Trustee and User Funders, if the capital expenditure is a User Funded Expansion) a notice of the QCA's decision (including a statement of reasons and the clear

identification of the capital expenditure project and the capital expenditure to which its decision relates).

- (f) For the avoidance of doubt, the Capital Indicator does not imply any acceptance by the QCA of that level of capital expenditure into the Regulatory Asset Base.
- (g) Unless Aurizon Network otherwise elects to do so under **Part 8** of this Undertaking, Aurizon Network does not have an obligation to construct or fund a capital expenditure project as a result of seeking or obtaining any approval of the scope, standard or cost of a capital expenditure project under this **Schedule E**.
- (h) For clarity, this clause 2.3 does not apply where:
 - (i) The QCA has already accepted the scope of the capital expenditure project as prudent;
 - (ii) The QCA accepts the scope of the capital expenditure project as prudent in accordance with Clause 2.2; or
 - (iii) The scope of the capital expenditure project has been accepted as prudent by Interested Participants by a vote in accordance with clause 4 of this Schedule E.

3 Asset Management Plan

- (a) Aurizon Network may prepare a proposed Asset Management Plan describing the standards that Aurizon Network will apply in determining whether to incur capital expenditure by replacing assets within the Regulatory Asset Base rather than maintaining those assets and submit that proposed Asset Management Plan to the QCA for approval.
- (b) To the extent that a capital expenditure project includes Asset Replacement and Renewal Expenditure and there is an Asset Management Plan, Aurizon Network may request the QCA's acceptance of the capital expenditure for that Asset Replacement and Renewal Expenditure as prudent and efficient.
- (c) If a request is made under **clause 3(b)**, the QCA may take into account whether the Asset Replacement and Renewal Expenditure is consistent with the Asset Management Plan.
- (d) **Clause 2** applies to any decision by the QCA in respect of the Asset Management Plan which, for clarity, includes refusing to approve the Asset Management Plan if it does not adequately assess the prudence and efficiency of the scope and standard of any Asset Replacement or Renewal Expenditure.

4 Acceptance of capital expenditure projects by Interested Participants

4.1 Application and purpose

(a) This **clause 4** is for the purpose of informing Aurizon Network and the QCA of the views of a broad range of Interested Participants in relation to capital expenditure projects, but (other than as described in clause 2.1(f) of this Schedule E) it does not bind either Aurizon Network or the QCA to accept those views. It therefore sets out a voting process for Access Holders, Customers and Access Seekers to provide their views on:

- (i) the prudence and efficiency of the scope of a capital expenditure project of any kind;
- (ii) the prudence and efficiency of the standard of works of a capital expenditure project of any kind;
- (iii) the prudence and efficiency of the costs of a capital expenditure project of any kind; or
- (iv) a material change to the scope, standard of works or costs of a capital expenditure project previously accepted by Interested Participants.

For clarity, Aurizon Network can seek a vote on any one or more of the matters listed in this clause.

(b) Aurizon Network may not seek a vote under this **clause 4** in relation to the matters set out in **clause 4.1(a)** unless:

- (i) it has completed the Feasibility Study for that project and provides the results of the Feasibility Study to the QCA and the Interested Participants (unless the Interested Participants agree that a Pre-feasibility Study is sufficient, in which case, it provides the results of the Pre-feasibility Study to the QCA and Interested Participants); and
- (ii) the Voting Proposal includes (either by reference to the results of the Feasibility Study or Pre-feasibility Study, if agreed by the Interested Participants, or as part of the proposal):
 - (A) the timeframe (including milestones (if any) and anticipated completion date) for constructing the capital expenditure project; and
 - (B) the cost tolerance for the capital expenditure project that is to be accepted as part of the Voting Proposal.

(c) An unsuccessful vote does not prevent Aurizon Network from seeking the QCA's acceptance on the same matter or a future vote.

- (d) Aurizon Network must promptly notify the QCA:
- (i) that it is seeking a vote; and
 - (ii) of the outcome of a vote,
- under this **clause 4**.
- (e) Aurizon Network is not obliged to seek acceptance of the matters set out in **clause 4.1(a)**, unless:
- (i) an Access Seeker (or its Customer) requiring the capital expenditure project to be able to secure Access Rights;
 - (ii) an Expansion Funder for the Expansion; or
 - (iii) an Interested Participant,
- requires Aurizon Network to obtain a vote from Interested Participants, in which case Aurizon Network must promptly (and in any event within 20 Business Days of completion of the Feasibility Study for the relevant project) seek acceptance under this **clause 4**.
- (f) Promptly (and in any event within twenty (20) Business Days) after Interested Participants accept a Voting Proposal in respect of the matters set out in **clause 4.1(a)**, Aurizon Network must, unless otherwise agreed with the QCA, seek the approval of the QCA to include that capital expenditure into the Regulatory Asset Base.
- (g) In this **clause 4**:
- (i) **Affected Train Path** means a Train Path:
 - (A) where the applicable Reference Tariff for a Train Service using that Train Path would be affected by including the amount of capital expenditure for the relevant capital expenditure project into the Regulatory Asset Base; or
 - (B) that will be impacted by the proposed capital expenditure project after construction of the proposed Expansion is completed;
 - (ii) **Interested Participants** means persons who satisfy the criteria set out in **clause 4.2(a)**;
 - (iii) **Voting Period** means:
 - (A) the period specified in the notice under **clause 4.4(a)(i)**, being at least six weeks after the notice is given; or
 - (B) where the Interested Participants for at least 60% of the aggregated Affected Train Paths for all Interested Participants notify Aurizon Network request a specified extension to the period

specified in the notice under **clause 4.4(a)(i)**, that extended period; and

- (iv) **Voting Proposal** means a proposal by Aurizon Network that Interested Participants accept by a vote relating to:
- (A) any one or more of the following:
 - (1) the prudence and efficiency of scope of a capital expenditure project of any kind;
 - (2) the prudence and efficiency of standard of works of a capital expenditure project of any kind; and
 - (3) the prudence and efficiency of costs of a capital expenditure project of any kind;
 - (B) a material change to:
 - (1) the scope, standard or works or costs of; or
 - (2) the timeframe or cost tolerances for, a capital expenditure project previously accepted by Interested Participants; or
 - (C) a capital expenditure project commencing greater than two (2) years after the date that capital expenditure project was previously accepted by the Interested Participants.

4.2 Identification of Interested Participants

- (a) The Interested Participants for a Voting Proposal are Customers, and Access Holders and Access Seekers without Customers, where:
- (i) the Access Charges (or likely Access Charges) relevant to the person:
 - (A) are (or will be) determined by reference to a Reference Tariff; and
 - (B) would be affected by including the amount of capital expenditure for a capital expenditure project into the Regulatory Asset Base; or
 - (ii) the proposed capital expenditure project will impact on the person's contracted Capacity or Train Paths after construction of the proposed Expansion is completed.
- (b) A Customer who is an Interested Participant may (by notice to Aurizon Network) nominate its Access Seeker or Access Holder, as applicable, (**Nominee**) to vote on its behalf in which case:
- (i) the Nominee is taken to be the Customer's agent for the purposes of the vote; and

- (ii) if requested by the Customer, Aurizon Network must provide the Customer with a copy of notices given to the Nominee under this **clause 4** contemporaneously with the giving of that notice to the Nominee.
- (c) Despite **clause 4.2(a)**:
 - (i) Aurizon Network may not include a person as an Interested Participant if that would result in any 'double counting' of votes (for example, if two Access Seekers are competing to provide rail haulage services to a prospective Customer that Customer will not be treated as a Customer for each Access Seeker which would double its Affected Train Paths and consequential voting power); and
 - (ii) if a person has not been invited to participate as an Interested Participant but that person believes that it is entitled to participate, then that person:
 - (A) may notify Aurizon Network and the QCA together with its reasons for believing it is entitled to participate; and
 - (B) is an Interested Participant if the person satisfies the criteria set out in **clause 4.2(a)**,

and Aurizon Network must promptly notify the person and the QCA of its determination as to whether the person is an Interested Participant.

4.3 Voting rights

- (a) Each Interested Participant's vote will be that Interested Participant's Affected Train Paths determined by Aurizon Network (acting reasonably) as the Interested Participant's Access Rights (whether under an Access Agreement or the subject of an Access Application) as follows:
 - (i) where the Access Agreement:
 - (A) will be in force five years after the first day of the Voting Period; or
 - (B) is subject to a legally binding commitment (even if conditional on the completion of an Expansion or Customer Specific Branch Line or other conditions which are Aurizon Network's responsibility to satisfy or can be waived by Aurizon Network),

the Affected Train Paths must be determined based on the Access Rights specified in that Access Agreement for a 12 Month period starting five years after the first day of the Voting Period;

- (ii) where:
 - (A) the Access Agreement is due to expire within five years after the first day of the Voting Period; and
 - (B) Aurizon Network reasonably expects that a Renewal will occur in relation to the relevant Access Rights under that Access Agreement,

the Affected Train Paths must be determined based on the Access Rights specified in that Access Agreement for the last period of twelve (12) Months of that Access Agreement;
- (iii) to the extent that the Interested Participant is (or is also) an Access Seeker or an Access Seeker's Customer:
 - (A) where the Available Capacity, plus the Capacity expected to be created by the capital expenditure project, that may potentially be used for Affected Train Paths (**Total Available Capacity**) is less than that needed by Aurizon Network to provide all of the Access Rights sought by Access Seekers (who, or whose Customers, are Interested Participants) for Affected Train Paths (**Requested Capacity**), the Affected Train Paths must be calculated as the Access Seeker's proportion of the Total Available Capacity calculated on a pro-rated basis by reference the Access Seeker's proportion of the Requested Capacity; or
 - (B) where the Total Available Capacity is greater than the Requested Capacity, the Affected Train Paths sought by the Access Seeker,

in either case, for a 12 Month period starting five years after the first day of the Voting Period; and
- (iv) if more than one of **clauses 4.3(a)(i) to (iii)** apply in respect of an Interested Participant, then the Affected Train Paths calculated under those clauses will be aggregated for that Interested Participant except that an Affected Train Path may not be counted more than once.

4.4 Acceptance process

- (a) If Aurizon Network intends to put forward a Voting Proposal, then Aurizon Network must:
 - (i) identify the Interested Participants and notify each identified Interested Participant of the Voting Proposal; and
 - (ii) make available information the information set out in this **clause 4.4** to those Interested Participants.

- (b) During the Voting Period:
 - (i) Aurizon Network must use reasonable endeavours to provide information, forums and engage in discussions with Interested Participants in relation to the relevant Voting Proposal if requested by any Interested Participants; and
 - (ii) Interested Participants are to notify Aurizon Network of whether they accept or do not accept the Voting Proposal by voting 'yes' or 'no'.
- (c) If an Interested Participant votes:
 - (i) "no", the Interested Participant must provide its reasons for that vote so that the QCA may understand the Interested Participant's reasons; and
 - (ii) "yes", the Interested Participant may but is not required to provide any reasons for its decision.
- (d) If an Interested Participant does not respond within the Voting Period or does not respond in a way that is a clear 'yes' or 'no' vote, then the Interested Participant is deemed to have accepted the relevant Voting Proposal – that is, voted 'yes'.
- (e) The Interested Participants are deemed to have accepted the relevant Voting Proposal if Interested Participants for at least 60% of the aggregated Affected Train Paths for all Interested Participants have voted 'yes'.
- (f) Aurizon Network must notify each of those Interested Participants of the results of the vote within five (5) Business Days after Aurizon Network has determined those results.

4.5 Information and materials relating to acceptance votes

- (a) Aurizon Network must make available information, when it considers it relevant or necessary to do so, to Interested Participants relating to proposed capital expenditure projects relevant to Coal Systems.
- (b) Aurizon Network must make available to Interested Participants and the QCA information on the relevant capital expenditure project, including the report prepared as a result of the Pre-feasibility Study (if agreed by Interested Participants) and the Feasibility Study (unless the Interested Participants agree to access the Pre-feasibility Study) for the relevant capital expenditure project.
- (c) Aurizon Network may require an Interested Participant to sign a confidentiality agreement substantially in the form set out in **Schedule I** prior to providing it information under this **clause 4.5**.

4.6 Compliance

- (a) Any person who is an Interested Participant in respect of a Voting Proposal who has any concerns about Aurizon Network's compliance

with this **clause 4** in respect of the proposed vote may notify Aurizon Network and the QCA of those concerns in writing including providing reasons or other information in support of those concerns prior to the end of the Voting Period.

- (b) Aurizon Network must take whatever action is reasonably required to address any concerns notified to it under **clause 4.6(a)** to achieve compliance with this **clause 4**.
- (c) An audit of Aurizon Network's compliance with this **clause 4** in relation to a vote must be procured by Aurizon Network:
 - (i) prior to Aurizon Network relying on that vote for the purposes of the QCA's acceptance of prudence and efficiency of a capital expenditure project; and
 - (ii) subject to **clauses 4.6(d) to 4.6(f)**, in accordance with **clause 10.6.4** of the Undertaking.
- (d) Where an audit is commenced under **clause 4.6(c)**:
 - (i) Aurizon Network must provide to the auditor copies of all concerns notified to it under **clause 4.6(a)** in relation to the relevant vote for the purpose of the audit certificate's preparation; and
 - (ii) the auditor will compile an audit report identifying:
 - (A) whether Aurizon Network has complied in all material respects with this **clause 4** and, if not, details as to the relevant non-compliance; and
 - (B) the process adopted for the conduct of the audit.
- (e) If, in preparing an audit certificate, the auditor identifies flaws in the calculation of the Affected Train Paths, then:
 - (i) Aurizon Network must recalculate the Affected Train Paths and recount the votes in a manner consistent with the auditor's findings;
 - (ii) the auditor will take that recalculation and recount into account in preparing the audit certificate; and
 - (iii) to the extent that the Aurizon Network has already notified Interested Participants of the outcome of the vote, Aurizon Network will notify the Interested Participants as soon as reasonably practicable of the recounted vote.
- (f) If in preparing an audit certificate, the auditor identifies a material discrepancy in a vote of Interested Participants under this **clause 4**, then Aurizon Network must redo the voting process.

5 Capital Expenditure Carryover Account

- (a) Aurizon Network will maintain a register in which it annually records all Approved Capital Expenditure including identifying the relevant capital expenditure:
- (i) by project;
 - (ii) by whether it relates to electrification assets; and
 - (iii) by Coal System.
- (b) If, at the end of each Year, the Approved Capital Expenditure differs from the Capital Indicator, the difference will be entered in the Capital Expenditure Carryover Account for assets funded under User Funding Agreements and assets funded by Aurizon Network. If the Approved Capital Expenditure exceeds the Capital Indicator, it will be deemed an under recovery of revenue. If the Approved Capital Expenditure is less than the Capital Indicator, it will be deemed an over-recovery of revenue.
- (c) The balance recorded in the Capital Expenditure Carryover Account will include:
- (i) a return on capital component, calculated as the difference between the return on capital assumed for the Capital Indicator and the return on capital that should have applied for the Approved Capital Expenditure, accrued at the Discount Rate;
 - (ii) a depreciation component, calculated as the difference between the depreciation assumed for the Capital Indicator and the depreciation that should have applied for the Approved Capital Expenditure; and
 - (iii) a tax depreciation component, calculated as the difference between the tax depreciation assumed for the Capital Indicator and the tax depreciation that should have applied for the Approved Capital Expenditure,
- and will be calculated using the modelling parameters and assumptions used to determine the Reference Tariffs.
- (d) The balance in the Capital Expenditure Carryover Account at the end of each Year will be rolled forward at the Discount Rate.
- (e) The balance in the Capital Expenditure Carryover Account at the end of the Term will be taken into account when determining Reference Tariffs to apply in the next undertaking with the intention of clearing the Capital Expenditure Carryover Account over the term of that next undertaking. In the event there is no next undertaking within one year after the withdrawal or expiry of this Undertaking, the balance in the Capital Expenditure Carryover Account will be recovered from, or

returned to, Access Holders (as the case may be) in the form of a single payment following the Terminating Date.

Schedule F

Reference Tariff

1 General provisions

1.1 Purpose

This **Schedule F** will be used for the following purposes:

- (a) Aurizon Network's formulation of Access Charges for a Train Service to which a Reference Tariff applies; and
- (b) where Access Charges, and related provisions, in an Access Agreement that were originally determined based on this **Schedule F** or **Schedule F** of an Applicable Undertaking, to allow for the adjustment of those Access Charges, and related provisions, in accordance with that Access Agreement for consistency with this **Schedule F** (as amended or replaced from time to time).

1.2 Application of Reference Tariffs

The Reference Tariffs in this **Schedule F**:

- (a) apply to coal carrying Train Services from the Commencing Date to the Terminating Date; and
- (b) are based on a Reference Train Service.

1.3 General characteristics of Reference Train Services

The Reference Train Service in respect of the Reference Tariffs:

- (a) **(Commodity)** carries only bulk coal;⁵
- (b) **(Operational characteristics)** meets the following criteria:
 - (i) the additional Reference Train Service criteria listed in relation to the applicable Reference Tariff (for example, in **clauses 7.1, 8.1, 9.1, 10.1, and 11.1**);
 - (ii) complies with the maximum speeds permitted on the Nominated Infrastructure as specified in the relevant Preliminary Information;
 - (iii) complies with Aurizon Network's Rollingstock Interface Standards applicable to the Nominated Infrastructure;
 - (iv) is otherwise compatible with the Nominated Infrastructure described in the relevant Preliminary Information and

⁵ In defining bulk coal, no differentiation is to be made between coal qualities or types, or between the end use markets of the coal.

- requires no additional expenditure by Aurizon Network to implement varied Below Rail controls identified in the IRMP;
- (v) operates in accordance with nominated sectional running times specified in the relevant Preliminary Information;
 - (vi) uses bottom dump wagons with the “KWIK DROP” door operating mechanism; and
 - (vii) uses measures to minimise coal spillage and leakage and coal dust emissions en route that are consistent with the Coal Loss Mitigation Provisions in **Schedule J**;
- (c) **(Below Rail Services)** only requires services from Aurizon Network that are Below Rail Services and that Below Rail Services comprised in Access are provided in accordance with this Undertaking;
 - (d) **(Conditions of Access)** operates in accordance with an Access Agreement on substantially the same terms as a Standard Access Agreement applicable to coal carrying Train Services, where the differences from the Standard Access Agreement do not give rise to a material increase in cost or risk; and
 - (e) **(Train Service Entitlement)** has a Train Service Entitlement:
 - (i) based on Trains being available for operation 24 hours per day and 360 days per year; and
 - (ii) specified in terms of Cyclic Traffic which will:
 - (A) operate in accordance with the distribution set out in the MTP;
 - (B) have regard to Planned Possessions and any other matters agreed between Aurizon Network and other service providers in the relevant Supply Chain; and
 - (C) comply with the applicable scheduling procedures as set out in the Network Management Principles.

2 Reference Tariff

2.1 Composition of Reference Tariff

The Reference Tariff is a charge in relation to Train Services that have operated, calculated in accordance with **clause 2.2** and, if applicable, **clause 2.3** (including Adjustment Charges) with specified Reference Tariff inputs and, if applicable, any System Premiums or System Discounts.

2.2 Calculations for Reference Train Services

- (a) Subject to **clause 2.3**, a charge for Reference Train Services is calculated as:

$$\left(AT_1 \times \frac{gtk}{1000} \right) + (AT_2 \times rtp) + \left(AT_3 \times \frac{ntk}{1000} \right) + (AT_4 \times nt) + \left(AT_5 \times \frac{egtk}{1000} \right) + \left(EC \times \frac{egtk}{1000} \right) + (QCALevy \times nt)$$

where:

AT₁ is the incremental maintenance tariff specified as the AT₁ input for the nominated Reference Train Service as specified for the relevant Reference Tariff (for example, as specified in **clauses 7.2, 8.2, 9.2, 10.2 and 11.2**, as applicable);

AT₂ is the incremental capacity tariff specified as the AT₂ input for the nominated Reference Train Service as specified for the relevant Reference Tariff (for example, as specified in **clauses 7.2, 8.2, 9.2, 10.2 and 11.2**, as applicable);

AT₃ is an allocative tariff specified as the AT₃ input for the nominated Reference Train Service as specified for the relevant Reference Tariff (for example, as specified in **clauses 7.2, 8.2, 9.2, 10.2 and 11.2**, as applicable);

AT₄ is an allocative tariff specified as the AT₄ input for the nominated Reference Train Service as specified for the relevant Reference Tariff (for example, as specified in **clauses 7.2, 8.2, 9.2, 10.2 and 11.2**, as applicable);

AT₅ is the electric access tariff specified as the AT₅ input for the nominated Reference Train Service as specified for the relevant Reference Tariff (for example, as specified in **clauses 7.2 and 8.2**, as applicable); and

EC is the electric energy charge which is initially (from the Commencing Date) as specified as the EC input for the nominated Reference Train Service as specified for the relevant Reference Tariff (for example, as specified in **clauses 7.2 and 8.2**, as applicable), and after the Approval Date as otherwise published by Aurizon Network on the Website on or about each 31 May during the Term after Aurizon Network seeks and obtains the QCA's approval for a new electric energy charge (taking into account any over or under recovery in the previous Year),

provided that the above calculation is subject to the addition of any applicable Adjustment Charge from time to time (including, if necessary, on a pro rata basis with other Train Services that have the same origin and destination and Access Holder and are run during same Billing Period, as the nominated Reference Train Service).

For clarity, the rtp for a Reference Train Service equals one.

- (b) The amounts of the AT₁, AT₂, AT₃, AT₄, AT₅, EC and the QCA Levy inputs (including the System Discounts and System Premiums, if

applicable) specified for the relevant Reference Tariff and any Adjustment Charge are GST exclusive.⁶

- (c) For the purposes of this **Schedule F**, a Train Service is a one way Train Service, that is, the journey from the Nominated Loading Facility to the Nominated Unloading Facility is one Train Service, and the return journey from the Nominated Unloading Facility to the Nominated Loading Facility is a second Train Service.
- (d) To the extent that the calculation of gtk and nt for a Train Service require a weight for the relevant Train or any Rollingstock comprised in that Train, weights may be nominal or actual weights, or a combination of nominal and actual weights provided that, unless otherwise agreed by Aurizon Network:
 - (i) any nominal weights will be as set out or calculated in the relevant Access Agreement or, otherwise, as agreed or approved by Aurizon Network, in relation to the calculation of gtk or nt, as applicable; and
 - (ii) actual weight will only be used where:
 - (A) the gross weight (in tonnes) of loaded or partly loaded wagons needs to be determined;
 - (B) there is a functioning weighbridge or weightometer (verified under the *National Measurement Act 1960* (Cth)) located en route between the origin and destination for the Train Service;
 - (C) Aurizon Network has agreed that the weighbridge or weightometer can be used to weigh wagons for the purpose of calculating Access Charges; and
 - (D) the relevant wagons can actually be weighed by that weighbridge or weightometer.
- (e) When Aurizon Network publishes the EC, it must separately identify the level of the Environment Compliance Charge within the EC.

2.3 Calculations for a Cross System Train Service

- (a) For a Cross System Train Service, the Reference Train Service description for each applicable Reference Tariff for each relevant Coal System will be applied to the extent that the Train Service is using that Coal System and the calculation under **clause 2.2** will be adjusted by applying the following:
 - (i) AT_1 will be the AT_1 component of the Reference Tariff for:
 - (A) the Origin Tariff, for the gtk attributable to the Origin System; and

⁶ An amount for GST will be added to the total calculated Access Charge, in accordance with the provisions of the applicable Access Agreement, at invoicing.

- (B) the Destination Tariff, for the gtk attributable to the Destination System;
 - (ii) AT_2 will be determined as follows:
 - (A) the AT_2 component of the Reference Tariff in the Origin System will be applicable to the Train Paths used in the Origin System, but only if the Train Service operates on capacity constrained corridors of the Origin System as identified in **clause 2.3(b)**; and
 - (B) the AT_2 component of the Reference Tariff in the Destination System will be applicable in accordance with **clause 2.2**;
 - (iii) AT_3 will be the AT_3 input for the relevant Reference Tariffs for:
 - (A) the Origin Tariff, for the ntk attributable to the Origin System; and
 - (B) the Destination Tariff, for the ntk attributable to the Destination System; and
 - (iv) AT_4 will be the AT_4 input for the Origin Tariff;
 - (v) AT_5 and EC will be determined as the AT_5 and EC components of the Reference Tariff for:
 - (A) the Origin System, for the egtk attributable to the Origin System; and
 - (B) the Destination System, for the egtk attributable to the Destination System; and
 - (vi) the QCA Levy component of the Reference Tariff in the Destination System will be applicable in accordance with clause 2.2, applied to the nt for the Train Service.
- (b) For the purposes of **clause 2.3(a)(ii)**, unless otherwise approved by the QCA, the Rail Infrastructure comprising railways between:
- (i) Coppabella and the Hay Point Junction;
 - (ii) Newlands and Abbot Point; and
 - (iii) Burngrove and the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone),
- is regarded as capacity constrained Rail Infrastructure.
- (c) For the purpose of **clause 2.3(a)**, if a Cross System Train Service loads in the Blackwater System and unloads in the Newlands System, then the Goonyella to Abbot Point System is deemed to be the Destination System for that Cross System Train Service.

3 Calculations for Take or Pay

3.1 Overview

- (a) The Take or Pay payable to Aurizon Network will be calculated in a manner consistent with this **clause 3**.

3.2 Application of historical Take or Pay arrangements

- (a) A different manner of calculation may apply to a Take or Pay depending on the Applicable Undertaking in force at the time that the relevant Access Agreement was entered into.
- (b) This **clause 3.2** describes the application of the Take or Pay obligations contained in Access Agreements that were originally entered into in accordance with the 2001 Undertaking, 2005 Undertaking and/or 2008 Undertaking, given that the Take or Pay obligations reference the undertaking in force at the time of their application.
- (c) Where the Access Holder has a Take or Pay with Aurizon Network under an Access Agreement named in Column 1 (**2001/05/08 Access Agreement**), the Take or Pay will be calculated in accordance with Column 2, subject to the adjustments made in Column 3 of the corresponding row in the following table:

Column 1	Column 2	Column 3
<p>An Access Agreement that was executed or renewed on or after 20 December 2001 but prior to 30 June 2006.</p> <p>A New Access Agreement where the relevant Old Access Agreement was executed or renewed on or after 20 December 2001 but prior to 30 June 2006.</p>	<p>Clause 3.2, Part A, Schedule F of the 2001 Undertaking</p>	<p>Where the calculation refers to:</p> <p>(a) the System Gtk; or</p> <p>(b) gtk in circumstances where that gtk relates to Train Services other than solely those under the relevant Access Agreement,</p> <p>then exclude any gtk attributable to any Train Services where the Access Charges for those Train Services are set based on an Expansion Tariff.⁷</p> <p>The references to System Gtk, System Forecast, and gtk in this row have the meanings given to those terms under the 2001 Undertaking.</p> <p>Where the calculation refers to the System Forecast, then that System Forecast is a reference to the Monthly System Forecast for the relevant Coal System set out in clause 12 of</p>

⁷ Access Agreements for coal carrying Train Services executed or renewed on or after 20 December 2001 but prior to 30 June 2006 (**UT1 Access Agreements**) will have Access Charges for Train Services in a Coal System set based on the relevant System Reference Tariff for that Coal System. Train Services under a UT1 Access Agreements will not have Access Charges set based on any Expansion Tariff for that Coal System. The relevant System Gtk or gtk should be limited to those Train Services whose Access Charges are set based on the same System Reference Tariff as the relevant Train Services for which a Take or Pay is being calculated. In the same way, the Monthly System Forecasts for each Coal System only relate to Train Services whose Access Charges are set by based on the relevant System Reference Tariff.

Column 1	Column 2	Column 3
		Schedule F.
<p>An Access Agreement that was executed or renewed on or after 30 June 2006 but prior to 23 October 2008.</p> <p>A New Access Agreement where the relevant Old Access Agreement was executed on or after 30 June 2006 but prior to 23 October 2008.</p>	<p>Clause 2.2, Part B, Schedule F of the 2005 Undertaking</p>	<ol style="list-style-type: none"> 1. A reference in that calculation to the “System Gtk”, or to gtk in circumstances where that gtk relates to Train Services other than solely those under the relevant Access Agreement, excludes any gtk attributable to any Train Services where the Access Charges for those Train Services are set based on an Expansion Tariff⁸. 2. A reference in that calculation to the “System Forecast” is a reference to the Gtk Forecast for the relevant System Reference Tariff. 3. A reference to “Paragraph 7.4.4(f) of the Undertaking” is a reference to clause 12.4(f) of this Undertaking. 4. A reference to “Total Actual Revenue” is a reference to Total Actual Revenue as defined under this Undertaking.
<p>An Access Agreement that was executed or renewed on or after 23 October 2008 but prior to 1 October 2010.</p> <p>A New Access Agreement where the relevant Old Access Agreement was executed on or 23 October 2008 but prior to 1 October 2010.</p>	<p>Clause 2.2, Part B, Schedule F of the 2008 Undertaking</p>	<ol style="list-style-type: none"> 5. A reference to “Individual Coal System Infrastructure” is a reference to the System Reference Tariff that is used to set the Access Charges for the relevant Train Services, subject to item 7 below. 6. A reference to “System Allowable Revenue” is a reference to Allowable Revenue as defined under this Undertaking. 7. A reference to “Access Agreements in relation to that Individual Coal System Infrastructure” is a reference to Tariff Based Access Agreements in relation to the relevant System Reference Tariff. 8. A reference to “the Total Revenue for that Individual Coal System Infrastructure” is a reference to “the Total Revenue” in relation to the relevant System Reference Tariff.

3.3 Application of new Take or Pay arrangements

- (a) This **clause 3.3** describes the application of the Take or Pay obligations contained in Access Agreements that were originally

⁸ Access Agreements for coal carrying Train Services executed or renewed under the 2005 Undertaking or 2008 Undertaking (except for a Customer initiated transfers of UT1 Access Agreements) (**UT2 Access Agreements**) will have Access Charges for Train Services in a Coal System set based on the relevant System Reference Tariff for that Coal System. Train Services under UT2 Access Agreements will not have Access Charges set based on any Expansion Tariff for that Coal System. The relevant System Gtk or gtk should be limited to those Train Services whose Access Charges are set based on the same System Reference Tariff as the relevant Train Services for which a Take or Pay is being calculated.

entered into in accordance with the 2010 Undertaking, the 2016 Undertaking and this Undertaking. Nothing in this **clause 3.3** applies to a 2001/05/08 Access Agreement. (Note: Take or Pay in the context of new Expansions is addressed in **clause 3.3(n)** below.)

- (b) Subject to **clause 3.3(n)** which applies to Take or Pay in the context of Expansions, where the Access Holder has a Take or Pay with Aurizon Network under an Access Agreement that is not a 2001/05/08 Access Agreement, the Take or Pay will be calculated as follows:
- (i) first, the maximum potential Take or Pay will be calculated based on **clauses 3.3(d) to (f)**; and
 - (ii) second, **clause 3.3(h)** will be applied to determine whether any Take or Pay liability exists; and
 - (iii) third, if Take or Pay liability exists, for the purpose of calculating Tariff Take or Pay in relation to a System Reference Tariff and to that extent only, the maximum potential Take or Pay will be adjusted by applying each of:
 - (A) **clause 3.3(j) (Mine capping)**; and
 - (B) **clause 3.3(k) to (m) (Tariff capping)**,
 as applicable and in that order to determine the actual Take or Pay payable to Aurizon Network.
- (c) In relation to Take or Pay charges in the context of a Pre-Approval Date Coal Access Agreement where the Access Holder is not a Train Operator, Take or Pay charges will be payable under that Access Agreement (including in relation to the non-operation of Train Services under any relevant train operations agreement). Take or Pay charges will not be payable to Aurizon Network by a Train Operator under a train operations agreement relevant to that Access Holder.
- (d) Subject to **clauses 3.3(h) to (m)**, Take or Pay charges applicable to an Access Holder will be:
- (i) determined for each Year;
 - (ii) invoiced for each Year following completion of that Year; and
 - (iii) calculated as the amount which is 100% of the amount calculated as:

$$(AT_2 \times rtp \times NTS) + \left(AT_3 \times \frac{ntk}{1000} \right) + (AT_4 \times nt)$$

where:

- (A) each of AT_2 , AT_3 and AT_4 inputs for that Access Holder's Access Charges at the rate applicable in that Year;
- (B) the nt and ntk (as applicable) are calculated by:

- (1) the aggregate nt and ntk (as applicable) that would have been achieved for the relevant Year had the full contracted entitlement been railed for the relevant Train Services; less
- (2) the aggregate nt and ntk (as applicable) not railed for the relevant Year due to the non-operation of Train Services for an Aurizon Network Cause; less
- (3) the aggregate nt and ntk (as applicable) railed for the relevant Year; and

(C) NTS is calculated as:

- (1) the number of Train Services that the Access Holder would have operated for the relevant Year had the full contracted entitlement been railed for the relevant Train Services; less
- (2) the number of those Train Services that either:
 - were not able to be operated solely as a result of an Aurizon Network Cause; or
 - were operated (whether loaded or empty) during that Year,

provided always that the amount of Take or Pay for a relevant Year must not be less than zero.

(e) To calculate nt and ntk for the purpose of **clause 3.3(d)(iii)(B)**, Aurizon Network must:

- (i) identify from the Access Agreement the number of Train Services that would have operated had the full contracted entitlement been used; and
- (ii) determine the number of Train Services that did not operate under that contracted entitlement due to an Aurizon Network Cause, provided that if an Access Holder has more than one Access Agreement for the same origin to destination pair, Aurizon Network must allocate those Train Services as between the relevant Access Agreements in the order in which those Access Agreements were executed (unless the relevant Access Holder has nominated a different order, in which case that order must be applied),

and calculate the nt and ntk by using the Nominal Train Payload applicable for the relevant Reference Tariff.

- (f) For the purpose of calculating Take or Pay charges, the calculation will be based on the origin and destination specified in the relevant Train Service Entitlement (provided that the Nominated Loading Facilities of RG Tanna Terminal and Barney Point will be treated as the same destination for the purposes of such a calculation).
- (g) For the purpose of calculating Take or Pay charges, an Access Holder's entitlement to operate Train Services is, without limitation, determined by reference to the Train Services that could have been operated in accordance with the Access Holder's Train Service Entitlement including even if:
 - (i) where the Access Holder is not a Train Operator:
 - (A) the Access Holder has not nominated a Train Operator to utilise Access Rights relevant to all or any of the Train Services;
 - (B) either:
 - (1) the Access Holder must ensure a Train Operator does not operate; or
 - (2) Aurizon Network suspends the right of the Access Holder to have a Train Operator operate,
 all or any of the Train Services; or
 - (C) under the relevant train operations deed, either:
 - (1) the relevant Train Operator must not operate; or
 - (2) Aurizon Network suspends the right of the relevant Train Operator to operate,
 all or any of the Train Services; or
 - (ii) where the Access Holder is a Train Operator, the Access Holder must not operate, or Aurizon Network suspends the right of the Access Holder to operate, all or any of the Train Services,

except to the extent of any express exceptions specified in the Access Holder's Access Agreement for the purpose of calculating Take or Pay charges where the Access Holder is taken to not have an entitlement to operate Train Services.

Take or Pay trigger

- (h) For the purpose of calculating Tariff Take or Pay in relation to a System Reference Tariff and to that extent only, the Tariff Take or Pay for a Year is not payable for that Year where the aggregate of the gtk for all coal carrying Train Services, to the extent that the Access Charges for those Train Services are set by reference to the relevant

Reference Tariff, operated for that Year exceeds the amount calculated as:

- (i) 100% of the GtK Forecast identified for that Year for that Reference Tariff; less
 - (ii) the gtk not achieved due to the non-operation of Train Services for an Aurizon Network Cause.
- (i) Where Tariff Take or Pay for a System Reference Tariff is being determined, **clauses 3.3(j)** and **(m)** only apply where Tariff Take or Pay is payable after **clause 3.3(h)** has been applied.

Mine capping

- (j) If:
- (i) Train Services operated in relation to an origin to destination in respect of a person (**End User**) who is either the Customer for those Train Services or the Access Holder for those Train Services (but who has no Customer) under an Access Agreement, exceed the Train Service Entitlement in that Access Agreement (**Exceeded Agreement**); and
 - (ii) there is another Access Agreement (excluding Access Agreements executed or renewed prior to 1 October 2010, and New Access Agreements where the relevant Old Access Agreement was executed or renewed within the same period) (**Other Agreement**) with Train Service Entitlements for that same origin to destination and that End User that have not been exceeded,

then the Take or Pay liability under the Other Agreement will be reduced by the amount of the additional revenue from Access Charges for AT₂₋₄ from those excess Train Services under the Exceeded Agreement but only to the extent that both that Take or Pay liability and those Access Charges are set by reference to the same Reference Tariff. For clarity:

- (iii) where the additional revenue is greater than the Take or Pay liability under one or more Other Agreements, that additional revenue may be used to reduce the Take or Pay liability under those Other Agreements (where there is more than one Other Agreement, the reduction will be pro-rated, on the basis of the total revenue from AT₂₋₄ that Aurizon Network is entitled to earn over the relevant Year under each of those Other Agreements, assuming Train Services were operated with a Nominal Train Payload); and
- (iv) the additional revenue from an Exceeded Agreement can only be used for a reduction of Take or Pay liability under this **clause 3.3(j)** in respect of the Year in which that additional revenue arose and cannot be accrued, rolled over

or otherwise used to reduce a Take or Pay liability for any other Year.

Tariff capping

- (k) **Clause 3.3(l)** must only be applied after **clause 3.3(j)** (if applicable) has been applied.
- (l) Subject to **clause 3.3(m)**, and to **clause 3.3(j)** (if applicable) having first been applied, where the Total Actual Revenue for AT₂₋₄ in relation to Access Charges set by reference to the relevant Reference Tariff less the aggregate amount of Tariff Take or Pay that Aurizon Network is entitled to earn from all Access Agreements executed or renewed on or after 30 June 2006 (other than any new or varied Access Agreement to the extent entered or varied as part of transferring Access Rights from existing Access Agreements in place on the day immediately prior to 30 June 2006 under a provision of the Access Agreement which permits the transfer of Access Rights) (**Total Revenue**) is:
 - (i) greater than or equal to the Allowable Revenue for AT₂₋₄ in relation to the relevant Reference Tariff, Tariff Take or Pay is not payable for that Year under those Access Agreements (**Full Take or Pay Agreements**); or
 - (ii) less than the Allowable Revenue for AT₂₋₄ in relation to that Reference Tariff:
 - (A) Aurizon Network must calculate the aggregate amount of Tariff Take or Pay that Aurizon Network is entitled to earn from all Full Take or Pay Agreements (**Total Actual Take or Pay**); and
 - (B) if the Total Actual Take or Pay exceeds the amount by which the Allowable Revenue for AT₂₋₄ in relation to the relevant Reference Tariff exceeds the Total Revenue from Access Charges set by reference to the relevant Reference Tariff (**Maximum Take or Pay Amount**), then:
 - (1) Aurizon Network must calculate for each relevant Access Holder, the proportion that the Access Holder's Tariff Take or Pay amount bears to the Total Actual Take or Pay (**Proportion**); and
 - (2) each relevant Access Holder's Tariff Take or Pay amount will be reduced to equal that Access Holder's Proportion of the Maximum Take or Pay Amount.
- (m) In determining what Aurizon Network would be entitled to earn for the purposes of **clause 3.3(l)**, Aurizon Network is deemed to have contracted on the terms of the relevant Standard Access Agreement

(as defined under the Applicable Undertaking) that applied on the date of execution or renewal of an Access Agreement, except for:

- (i) those Access Agreements which have been altered by agreement from that form in a manner consistent with the terms of any Approved Undertaking or approval of the QCA, in which case Aurizon Network's entitlement will be calculated in accordance with the terms of such Access Agreements; and
- (ii) a New Access Agreement to the extent entered into as part of transferring Access Rights from an Old Access Agreement executed under the 2001 Undertaking, under a provision of the Access Agreement which permits the transfer of Access Rights, in which case Aurizon Network's entitlement to Tariff Take or Pay amounts will be calculated on the basis that Aurizon Network has contracted on the terms of the relevant Standard Access Agreement (as defined under the 2001 Undertaking) that applied on the date of execution of that Old Access Agreement.

Take or Pay for Expansions

- (n) In relation to Take or Pay in the context of an Expansion Tariff:
 - (i) The Take or Pay amount for an Access Holder that is required to pay an Expansion Tariff will be calculated in accordance with:
 - (A) the formulae in **clause 3.3(d)(iii)**; plus
 - (B) $AT5 \times egtk / 1000$;where the egtk is calculated by:
 - (C) the aggregate egtk that would have been achieved for the relevant Year had the full contracted entitlement been railed for the relevant Train Services; less
 - (D) the aggregate egtk not railed for the relevant Year due to the non-operation of Train Services for an Aurizon Network Cause; less
 - (E) the aggregate egtk railed for the relevant Year;provided always that the amount of Take or Pay for the Year must not be less than zero.
 - (ii) In order to calculate egtk for the purposes of this clause, Aurizon Network will:
 - (A) identify from the Access Agreement the number of Train Services that would have operated had the full contracted entitlement been used;

- (B) determine the number of Train Services that did not operate under that contracted entitlement due to an Aurizon Network Cause; and
 - (C) convert this to egtk by using the Nominal Train Payload for the relevant Reference Tariff as reasonably determined by Aurizon Network.
- (iii) For the avoidance of doubt:
- (A) there is no Take or Pay trigger test – ie, **clause 3.3(h)** does not apply; and
 - (B) there are no capping mechanisms – ie, **clauses 3.3(j) to 3.3(m)** do not apply.

4 Annual review of Reference Tariffs

4.1 Requirement for annual review of Reference Tariffs

- (a) Prior to the beginning of each Year during the Term (except for the first Year) each Reference Tariff will be adjusted by Aurizon Network to reflect the variations to the applicable Allowable Revenue:
 - (i) for the relevant Year due to an adjustment to Second Year Allowable Revenue under **clause 4.4**; and
 - (ii) for the relevant Year and each subsequent Year during the Term in accordance with **clause 4.1(b)**.
- (b) Aurizon Network will submit to the QCA by 28 February of each Year during the Term:
 - (i) a revised Gtk Forecast for each Reference Tariff for the next Year;
 - (ii) details of the methodology, data and assumptions used to estimate the revised Gtk Forecast; and
 - (iii) the proposed adjustments, for each Reference Tariff, arising from any difference between the relevant revised Gtk Forecast and the Gtk Forecast used for the purpose of determining the Allowable Revenue for that Reference Tariff, to:
 - (A) the Allowable Revenue for the Reference Tariff for each subsequent Year during the Term; and
 - (B) the Reference Tariff for the next Year.
- (c) If, after receiving a submission under **clause 4.1(b)**, the QCA considers that an error has been made in the proposed revised Gtk Forecast or adjustments to Allowable Revenue or Reference Tariffs, then:

- (i) the QCA will endeavour to notify Aurizon Network within forty (40) Business Days, providing details of the error and how the proposal needs to be amended in order for the QCA to approve it; and
- (ii) after receiving that notice, Aurizon Network must within ten (10) Business Days either:
 - (A) show why it does not consider that the error has been made; or
 - (B) resubmit a corrected version of the submission.
- (d) The QCA may approve the revised Gtk Forecast, Allowable Revenues and Reference Tariffs if it considers that the revised Gtk Forecast is reasonable and the consequential adjustments to Allowable Revenues and Reference Tariffs are calculated properly.
- (e) If Aurizon Network does not make a submission under **clause 4.1(b)** in respect of a Year by 28 February, then no adjustments to the Gtk Forecast, Allowable Revenues or Reference Tariffs for that Year will be made under this **clause 4.1**.

4.2 Allowable Revenue

- (a) Subject to **clause 4.2(b)**, the Allowable Revenue:
 - (i) for AT_{2-4} in relation to a Reference Tariff for a Year, is the total revenue from AT_{2-4} arising from all Tariff Based Access Agreements in relation to that Reference Tariff that Aurizon Network is entitled to earn over the relevant Year as specified in the Reference Tariff (for example, as specified in **clauses 7.3, 8.3, 9.3, 10.3 and 11.3 of Schedule F**, as applicable), as amended from time to time, and as adjusted or varied in accordance with this **Schedule F** (but, for clarity, excluding any Adjusted Allowable Revenue); and
 - (ii) for the AT_5 component of Access Charges in relation to a Reference Tariff for a Year, is the total revenue from the AT_5 component of Access Charges arising from all Tariff Based Access Agreements in relation to that Reference Tariff that Aurizon Network is entitled to earn over the relevant Year as specified in the Reference Tariff (for example, as specified in **clauses 7.3 and 8.3 of Schedule F**, as applicable) as amended from time to time, and as adjusted or varied in accordance with this **Schedule F**.
- (b) Unless otherwise agreed with the QCA, when calculating Allowable Revenue in relation to the Origin Tariff and the Destination Tariff for a Cross System Train Service, regardless of when the Cross System Train Service commenced:
 - (i) for the Allowable Revenue for AT_{2-4} :

- (A) the sum of the following components of Access Charges that Aurizon Network would be expected to earn in respect of a forecast Cross System Train Service:
 - (1) the AT₂ components calculated based on the relevant Destination Tariff and on **clause 2.3(a)(ii) of Schedule F**; and
 - (2) 50% of the AT₃ components calculated based on the relevant Destination Tariff,
 will be allocated to Allowable Revenue for the Destination Tariff; and
- (B) all other Access Charges attributable to AT₂₋₄ which Aurizon Network would be expected to earn in respect of a forecast Cross System Train Service calculated based on the Origin Tariff applicable to that Cross System Train Service, will be allocated to the Allowable Revenue of the Origin Tariff; and
- (ii) for the Allowable Revenue for AT₅, the AT₅ component of Access Charges that Aurizon Network would be expected to earn in respect of a forecast Cross System Train Service, calculated based on:
 - (A) the Origin Tariff and the egtk in the Origin System, will be allocated to the Allowable Revenue for the Origin Tariff; and
 - (B) the Destination Tariff and the egtk in the Destination System, will be allocated to the Allowable Revenue for the Destination Tariff.

4.3 Calculation of Revenue Adjustment Amounts

Obligation to calculate Revenue Adjustment Amounts

After the end of each Year, Aurizon Network will calculate for that Year for each Reference Tariff:

- (a) an AT₂₋₄ Revenue Adjustment Amount for that Reference Tariff by subtracting:
 - (i) the Adjusted Allowable Revenue for AT₂₋₄ (calculated under **clause 4.3(c)**) for that Reference Tariff; from
 - (ii) the Total Actual Revenue for AT₂₋₄ (calculated under **clause 4.3(d)**) in relation to that Reference Tariff,
 for that Year; and
- (b) an AT₅ Revenue Adjustment Amount for that Reference Tariff by subtracting:

- (i) the Adjusted Allowable Revenue for AT₅ (calculated under **clause 4.3(c)**) for that Reference Tariff; from
 - (ii) the Total Actual Revenue for AT₅ (calculated under **clause 4.3(g)**) in relation to that Reference Tariff,
- for that Year.

Calculation of Adjusted Allowable Revenue

- (c) The Adjusted Allowable Revenue for AT₂₋₄ or the AT₅ component of Access Charges in relation to a Reference Tariff is the sum of the following components of the applicable Allowable Revenue (as relevant to the applicable Allowable Revenue):
 - (i) the component relating to the recovery of Aurizon Network's maintenance costs, adjusted to reflect the difference between:
 - (A) the actual MCI value for the relevant Year; and
 - (B) the forecast MCI value that was used for the purpose of determining the relevant Reference Tariff for the relevant Year;
 - (ii) the component relating to the recovery of Aurizon Network's operating costs, excluding those costs referred to in **clause 4.3(c)(i)**, adjusted to reflect the difference between:
 - (A) the actual CPI value for the relevant Year; and
 - (B) the forecast CPI value that was used for the purpose of determining the relevant Reference Tariff for the relevant Year;
 - (iii) the components relating to the recovery of Aurizon Network's costs associated with the connection of Aurizon Network's electrical traction system to an electricity transmission or distribution network, adjusted to reflect the difference between:
 - (A) the actual costs for the relevant Year; and
 - (B) the forecast costs used for the purpose of determining the relevant Reference Tariff for the relevant Year;
 - (iv) the components relating to the recovery of Aurizon Network's costs for the cost of audits required under this Undertaking by the QCA for the relevant Year, but only to the extent that the QCA has approved in writing the relevant audit costs as efficiently incurred and such costs are not already recoverable by Aurizon Network elsewhere in this Undertaking;

- (v) the components relating to the recovery of Aurizon Network's costs for the cost of any Conditions Based Assessment required under this Undertaking by the QCA for the relevant Year, but only to the extent that the QCA has approved in writing the relevant Condition Based Assessment costs as efficiently incurred and such costs are not already recoverable by Aurizon Network elsewhere in this Undertaking;
- (vi) the component relating to the recovery of Aurizon Network's costs for ground penetrating radar measurement, but only to the extent that these costs have been prudently and efficiently incurred and are not already recoverable by Aurizon Network elsewhere in this Undertaking;
- (vii) the components relating to the payment by Aurizon Network of rebates relating to the capital components of Access Charges attributable to the use of all or part of specified assets relating to the relevant Reference Tariff (other than under a User Funding Agreement), adjusted to reflect the difference between:
 - (A) the actual payment of rebates made under those agreements for the applicable assets; and
 - (B) the forecast payments of those rebates used for the purpose of determining the relevant Reference Tariff for the relevant Year;
- (viii) the components relating to the recovery of Aurizon Network's costs relating to, or arising out of compliance with this Undertaking that were not allowed for in the determination of the relevant Reference Tariff, but only to the extent that the QCA has approved in writing the relevant costs as efficiently incurred and such costs are not already recoverable by Aurizon Network elsewhere in this Undertaking; and
- (ix) all components excluding those costs referred to in any of **clauses 4.3(c)(i) to (viii)**.

Calculation of Total Actual Revenue for AT₂₋₄

- (d) The Total Actual Revenue for AT₂₋₄ in relation to the relevant Reference Tariff is the sum of:
 - (i) total revenue from AT₂₋₄, including all revenue from Overload Charges and any Ancillary Revenues relating to maintaining connections to Private Infrastructure (except to the extent that costs associated with maintaining connections to any Private Infrastructure are not specifically allowed for in the relevant Reference Tariff), for coal carrying Train Services, in relation to the relevant Reference Tariff that operated in the Year, that Aurizon Network would have earned

(regardless of what it actually earned or collected), if that revenue were calculated consistent with the following:

- (A) for a Train Service that is:
 - (1) consistent with the relevant Reference Train Service; and
 - (2) is not a Cross System Train Service, the AT₂, AT₃ and AT₄ components of the relevant Reference Tariff;
 - (B) for a Cross System Train Service that is consistent with the relevant Reference Train Service (to the extent that the relevant Reference Tariff applies), that part of the AT₂, AT₃ and AT₄ components of the relevant Reference Tariff allocated consistently with the method used in the calculation of the relevant Allowable Revenue under **clause 4.2(b)**;
 - (C) for a Train Service that varies from the relevant Reference Train Service due to it not complying with:
 - (1) **clause 1.3(b)(v)**, the AT₂ component of the Access Charge (where the Access Charge varies from the Reference Tariff under **clause 6.2.3(c)** of this Undertaking) and the AT₃ and AT₄ components of the relevant Reference Tariff; or
 - (2) any other part of **clause 1.3(b), (d) or (e)** (other than **clause 1.3(b)(v)** – with which it complies), the AT₂, AT₃ and AT₄ components of the relevant Reference Tariff; or
 - (D) for a Train Service where the QCA has otherwise approved an Access Charge that differs from the relevant Reference Tariff, the amount of the AT₂, AT₃ and AT₄ components of the relevant Access Charge;
- (ii) the amount of all Take or Pay and, subject to **clause 4.3(e)**, Relinquishment Fees and Transfer Fees which Aurizon Network would be entitled to be paid in the relevant Year under Tariff Based Access Agreements, for coal carrying Train Services, in relation to the relevant Reference Tariff (or, for a Cross System Train Service, to the extent the relevant Reference Tariff applies to the setting of Access Charges for that Cross System Train Service) calculated on the basis that Aurizon Network is deemed to have contracted on the terms of the relevant Standard Access Agreement (as

defined under the Applicable Undertaking) that applied on the date of execution or renewal of an Access Agreement, except for:

- (A) those Access Agreements which have been altered from the relevant Standard Access Agreement in accordance with any Approved Undertaking or as approved by the QCA, for which Aurizon Network's entitlement to Take or Pay amounts, Relinquishment Fees or Transfer Fees will be calculated in accordance with the terms of those Access Agreements; and
 - (B) a New Access Agreement to the extent entered into as part of transferring Access Rights from an Old Access Agreement executed under the 2001 Undertaking, under provisions of the Access Agreement which permits the transfer of Access Rights, which has not been renewed after 30 June 2006, for which Aurizon Network's entitlement to Take or Pay amounts, Relinquishment Fees and Transfer Fees will be calculated on the basis that Aurizon Network has contracted on the terms of the relevant Standard Access Agreement (as defined under the 2001 Undertaking) that applied on the date of execution of that Old Access Agreement; and
- (iii) all revenue from AT₂₋₄ that Aurizon Network would have been entitled to earn under a Tariff Based Access Agreement in relation to the relevant Reference Tariff during the relevant Year but for Aurizon Network's breach of that Access Agreement or negligence in the provision of Below Rail Services to the extent that such events of breach or negligence resulted in the non-provision of 5% or more of the total number of Train Services for any single origin-destination pair during the relevant Year (provided that, where Access Rights are held by a party that is not a Train Operator, the 5% threshold is measured across the number of Train Services for each single origin to destination pair under that Access Agreement, not any relevant train operations deed),
- less any interest comprised in those amounts representing interest paid or payable to Aurizon Network in relation to Access Charges (including any Adjustment Charges).
- (e) Subject to the QCA's approval, Aurizon Network may reduce the amount of any Relinquishment Fee or Transfer Fee used to calculate Total Actual Revenue for a Year if its inclusion will have a material effect on the AT₂₋₄ Revenue Adjustment Amount.

- (f) If Aurizon Network reduces the amount of any Relinquishment Fee or Transfer Fee under **clause 4.3(e)** of **Schedule F**, then the amount of the reduction must be carried forward to a following Year, including a return on capital amount, calculated by reference to the Discount Rate over the period starting on the first day of the Year in which the Relinquishment Fee or Transfer Fee is received and ending on the first day of the Year in which the Relinquishment Fee or Transfer Fee is included in the calculation of Total Actual Revenue.

Calculation of Total Actual Revenue for the AT₅ component of Access Charges

- (g) The Total Actual Revenue for the AT₅ component of Access Charges in relation to the relevant Reference Tariff is the sum of:
- (i) total revenue from the AT₅ component of Access Charges arising from all Tariff Based Access Agreements, for coal carrying Train Services, in relation to the relevant Reference Tariff that Aurizon Network has actually earned over the relevant Year (whether or not actually collected by Aurizon Network), calculated using:
 - (A) for a Train Service for which **clause 6.9.1(b)** of this Undertaking applies, the amount of the AT₅ component of the relevant Access Charges; or
 - (B) if **paragraph (A)** does not apply:
 - (1) for a Cross System Train Service that is consistent with the relevant Reference Train Service, the AT₅ component of the relevant Reference Tariff allocated consistently with the method used in the calculation of the relevant Allowable Revenue under **clause 4.2(b)**; or
 - (2) where **paragraph (1)** does not apply, the AT₅ component of the relevant Reference Tariff; and
 - (ii) all revenue from the AT₅ component of Access Charges that Aurizon Network would have been entitled to earn under a Tariff Based Access Agreement in relation to the relevant Reference Tariff during the relevant Year but for Aurizon Network's breach of that Access Agreement or negligence in the provision of Below Rail Services to the extent that such events of breach or negligence resulted in the non-provision of 5% or more of the total number of Train Services for any single origin-destination pair during the relevant Year (provided that, where Access Rights are held by a party that is not a Train Operator, the 5% threshold is measured across the number of Train Services for each single origin to

destination pair under that Access Agreement, not any relevant train operations deed),

less any interest comprised in those amounts representing interest paid or payable to Aurizon Network in relation to Access Charges (including any Adjustment Charges).

Approval of Revenue Adjustment Amounts

- (h) Aurizon Network will submit to the QCA by 30 September after the end of each Year of the Term details of the methodology, data and assumptions used to calculate the Revenue Adjustment Amounts for that Year under this **clause 4.3** and **clause 4.4** provided that if, in that September, Adjustment Charges have not yet been approved relating to the relevant Year, then Aurizon Network is only required to submit the relevant information within thirty (30) days after those Adjustment Charges have been approved.
- (i) The QCA may give Aurizon Network a notice requiring Aurizon Network to submit the Revenue Adjustment Amounts, if Aurizon Network fails to do so under **clause 4.3(h)**.
- (j) The QCA may grant Aurizon Network an extension of the time for submitting, or resubmitting, the Revenue Adjustment Amounts if:
 - (i) Aurizon Network provides a written request to the QCA for an extension of time; and
 - (ii) the extension of time is reasonable or necessary.If an extension of time is granted, Aurizon Network will submit the Revenue Adjustment Amounts within the time specified by the QCA.
- (k) The QCA may calculate Revenue Adjustment Amounts that are consistent with the requirements specified in this **clause 4.3**:
 - (i) if Aurizon Network does not comply with a notice from the QCA under **clause 4.3(h)** or **4.3(n)(ii)**; or
 - (ii) if the QCA, under **clause 4.3(n)(ii)**, refuses to approve the Revenue Adjustment Amounts resubmitted by Aurizon Network.
- (l) Where Aurizon Network submits the Revenue Adjustment Amounts under **clause 4.3(h)**, the QCA may, to the extent it considers it appropriate to do so:
 - (i) publish details of the Revenue Adjustment Amounts; and
 - (ii) invite and consider comments from stakeholders regarding the Revenue Adjustment Amounts.

To the extent that such comments are provided, the QCA must give Aurizon Network a reasonable period to respond to those comments.

- (m) The QCA will approve any Revenue Adjustment Amounts if the QCA is reasonably satisfied that they have been calculated in accordance with this **clause 4.3**.
- (n) If the QCA:
 - (i) approves the Revenue Adjustment Amounts, the QCA will give Aurizon Network a notice stating the reasons for the QCA's decision; or
 - (ii) refuses to approve the Revenue Adjustment Amounts, the QCA will give Aurizon Network a notice:
 - (A) stating the reasons for its refusal and the way in which it considers that the Revenue Adjustment Amounts should be amended; and
 - (B) requiring Aurizon Network to amend the Revenue Adjustment Amounts in that way and to resubmit the Revenue Adjustment Amounts to the QCA within thirty (30) days after Aurizon Network receives that notice.
- (o) Aurizon Network must comply with a notice under **clause 4.3(n)(ii)**.
- (p) The QCA may approve Revenue Adjustment Amounts resubmitted by Aurizon Network or developed by the QCA under **clause 4.3(j)**, if it is satisfied that they:
 - (i) are consistent with the matters specified under **clause 4.3(l)**; and
 - (ii) if a notice has been issued under **clause 4.3(n)(ii)**, have been amended or developed in accordance with that notice.
- (q) Despite any other provision of this Undertaking, to the extent that:
 - (i) Adjustment Charges have been approved for a Year;
 - (ii) Aurizon Network is entitled or obliged to recover or reimburse those Adjustment Charges from or to Access Holders;
 - (iii) Aurizon Network is obliged under this Undertaking to calculate Revenue Adjustment Amounts in respect of that Year; and
 - (iv) in recovering or reimbursing the Adjustment Charges, the Adjustment Charges are included in an invoice relating to a Billing Period in the Year in which the relevant Revenue Adjustment Amounts are required to be calculated,

then, the Total Actual Revenue for AT_{2-4} or AT_5 for each relevant Coal System for that Year and the Year in which the relevant Revenue Adjustment Amounts are required to be calculated must be adjusted

to take account of the Adjustment Charges (but excluding the interest component of those Adjustment Charges).

4.4 Revenue adjustment

- (a) Where a Revenue Adjustment Amount has been approved by the QCA under **clause 4.3**:
- (i) the equivalent Allowable Revenue to that used in the calculation of that Revenue Adjustment Amount for the relevant Reference Tariff for the Year after the Year in which that Revenue Adjustment Amount was calculated (that is, the **Second Year Allowable Revenue**) must be adjusted in accordance with this **clause 4.4**; and
 - (ii) the Allowable Revenue for all subsequent Years must also be adjusted to reflect the actual change in the MCI and CPI as used in the calculation of the approved Revenue Adjustment Amount.
- (b) A Second Year Allowable Revenue will be adjusted as follows:
- (i) for an AT_{2-4} Revenue Adjustment Amount, by subtracting from the relevant Second Year Allowable Revenue:
 - (A) that AT_{2-4} Revenue Adjustment Amount; and
 - (B) a return on capital amount, calculated by reference to the Discount Rate as applied to the AT_{2-4} Revenue Adjustment Amount over the period starting on the first day of the Year in which the Revenue Adjustment Amount is calculated and ending on the last day of the Year following that Year; and
 - (ii) for an AT_5 Revenue Adjustment Amount, by subtracting from the relevant Second Year Allowable Revenue:
 - (A) that AT_5 Revenue Adjustment Amount; and
 - (B) a return on capital amount, calculated by reference to the Discount Rate as applied to the AT_5 Revenue Adjustment Amount over the period starting on the first day of the Year in which the Revenue Adjustment Amount is calculated and ending on the last day of the Year following that Year.
- (c) Where a Second Year Allowable Revenue is adjusted under this **clause 4.4**, Aurizon Network must vary the relevant Reference Tariff as part of the adjustment of the relevant Reference Tariff under **clause 4.1(a)**.

5 Reference Tariff variations

5.1 Obligation to submit Reference Tariff variations

- (a) Aurizon Network:
 - (i) may submit a Reference Tariff variation to the QCA, where Aurizon Network considers that the variation will promote efficient investment by either Aurizon Network or another person in the Supply Chain; or
 - (ii) must submit a Reference Tariff variation to the QCA, subject to **clause 5.6**:
 - (A) within sixty (60) days after:
 - (1) Aurizon Network becomes aware that an Endorsed Variation Event has occurred or a Review Event has occurred or will occur; or
 - (2) a notice being given to Aurizon Network by the QCA under **clause 5.1(b)**; or
 - (B) by 28 February prior to each Year of the Term, in accordance with **clause 4.1(a)** (if applicable).
- (b) The QCA may give Aurizon Network a notice requiring Aurizon Network to submit a Reference Tariff variation if Aurizon Network fails to submit a Reference Tariff variation within sixty (60) days, subject to **clause 5.6**, after the QCA determines, and notifies Aurizon Network, that an Endorsed Variation Event or a Review Event has occurred.
- (c) The QCA may develop a Reference Tariff variation that is consistent with the requirements specified in this **clause 5**:
 - (i) if Aurizon Network does not comply with a written notice given by the QCA under **clause 5.1(b)** or **clause 5.5(e)(ii)** for it to submit, or resubmit, a Reference Tariff variation; or
 - (ii) if the QCA refuses to approve a Reference Tariff variation resubmitted by Aurizon Network in accordance with a notice given by the QCA under **clause 5.5(e)(ii)**.
- (d) A Reference Tariff variation under this **clause 5** will include a revised GtK Forecasts and Allowable Revenues to the extent applicable to that Reference Tariff variation.

5.2 Endorsed Variation Events

The occurrence of any of the following events is an Endorsed Variation Event:

- (a) a Change in Law or a Change in Relevant Taxes occurs, that either alone or in combination with all other Changes in Law or Changes in Relevant Taxes that have occurred since the Commencing Date, would cause a change in the costs reflected in the AT₃, AT₄, and/or

AT₅ input of the relevant Reference Tariff of greater than 2.5% excluding the impact of any Change in Law or Change in Relevant Taxes that have previously resulted in a variation of the Reference Tariff;

- (b) a change in the pricing of one or more Distribution Entities and/or Transmission Entities that, either alone or in combination with all other changes in the pricing of relevant Distribution Entities and/or Transmission Entities that have occurred since the Commencing Date and that have not previously resulted in a variation of the Reference Tariff, would cause a change in the costs reflected in the AT₅ input of the relevant Reference Tariff of greater than 2.5%; or
- (c) the QCA Levy input of a relevant Reference Tariff is reviewed (taking into account any over or under recovery of fees via the QCA Levy component of Access Charges in the previous Year) following the QCA's announcement of its fees for the provision of regulatory services for the rail industry.

5.3 Review Event

The occurrence of a Force Majeure Event – of the type set out in either **paragraph (e), (l) or (m)** of the definition of that term – affecting Aurizon Network, to the extent that Aurizon Network has incurred or will incur additional Incremental Costs of greater than \$1 million that have not previously resulted in a variation of the relevant Reference Tariff, is a Review Event in respect of which Aurizon Network has given written notice to the QCA of Aurizon Network's intention to propose a variation to that Reference Tariff under this **clause 5**.

5.4 Requirements for submissions

Where Aurizon Network submits a Reference Tariff variation, the variation must:

- (a) nominate the Reference Tariff to be varied;
- (b) include details of the methodology, data and assumptions used to vary the Reference Tariff;
- (c) for a variation under **clause 5.1(a)(i)**, include information on:
 - (i) the matters set out in **clause 6.6** (Pricing limits) of this Undertaking; and
 - (ii) why Aurizon Network considers that the variation of the Reference Tariff will promote efficient investment by either Aurizon Network or another person in the Supply Chain; and
- (d) for a variation in respect of an Endorsed Variation Event or a Review Event, evidence that the Endorsed Variation Event or Review Event has occurred or will occur.

5.5 Approval process

- (a) The QCA may publish details of Aurizon Network's proposed Reference Tariff variation and invite and consider comments from stakeholders regarding the proposed variation.
- (b) The QCA must give Aurizon Network a reasonable opportunity to respond to any comments from stakeholders that the QCA considers regarding the proposed variation. The QCA must consider all such responses from Aurizon Network.
- (c) The QCA may approve Aurizon Network's proposed Reference Tariff variation if the QCA is satisfied that:
 - (i) for a variation in respect of an Endorsed Variation Event:
 - (A) the Endorsed Variation Event has occurred; and
 - (B) the variation of the Reference Tariff is consistent with the change in the forecast cost resulting from the Endorsed Variation Event (including incremental maintenance and incremental capital costs), calculated as if all other assumptions originally used for the determination of Reference Tariffs are held constant;
 - (ii) for a variation in respect of a Review Event:
 - (A) the Review Event has occurred or will occur; and
 - (B) the variation of the relevant Reference Tariff:
 - (1) is consistent with the change in the cost resulting from or that will result from the Review Event; and
 - (2) reflects the impact of the relevant Review Event on the financial position of Aurizon Network (including the impact of incremental maintenance and incremental capital costs); and
 - (iii) for a variation in respect of either an Endorsed Variation Event or a Review Event, whether the proposed variation has been calculated as if all other Reference Tariffs were also being recalculated due to the Endorsed Variation Event or Review Event (as applicable).
- (d) If the QCA approves a Reference Tariff variation:
 - (i) the QCA will give Aurizon Network a notice stating the reasons for the QCA's decision;
 - (ii) the Reference Tariff variation will apply, where the variation arose as a result of:

- (A) an Endorsed Variation Event:
 - (1) from the first day of the Month immediately following the date of the occurrence of the Endorsed Variation Event; or
 - (2) where the date of the occurrence of the Endorsed Variation Event is the first day of a Month, from that date;
 - (B) an adjustment of Reference Tariffs under **clause 4.1**, from 1 July of the Year following the Year in which the variation was submitted; or
 - (C) a Review Event, from the date approved by the QCA (being a date that may be before, on or after the date on which the QCA approved that Reference Tariff variation); and
- (iii) Aurizon Network must:
- (A) publish details of the Reference Tariff variation on the Website; and
 - (B) advise Access Holders and Access Seekers, in respect of the relevant Reference Train Service, of the Reference Tariff variation.
- (e) If the QCA refuses to approve a Reference Tariff variation, the QCA will give Aurizon Network a notice:
- (i) stating the reasons for its refusal and the way in which the QCA considers that the variation should be amended; and
 - (ii) if that variation was required to be submitted by Aurizon Network under this **clause 5** in respect of an Endorsed Variation Event or a Review Event, requiring Aurizon Network to vary the Reference Tariff in the way the QCA considers it appropriate and to resubmit the variation to the QCA within twenty (20) Business Days after Aurizon Network receiving the notice, subject to **clause 5.6**.
- (f) Aurizon Network must comply with a notice given under **clause 5.5(e)**.
- (g) When considering whether to approve a resubmitted Reference Tariff variation or a Reference Tariff variation developed by the QCA under **clause 5.1(c)**, the QCA must take into account:
- (i) the matters specified under **clause 5.5(c)** (as applicable); and
 - (ii) if applicable, whether the variation has been amended or developed in accordance with the QCA's prior decision (if

any) to refuse to approve the relevant Reference Tariff variation.

- (h) For the purposes of **clause 5.1**:
 - (i) a Reference Tariff variation submitted by Aurizon Network or developed by the QCA under **clause 5.1** must include a review of Allowable Revenue and GtK Forecast to the extent applicable to that variation; and
 - (ii) the QCA in approving a variation of a Reference Tariff must also approve the corresponding variation of the applicable Allowable Revenue and GtK Forecast.

5.6 Extensions of time

- (a) The QCA may grant Aurizon Network an extension of the time for submitting, or resubmitting, a Reference Tariff variation if:
 - (i) Aurizon Network provides a written request to the QCA for an extension of time which includes the reasons why Aurizon Network requires the extension of time; and
 - (ii) the extension of time is reasonable or necessary.
- (b) If the QCA grants Aurizon Network an extension of time under **clause 5.6(a)**, Aurizon Network must submit or resubmit the Reference Tariff variation within the time specified by the QCA.

6 Adjustment Charges

6.1 Calculation of Adjustment Charges

- (a) Subject to **clause 6.3**, if:
 - (i) this Undertaking specifies that a Reference Tariff is applicable or effective from a date prior to the date on which that Reference Tariff was approved by the QCA; or
 - (ii) a variation of a Reference Tariff (including a variation approved under **clause 5**) is applicable or effective from a date prior to the date on which the variation was approved by the QCA,

Aurizon Network is entitled to recover from or will reimburse to, as applicable, each relevant Access Holder (or, if applicable, Train Operator if it pays a component of the Access Charges the amount (**Adjustment Amount**) which is the sum of:

- (iii) the aggregate of the differences, for each relevant Access Holder (or, if applicable, Train Operator) for each calendar Month (or part thereof) since the date on which the Reference Tariff or the variation of the Reference Tariff was to apply or take effect (**Effective Date**) until the date on which that Reference Tariff was approved by the QCA or the

variation of the Reference Tariff was made, as applicable, between:

- (A) the Access Charges paid or payable by that Access Holder (or, if applicable, Train Operator) in respect of the Train Services operated by or for that Access Holder (or, if applicable, Train Operator) during that calendar Month (or part thereof); and
 - (B) the Access Charges that would have been paid or payable by that Access Holder (or, if applicable, Train Operator) in respect of those Train Services if the Access Charges were calculated in accordance with the Reference Tariff or the variation of the Reference Tariff referred to in **clause 6.1(a)(i)** or **(ii)** on and from the Effective Date; and
- (iv) the aggregate of the interest calculated in accordance with **clause 6.1(b)** in respect of the amount of each difference comprising the amount calculated in accordance with **clause 6.1(a)(iii)**,

by making adjustments to the Access Charges (**Adjustment Charge**) payable by Access Holders (or, if applicable, Train Operator if it pays a component of the Access Charges so as to recover or reimburse, as applicable, the Adjustment Amount (subject to the provisions of this Undertaking). To the extent that the Access Holder (or, if applicable, Train Operator) has not paid the original Access Charge to which an Adjustment Charge relates, then the Adjustment Charge may be set off against the amount payable by the Access Holder (or, if applicable, Train Operator).

- (b) The interest referred to in **clause 6.1(a)(iv)** must be calculated:
- (i) in respect of the amount of each difference comprising the amount calculated under **clause 6.1(a)(iii)**;
 - (ii) on the basis that the interest:
 - (A) accrues and is charged from day to day; and
 - (B) is capitalised at the end of each Month and will thereafter itself bear interest;
 - (iii) at the rate equal to, for interest accruing in a Month:
 - (A) the mid-point of the one Month Bank Bill Swap Rate as published by the Australian Financial Markets Association (or its successor) for the Business Day immediately prior to the 21st day of the previous Month; or
 - (B) if that rate is no longer published, the rate will be an appropriate equivalent rate determined by Aurizon Network, acting reasonably; and

- (iv) for the period commencing on the date when the Access Charges used to calculate the applicable difference in accordance with **clause 6.1(a)(iii)(A)** were due and payable and ending on the date when the Adjustment Charge is to be due and payable,

provided that if Aurizon Network is required to reimburse an Adjustment Charge, then no interest will be calculated to the extent that the Access Holder (or, if applicable, Train Operator) has not paid the original Access Charge to which the Adjustment Charge relates.

6.2 Approval of Adjustment Charges

- (a) Aurizon Network:
 - (i) may, if it submits a Reference Tariff variation under **clause 5.1** and that variation is proposed to apply or take effect on a date prior to the date on which the QCA will approve the variation; or
 - (ii) must, if:
 - (A) the QCA approves a Reference Tariff variation under **clause 5.1** and that variation applies or takes effect on a date prior to the date on which the QCA approves the variation (and subject to **clause 6.2(a)(i)**); or
 - (B) this Undertaking specifies that a Reference Tariff is applicable or effective from a date prior to the date on which that Reference Tariff was approved by the QCA,submit to the QCA proposed Adjustment Charges.
- (b) Where Aurizon Network submits proposed Adjustment Charges to the QCA under **clause 6.2(a)**:
 - (i) Aurizon Network's submission must, without limitation:
 - (A) identify, subject to **clause 6.3(a)**, the Access Holders (or, if applicable, Train Operator) in respect of whom the proposed Adjustment Charges are to be applied;
 - (B) set out the proposed Adjustment Charges for each Access Holder (or, if applicable, Train Operator) including details of how those proposed Adjustment Charges were calculated;
 - (C) indicate the Billing Period(s) in respect of which the proposed Adjustment Charges are to be applied; and

- (D) if applicable, how the proposed Adjustment Charges are to be allocated for the purposes of calculations under **clause 4.3**;
- (ii) if the QCA considers it appropriate, the QCA may publish details of Aurizon Network's submission of proposed Adjustment Charges and invite and consider comments from stakeholders regarding the proposed Adjustment Charges; and
- (iii) the QCA must approve:
 - (A) the Access Holders (and, if applicable, Train Operators) in respect of whom the Adjustment Charges are to apply;
 - (B) the Adjustment Charges that are to apply to each Access Holder (and, if applicable, Train Operator);
 - (C) the Billing Period(s) in respect of which the Adjustment Charges will be applied; and
 - (D) if applicable, how the Adjustment Charges must be allocated for the purposes of calculations under **clause 4.3**,

if the proposed Adjustment Charges submitted by Aurizon Network (excluding any interest component) constitute no more of a recovery or no less of a reimbursement of any under or over recovery of Access Charges by Aurizon Network that relate to each Access Holder (or, if applicable, Train Operator), and any interest component was calculated under **clause 6.1(b)(iii)(B)**.
- (c) Aurizon Network must comply with an approval of the QCA given under **clause 6.2(b)(iii)** or **6.2(f)** including in applying the Adjustment Charge approved for each Access Holder to the calculation of Access Charges payable by that Access Holder (or, if applicable, Train Operator).
- (d) If the QCA refuses to approve Aurizon Network's submission for an Adjustment Charge, the QCA must give Aurizon Network a notice:
 - (i) stating the reasons for its refusal and the way in which the QCA considers the proposed Adjustment Charge should be amended so as to constitute (excluding any interest component) no more of a recovery or no less of a reimbursement of any under or over recovery of Access Charges by Aurizon Network that relate to each Access Holder (or, if applicable, Train Operator); and
 - (ii) requiring Aurizon Network to vary the proposed Adjustment Charge in the way the QCA considers it appropriate and

resubmit the amended proposal to the QCA within thirty (30) days of Aurizon Network receiving the notice.

- (e) Aurizon Network must comply with a notice given under **clause 6.2(d)**.
- (f) The QCA must approve a resubmitted proposal for Adjustment Charges, if the resubmitted proposal has been amended or developed in accordance with the QCA's notice given under **clause 6.2(d)** and the QCA is satisfied that the proposed Adjustment Charges resubmitted by Aurizon Network (excluding any interest component) constitute no more of a recovery or no less of a reimbursement of any under or over recovery of Access Charges by Aurizon Network that relate to each Access Holder (or, if applicable, Train Operator).

6.3 Application to Access Holders and Train Operators

- (a) An Adjustment Charge may only apply to:
 - (i) an Access Holder (**New Access Holder**) that did not run, or cause a Train Operator to run; or
 - (ii) a Train Operator (**New Train Operator**) that did not operate, the Train Services to which that Adjustment Charge relates (**Past Train Services**) if:
 - (iii) the Access Holder who ran (or caused a Train Operator to run) or the Train Operator who operated (as applicable), the Past Train Services no longer has (or, at the time when the Adjustment Charges are to be applied, will have ceased to have) a rail haulage agreement with the Customer relating to the Past Train Services or in respect of Train Services with the same origin and destination as the Past Train Services;
 - (iv) either:
 - (A) the New Access Holder or New Train Operator (as applicable) has a rail haulage agreement with the person who was the Customer referred to in **clause 6.3(a)(iii)** (including that Customer's successors and assigns) in respect of Train Services with the same origin and destination as the Past Train Services; or
 - (B) the New Access Holder was that Customer (or is that Customer's successor or assign); and
 - (v) either:
 - (A) for a New Access Holder, the New Access Holder has been granted Access Rights with the same origin and destination as the Past Train Services; or
 - (B) for a New Train Operator, the New Train Operator's Train Operations Deed includes right to operate

Train Services with the same origin and destination as the Past Train Services.

- (b) No Adjustment Charge will apply to an Access Holder who ran the Past Train Services if that Access Holder has, at the time when the Adjustment Charges are to be applied, ceased to have a rail haulage agreement with the Customer for the Past Train Services (including that person's successors and assigns) in respect of Train Services with the same origin and destination as the Past Train Services provided that with the cessation of that rail haulage agreement, the applicable Access Rights were either relinquished or expired.
- (c) For clarity:
- (i) where:
- (A) an Access Holder does not have a Train Operator; and
- (B) if that Access Holder had a Train Operator, Adjustment Charges would be applied to that Train Operator in accordance with **clause 6.2(a)**,
- any such Adjustment Charge will apply to the Access Holder; or
- (ii) where:
- (A) a Past Train Service was or was entitled to be operated under an Access Agreement by a relevant Train Operator (**Past Train Operator**);
- (B) there is no New Access Holder; and
- (C) either the Access Holder, at the time when the Adjustment Charges are to be applied:
- (1) does not have a Train Operator under that Access Agreement; or
- (2) has a Train Operator but that person is not the Past Train Operator,
- any such Adjustment Charge will:
- (D) if there is no Train Operator, apply to the Access Holder; or
- (E) otherwise, apply to the relevant Train Operator.
- (d) The calculation of Access Charges under an Access Agreement must be reviewed and varied to provide for the payment of Adjustment Charges in respect of the relevant Access Holder (or, if applicable, Train Operator) including:
- (i) that the Access Charges payable by the Access Holder (or, if applicable, Train Operator) must include any applicable

Adjustment Charge from time to time in relation to or in connection with any variation of a Reference Tariff that applies or takes effect on a past date or any Reference Tariff that this Undertaking states is applicable or effective from a past date; and

- (ii) that an Adjustment Charge must be applied to the calculation of the amount of the invoice for charges payable by the Access Holder (or, if applicable, Train Operator) under the Access Agreement for the relevant Billing Period.

7 Blackwater System – System Reference Tariff

7.1 Additional Reference Train Service criteria

In addition to **clause 1.3**, the Reference Train Service to which this **clause 7** applies must also satisfy the following criteria:

- (a) **(Coal System)** operates in the Blackwater System;
- (b) **(Operational characteristics)** meets the following criteria:
 - (i) a maximum Comparative Length of 1709 metres, unless operating from Minerva where it will be 1240 metres;
 - (ii) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220⁹ loading, or otherwise generates a loading equivalent to M220, except that Train Services operating from Minerva will have a maximum axle load of 20 tonne – with loading in excess of this maximum axle load dealt with in accordance with the relevant Load Variation Table; and
 - (iii) uses diesel or electric traction, except operating from Minerva where it will only use diesel traction.
- (c) **(Conditions of Access)** where its Access Agreement has an “Average Below Rail Transit Time Threshold” (as defined under the relevant Standard Access Agreement) or another equivalent threshold or performance level relating to Aurizon Network (**Threshold**) and that Threshold is no less than 127%;
- (d) **(Loading Facilities)** uses the following Nominated Loading Facilities and does not exceed the following Loading Times:

Nominated Loading Facilities ¹⁰	Loading Time (hours) per return trip
Yarrabee (Boonal)	3.8

⁹ As specified in the ANZRC Railway Bridge Design Manual 1974.

¹⁰ Diagrams showing the location of the Nominated Loading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

Nominated Loading Facilities¹⁰	Loading Time (hours) per return trip
Jellinbah (Boonal)	4.6
Boorgoon	3.8
Curragh	3.3
Ensham	3.2
German Creek	3.0
Gregory	3.0
Kestrel (Gordonstone)	3.3
Kinrola	3.15
Koorilgah	5.0
Minerva	2.3
Oaky Creek	2.6
Rolleston	4.3
Yongala	3.2
Lake Vermont	3.0

- (e) **(Unloading Facilities)** uses the following Nominated Unloading Facilities and does not exceed the following Unloading Times:

Nominated Unloading Facilities¹¹	Unloading Time (hours) per return trip
Barney Point	5.0
Cement Australia	6.0
Comalco Refinery	6.0
Gladstone Power Station	4.3
Golding/RG Tanna Terminal	2.6
Queensland Alumina Ltd (QAL) ¹²	8.9

¹¹ Diagrams showing the location of the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

Nominated Unloading Facilities ¹¹	Unloading Time (hours) per return trip
Stanwell Power Station	2.3
Wiggins Island Coal Export Terminal	1.5 ¹³

(f) **(Dwell Period)** has Dwell periods not exceeding the following:

	Dwell period (hours) per return trip
Inclusive of Train examination	9.2
Excluding Train examination	3.2

7.2 Reference Tariff inputs

(a) Subject to **clause 7.2(c)**, the Reference Tariff inputs are:

Reference Tariff input	2017/18 [^] (\$)	2018/19 (\$)	2019/20 (\$)	2020/21 (\$)
AT ₁	0.93	0.95	0.97	0.99
AT ₂	2,187.59	2,214.28	2,241.29	2,268.64
AT ₃	7.71*	7.53*	7.48*	7.43*
AT ₄	2.62	2.57	2.55	2.61
AT ₅	3.31	3.26	3.26	3.26
EC	0.77	0.79	0.80	0.81
QCA Levy	0.02929	0.02965	0.03001	0.03038

* This amount must be adjusted by subtracting the System Discount under **clause 7.2(b)** where the System Discount, applies to the relevant Train Service.

[^] To be updated upon QCA approval of 2015-16 revenue cap.

(b) The System Discounts for Train Services to or from Nominated Loading Facilities or Nominated Unloading Facilities are:

¹² The Unloading Time for the QAL refinery represents the time the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

¹³ For services from the North Coast Line 0.7 hours.

Nominated Unloading Facilities	System Discount (\$/ntk)			
	2017/18	2018/19	2019/20	2020/21
Stanwell Power Station	2.70	2.64	2.62	2.60

- (c) The Reference Tariff inputs referred to below in relation to a Nominated Loading Facility replace the equivalent Reference Tariff inputs in **clause 7.2(a)** for any Train Service using that Nominated Loading Facility:

Nominated Loading Facility	Reference Tariff input	2017/18 (\$)	2018/19 (\$)	2019/20 (\$)	2020/21 (\$)
Rolleston	AT ₃	9.00	7.82	7.73	7.43

- (d) For clarity, where a Train Service operating in the Blackwater System is a Cross System Train Service, the Reference Tariff inputs set out above relating to that Train Service are subject to **clause 2.3**.
- (e) The Nominal Train Payload for:
- (i) a Train Service (other than a Cross System Train Service or a Train Service referred to in **clause 7.2(e)(iii)**) to which the Reference Tariff in this **clause 7** applies, is a nominal nt of 8,211 tonnes;
 - (ii) a Cross System Train Service where the Destination System is the Blackwater System, is a nominal nt of 8,211 tonnes;
or
 - (iii) a Train Service (other than a Cross System Train Service) that has Minerva as a Nominated Loading Facility, is a nominal nt of 5,831 tonnes.

7.3 Gtk Forecast and Allowable Revenues

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT ₂₋₄ (\$)	Allowable Revenue – AT ₅ (\$)
2017/18 ¹	38,500,357	411,018,335	96,614,424
2018/19	39,384,679	405,287,283	97,428,007
2019/20	39,603,874	403,033,865	98,113,879
2020/21	39,675,500	404,497,734	98,429,832

- (1) To be updated upon QCA approval of 2015-16 revenue cap.

8 Goonyella System – System Reference Tariff

8.1 Additional Reference Train Service criteria

In addition to **clause 1.3**, the Reference Train Service to which this **clause 8** applies must also satisfy the following criteria:

- (a) **(Coal System)** operates in the Goonyella System;
- (b) **(Operational characteristics)** meets the following criteria:
 - (i) a maximum Comparative Length of 2082 metres;
 - (ii) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220¹⁴ loading, or otherwise generates a loading equivalent to M220 – with loading in excess of this maximum axle load dealt with in accordance with the relevant Load Variation Table; and
 - (iii) uses diesel or electric traction.
- (c) **(Conditions of Access)** where its Access Agreement has an “Average Below Rail Transit Time Threshold” (as defined under the relevant Standard Access Agreement) or another equivalent threshold or performance level relating to Aurizon Network (**Threshold**) and that Threshold is no less than 123%;
- (d) **(Loading Facilities)** uses the following Loading Facilities and does not exceed the following Loading Times:

Nominated Loading Facilities ¹⁵	Loading Time (hours) per return trip
Blair Athol (Clermont)	3.1
Burton	3.8
Carborough Downs	3.5
Caval Ridge*	2.5
German Creek	2.9
Goonyella	3.9
Gregory	3.6
Hail Creek	2.6

¹⁴ As specified in the ANZRC Railway Bridge Design Manual 1974.

¹⁵ Diagrams showing the location of the Nominated Loading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

Nominated Loading Facilities¹⁵	Loading Time (hours) per return trip
Isaac Plains	3.9
Lake Vermont	3.0
Macarthur (Coppabella)	3.9
Millennium	3.0
Middlemount*	3.5
Moorvale	3.6
Moranbah North	3.6
North Goonyella	4.3
Norwich Park	3.9
Oaky Creek	3.2
Peak Downs	4.2
Riverside	4.6
Saraji	4.4
South Walker Creek	3.8

* Balloon loops for these loading facilities are Private Infrastructure

(e) **(Unloading Facilities)** uses the following Nominated Unloading Facilities and does not exceed the following Unloading Times:

Nominated Unloading Facilities¹⁶	Unloading Time (hours) per return trip
Dalrymple Bay	Pit 1 – 2.5 Pit 2 – 2.5 Pit 3 – 2.0
Hay Point	2.8

(f) **(Dwell Period)** has Dwell periods not exceeding the following:

¹⁶ Diagrams showing the location of the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

	Dwell period (hours) per return trip
Inclusive of Train examination	8.8
Excluding Train examination	1.8

8.2 Reference Tariff inputs

(a) Subject to **clause 8.2(b)**, the Reference Tariff inputs are:

Reference Tariff input	2017/18 [^] (\$)	2018/19 (\$)	2019/20 (\$)	2020/21 (\$)
AT ₁	0.65	0.66	0.67	0.68
AT ₂	1,385.97	1,402.88	1,419.99	1,437.31
AT ₃	5.92	5.97	6.34	6.19
AT ₄	1.24	1.25	1.32	1.29
AT ₅	2.01	2.01	2.05	2.08
EC	0.77	0.79	0.80	0.81
QCA Levy	0.02929	0.02965	0.03001	0.03038

[^] To be updated upon QCA approval of 2015-16 revenue cap.

(b) The Reference Tariff inputs referred to below in relation to a Nominated Loading Facility replace the equivalent Reference Tariff inputs in **clause 8.2(a)** for any Train Service using that Nominated Loading Facility:

Nominated Loading Facility	Reference Tariff input	2017/18 (\$)	2018/19 (\$)	2019/20 (\$)	2020/21 (\$)
Middlemount	AT ₃	3.86	3.86	3.93	3.88
	AT ₄	1.03	1.03	1.05	1.04
	AT ₅	1.02	1.03	1.07	1.10
Caval Ridge	AT ₃	4.04	4.11	4.47	4.31
	AT ₄	0.84	0.86	0.93	0.90
	AT ₅	1.58	1.64	1.67	1.70

- (c) For clarity, where a Train Service operating in the Goonyella System is a Cross System Train Service, the Reference Tariff inputs set out above relating to that Train Service are subject to **clause 2.3**.
- (d) The Nominal Train Payload for:
- (i) a Train Service (other than a Cross System Train Service) to which the Reference Tariff in this **clause 8** applies; or
- (ii) a Cross System Train Service where the Destination System is the Goonyella System,
- is a nominal nt of 10,055 tonnes.

8.3 Gtk Forecast and Allowable Revenues

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT ₂₋₄ (\$)	Allowable Revenue – AT ₅ (\$)
2017/18 ¹	39,617,676	326,651,609	77,937,299
2018/19	39,617,676	329,304,209	78,266,524
2019/20	39,528,336	347,912,440	79,517,035
2020/21	39,491,463	340,841,164	80,723,521

(1) To be updated upon QCA approval of 2015-16 revenue cap.

9 Moura System – System Reference Tariff

9.1 Additional Reference Train Service criteria

In addition to **clause 1.3**, the Reference Train Service to which this **clause 9** applies must also satisfy the following criteria:

- (a) **(Coal System)** operates in the Moura System;
- (b) **(Operational characteristics)** meets the following criteria:
- (i) a maximum Comparative Length of 1000 metres;
- (ii) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220¹⁷ loading, or otherwise generates a loading equivalent to M220 – with loading in excess of this maximum axle load dealt with in accordance with the relevant Load Variation Table; and
- (iii) uses diesel traction;
- (c) **(Conditions of Access)** where its Access Agreement has an “Average Below Rail Transit Time Threshold” (as defined under the

¹⁷ As specified in the ANZRC Railway Bridge Design Manual 1974.

relevant Standard Access Agreement) or another equivalent threshold or performance level relating to Aurizon Network (**Threshold**) and that Threshold is no less than 130%;

- (d) **(Loading Facilities)** uses the following Nominated Loading Facilities and does not exceed the following Loading Times:

Nominated Loading Facilities ¹⁸	Loading Time (hours) per return trip
Baralaba	4.9
Boundary Hill	3.4
Dunn Creek (Callide)	4.2
Moura	3.6

- (e) **(Unloading Facilities)** uses the following Nominated Unloading Facilities and does not exceed the following Unloading Times:

Nominated Unloading Facilities ¹⁹	Unloading Time (hours) per return trip
Barney Point	5.0
Cement Australia	4.3
Comalco Refinery	6.0
Gladstone Power Station	4.3
Golding/RG Tanna Terminal	2.6
Queensland Alumina Ltd (QAL) ²⁰	8.9
Wiggins Island Coal Export Terminal	1.5 ²¹

¹⁸ Diagrams showing the location of the Nominated Loading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

¹⁹ Diagrams showing the location of the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

²⁰ The Unloading Time for the QAL refinery represents the time the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

²¹ For services from the North Coast Line 0.7 hours.

(f) **(Dwell Period)** has Dwell periods not exceeding the following:

	Dwell period (hours)per return trip
Inclusive of Train examination	6.2
Excluding Train examination	3.2

9.2 Reference Tariff inputs

(a) The Reference Tariff inputs are:

Reference Tariff input	2017/18 [^] (\$)	2018/19 (\$)	2019/20 (\$)	2020/21 (\$)
AT ₁	1.73	1.77	1.80	1.83
AT ₂	655.26	663.26	671.35	679.54
AT ₃	11.57	11.81	12.13	12.29
AT ₄	1.88	1.92	1.97	2.00
QCA Levy	0.02929	0.02965	0.03001	0.03038

[^] To be updated upon QCA approval of 2015-16 revenue cap.

(b) The Reference Tariff inputs referred to below in relation to a Nominated Loading Facility replace the equivalent Reference Tariff inputs in **clause 9.2(a)** for any Train Service using that Nominated Loading Facility:

Nominated Loading Facility	Reference Tariff input	2017/18 (\$)	2018/19 (\$)	2019/20 (\$)	2020/21 (\$)
Baralaba ¹	AT ₃	-	-	-	-

(1) Only those Train Services from this loading facility that terminate at Wiggins Island Coal Export Terminal are subject to this Reference Tariff input.

(c) For clarity, where a Train Service operating in the Moura System is a Cross System Train Service, the Reference Tariff inputs set out above relating to that Train Service are subject to **clause 2.3**.

- (d) The Nominal Train Payload for:
- (i) a Train Service to which the Reference Tariff in this **clause 9** applies; or
 - (ii) a Cross System Train Service where the Destination System is the Moura System,
is a nominal nt of 6,269 tonnes.

9.3 Gtk Forecast and Allowable Revenues

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT ₂₋₄ (\$)
2017/18 ¹	2,796,252	41,501,336
2018/19	2,796,252	42,327,201
2019/20	2,796,252	43,447,347
2020/21	2,796,252	44,022,880

(1) To be updated upon QCA approval of 2015-16 revenue cap.

10 Newlands System – System Reference Tariff

10.1 Additional Reference Train Service criteria

In addition to **clause 1.3**, the Reference Train Service to which this **clause 10** applies must also satisfy the following criteria:

- (a) **(Coal System)** operates in the Newlands System;
- (b) **(Operational characteristics)** meets the following criteria:
 - (i) a maximum Comparative Length of 1402 metres;
 - (ii) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220²² loading, or otherwise generates a loading equivalent to M220 – with loading in excess of this maximum axle load dealt with in accordance with the relevant Load Variation Table; and
 - (iii) uses diesel traction;
- (c) **(Conditions of Access)** where its Access Agreement has an “Average Below Rail Transit Time Threshold” (as defined under the relevant Standard Access Agreement) or another equivalent threshold or performance level relating to Aurizon Network (**Threshold**) and that Threshold is no less than 160%;

²² As specified in the ANZRC Railway Bridge Design Manual 1974.

- (d) **(Loading Facilities)** uses the following Nominated Loading Facilities and does not exceed the following Loading Times:

Nominated Loading Facilities ²³	Loading Time (hours) per return trip
McNaughton	1.85
Newlands	2.05
Sonoma	2.4

- (e) **(Unloading Facilities)** uses the following Nominated Unloading Facilities and does not exceed the following Unloading Times:

Nominated Unloading Facilities ²⁴	Unloading Time (hours) per return trip
Abbot Point	2.05

- (f) **(Dwell Period)** has Dwell periods not exceeding the following:

	Dwell period (hours)per return trip
Inclusive of Train examination	6.4
Excluding Train examination	2.4

10.2 Reference Tariff inputs

- (a) The Reference Tariff inputs are:

Reference Tariff input	2017/18 [^] (\$)	2018/19 (\$)	2019/20 (\$)	2020/21 (\$)
AT ₁	1.80	1.84	1.87	1.91
AT ₂	292.98	296.55	300.17	303.83
AT ₃	11.31	12.15	12.84	13.74
AT ₄	1.62	1.74	1.83	1.96
QCA Levy	0.02929	0.02965	0.03001	0.03038

²³ Diagrams showing the location of the Nominated Loading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

²⁴ Diagrams showing the location of the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

^ To be updated upon QCA approval of 2015-16 revenue cap.

- (b) For clarity, where a Train Service operating in the Newlands System is a Cross System Train Service, the Reference Tariff inputs set out above relating to that Train Service are subject to **clause 2.3**.
- (c) The Nominal Train Payload for:
- (i) a Train Service (other than a Cross System Train Service) to which the Reference Tariff in this **clause 10** applies; or
 - (ii) a Cross System Train Service where the Destination System is the Newlands System,
- is a nominal nt of 6,871 tonnes.

10.3 Gtk Forecast and Allowable Revenues

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT ₂₋₄ (\$)
2017/18 ¹	2,105,250	30,502,827
2018/19	2,105,250	32,727,070
2019/20	2,105,250	34,533,118
2020/21	2,105,250	36,925,763

(1) To be updated upon QCA approval of 2015-16 revenue cap.

11 Goonyella to Abbot Point System – System Reference Tariff

11.1 Additional Reference Train Service criteria

In addition to **clause 1.3**, the Reference Train Service to which this **clause 11** applies must also satisfy the following criteria:

- (a) **(Coal System)** operates in the Goonyella to Abbot Point System;
- (b) **(Operational characteristics)** meets the following criteria:
 - (i) a maximum Comparative Length of 1402 metres;
 - (ii) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220²⁵ loading, or otherwise generates a loading equivalent to M220 – with loading in excess of this

²⁵ As specified in the ANZRC Railway Bridge Design Manual 1974.

maximum axle load dealt with in accordance with the relevant Load Variation Table; and

- (iii) uses diesel traction.
- (c) **(Conditions of Access)** where its Access Agreement has an “Average Below Rail Transit Time Threshold” (as defined under the relevant Standard Access Agreement) or another equivalent threshold or performance level relating to Aurizon Network (**Threshold**) and that Threshold is no less than 160%;
- (d) **(Loading Facilities)** uses the following Nominated Loading Facilities and does not exceed the following Loading Times:

Nominated Loading Facilities²⁶	Loading Time (hours) per return trip
Riverside	3.0
Peak Downs	3.0
Lake Vermont	2.05 (estimate) ²⁷
Blair Athol (Clermont)	2.04 (estimate) ²⁸
Middlemount*	2.75
Caval Ridge*	1.85

* Balloon loops for these loading facilities are Private Infrastructure.

- (e) **(Unloading Facilities)** uses the following Nominated Unloading Facilities and does not exceed the following Unloading Times:

Nominated Unloading Facilities²⁹	Unloading Time (hours) per return trip
Abbot Point	2.05

²⁶ Diagrams showing the location of the Nominated Loading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

²⁸ This is an estimate of loading time for this Loading Facility. Aurizon will review this loading time in accordance with the relevant Access Agreement. A variation from the loading time will not result in the Train Service being considered not to be a Reference Train Service until after the loading time is reviewed in accordance to the relevant Access Agreement.

²⁹ Diagrams showing the location of the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

(f) **(Dwell Period)** has Dwell periods not exceeding the following:

	Dwell period (hours)per return trip
Inclusive of Train examination	7.35 per consist every 20 days
Excluding Train examination	1.35

11.2 Reference Tariff inputs

(a) The Reference Tariff inputs are:

Reference Tariff input	2017/18^ (\$)	2018/19 (\$)	2019/20 (\$)	2020/21 (\$)
AT ₁	1.45	1.48	1.51	1.54
AT ₂	13,600.69	13,766.62	13,934.57	14,104.57
AT ₃	1.93	1.91	1.76	1.77
AT ₄	4.59	3.86	3.64	3.50
QCA Levy	0.02929	0.02965	0.03001	0.03038

^ To be updated upon QCA approval of 2015-16 revenue cap.

(b) The Nominal Train Payload for:

- (i) a Train Service to which the Reference Tariff in this **clause 11** applies; or
- (ii) a Cross System Train Service where the Destination System is the Goonyella to Abbot Point System,
is a nominal nt of 6,871 tonnes.

11.3 Gtk Forecast and Allowable Revenues

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT₂₋₄ (\$)
2017/18 ¹	9,673,950	143,042,517
2018/19	10,078,367	141,915,514
2019/20	10,078,367	137,907,936
2020/21	10,078,367	136,324,202

(1) To be updated upon QCA approval of 2015-16 revenue cap.

12 Transitional provisions – Monthly System Forecasts for 2001 Undertaking Access Agreements

(a) This **clause 12** sets out Monthly System Forecasts for the Blackwater System and Newlands System³⁰ that are to be used as the ‘System Forecasts’ of gtk for the purposes of:

- (i) Access Agreements; and
- (ii) New Access Agreements where the relevant Old Access Agreement was,

executed or renewed during the term of the 2001 Undertaking including in relation to the calculation of “VTP” and “IATP” for Take or Pay charges.

(b) For clarity:

- (i) the Monthly System Forecasts for a Coal System are based on the Gtk Forecast for the System Reference Tariff for that Coal System. Changes to the Gtk Forecast for a System Reference Tariff will affect the Monthly System Forecast for that Coal System; and
- (ii) any process, obligation or right to vary a Gtk Forecast for a System Reference Tariff for a Coal System under this Undertaking must also include any consequential variation to the Monthly System Forecast for that Coal System under this **clause 12**.

Blackwater System

Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)
Jul-18	3,349,644	Jul-20	3,445,653
Aug-18	3,472,781	Aug-20	3,572,320
Sep-18	3,275,179	Sep-20	3,369,054
Oct-18	3,343,674	Oct-20	3,439,512
Nov-18	3,254,327	Nov-20	3,347,604
Dec-18	3,241,758	Dec-20	3,334,675

³⁰ **Clause 12** does not apply in relation to the Goonyella System and the Moura System as there are no longer any Access Agreements, or New Access Agreements where the relevant Old Access Agreement was, executed or renewed during the term of the 2001 Undertaking.

Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)
Jan-19	2,946,713	Jan-21	3,031,173
Feb-19	2,431,710	Feb-21	2,501,408
Mar-19	3,086,038	Mar-21	3,174,492
Apr-19	3,185,622	Apr-21	3,276,930
May-19	3,406,658	May-21	3,504,302
Jun-19	3,506,253	Jun-21	3,606,751
Jul-19	3,426,583	Jul-21	3,451,885
Aug-19	3,552,548	Aug-21	3,578,780
Sep-19	3,350,407	Sep-21	3,375,147
Oct-19	3,420,475	Oct-21	3,445,732
Nov-19	3,329,076	Nov-21	3,353,658
Dec-19	3,316,219	Dec-21	3,340,706
Jan-20	3,014,397	Jan-22	3,036,656
Feb-20	2,487,564	Feb-22	2,505,932
Mar-20	3,156,922	Mar-22	3,180,233
Apr-20	3,258,793	Apr-22	3,282,857
May-20	3,484,907	May-22	3,510,640
Jun-20	3,586,788	Jun-22	3,613,274

Newlands System

Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)
Jul-18	199,278	Jul-20	199,278
Aug-18	186,054	Aug-20	186,054
Sep-18	184,934	Sep-20	184,934

Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)
Oct-18	183,435	Oct-20	183,435
Nov-18	186,169	Nov-20	186,169
Dec-18	163,855	Dec-20	163,855
Jan-19	179,664	Jan-21	179,664
Feb-19	158,807	Feb-21	158,807
Mar-19	160,405	Mar-21	160,405
Apr-19	152,725	Apr-21	152,725
May-19	177,286	May-21	177,286
Jun-19	172,637	Jun-21	172,637
Jul-19	199,278	Jul-21	199,278
Aug-19	186,054	Aug-21	186,054
Sep-19	184,934	Sep-21	184,934
Oct-19	183,435	Oct-21	183,435
Nov-19	186,169	Nov-21	186,169
Dec-19	163,855	Dec-21	163,855
Jan-20	179,664	Jan-22	179,664
Feb-20	158,807	Feb-22	158,807
Mar-20	160,405	Mar-22	160,405
Apr-20	152,725	Apr-22	152,725
May-20	177,286	May-22	177,286
Jun-20	172,637	Jun-22	172,637

Schedule G

Network Management Principles

1 Train Service Entitlements

1.1 Train Service Entitlements:

- (a) for the same types of traffics, will be defined using consistent terminology;³¹ and
- (b) will be expressed in terms that can be interpreted for the development of a Strategic Train Plan (**STP**), a Master Train Plan (**MTP**), an Intermediate Train Plan (**ITP**), where necessary, and a Daily Train Plan (**DTP**).

2 Strategic Train Plan principles

- (a) The purpose of the STP for each Coal System is to demonstrate that Aurizon Network has sufficient capacity to deliver existing Train Services Entitlements in:
 - (i) the relevant Coal System; and
 - (ii) the Customer Specific Branch Lines in each Coal System.
- (b) The STP must be developed for and be considered as part of the Baseline Capacity Assessment and Capacity Assessment that Aurizon Network must undertake under **clause 7A.4.1** and **clause 7A.4.2** respectively of this Undertaking.
- (c) Aurizon Network will make the STP available to the QCA:
 - (i) at the same time it makes the outcomes of the Baseline Capacity Assessment available to the QCA in accordance with **clause 7A.4.1** of this Undertaking; and
 - (ii) in respect of each subsequent STP, at the same time it makes the outcomes of the Capacity Assessment available to the QCA in accordance with **clause 7A.4.2** of the Undertaking and to each Access Holder (or its Customer) and each Access Seeker that requests the relevant STP.
- (d) Aurizon Network must comply with the obligations in **clause 7.6(l)** when providing the STP to the QCA, Access Holders and Access Seekers.
- (e) An STP must provide:

³¹ For example, Timetabled Traffics may be defined in terms of a path between certain locations, on particular days, and at particular times. Cyclic Traffics may be defined in terms of a number of train paths per specified period of time.

- (i) an estimate of the Existing Capacity that is anticipated by Aurizon Network:
 - (A) to be necessary to meet its obligations in relation to Train Service Entitlements for a subsequent period of at least one year (but not more than two years) commencing on 1 July; and
 - (B) in each individual Coal System STP and in aggregate for all Coal System STPs on a Monthly and Yearly basis and in million tonnes per annum, indicating on a system, mainline and branch line basis:
 - (1) for information purposes only, statement of Capacity on a Train Service Entitlement basis, assuming the relevant Nominal Train Payload outlined in **Schedule F**;
 - (2) the number of Train Service Entitlements that can be provided;
 - (3) the number of Train Service Entitlements that cannot be provided; and
 - (4) available Capacity by Train Paths;
 - (ii) validation of total contracted Train Service Entitlements on a System by System basis;
 - (iii) identification of Operational Constraints (including a quantification of, and any qualifications applicable to, such constraints); and
 - (iv) if different measures of Capacity are agreed under **clause 7A.4.1(b)(iv)(C)**, an estimate of the Existing Capacity that is anticipated by Aurizon Network using those measures.
- (f) Aurizon Network must prepare:
- (i) an STP in relation to all Train Service Entitlements in all Coal Systems in aggregate;
 - (ii) a separate STP for each Coal System; and
 - (iii) if requested by the QCA (acting reasonably), a separate STP for groups of Coal Systems or a combination of individual and groups of Coal Systems.
- (g) In preparing an STP, Aurizon Network will consider:
- (i) only the Train Paths that are System Paths;
 - (ii) the known and reasonably anticipated:
 - (A) track maintenance requirements; and
 - (B) impacts of the construction of Expansions,

- for the period of the STP;
 - (iii) the relevant System Operating Parameters; and
 - (iv) any other factors that may materially impact on the Existing Capacity necessary for Aurizon Network to meet its obligations in relation to Train Service Entitlements for the period of the STP.
- (h) The STP must specify the material assumptions that Aurizon Network has made during its preparation.
 - (i) Any review by the QCA of the STP prepared by Aurizon Network must be conducted in accordance with the relevant provisions of **clause** Error! Reference source not found. and **clause 7A.4.2**, insofar as those clauses refer to the STP.

3 Master Train Plan principles

3.1 Purpose and form of the MTP

- (a) The purpose of the MTP is to demonstrate how Aurizon Network plans to deliver Train Service Entitlements in each Coal System, having regard to Planned Possessions, Existing Capacity, the System Operating Parameters and other relevant characteristics of each Coal System.
- (b) The MTP must be published in a tabular timetable form that is readily convertible to an ITP and DTP (with additional time/distance (location) formats if deemed necessary by Aurizon Network) and must specify the capability of Aurizon Network to deliver Train Service Entitlements in each Coal System for a period of at least one (1) Month up to three (3) Months given other activities on the relevant Rail Infrastructure.
- (c) In preparing the MTP, Aurizon Network must consider:
 - (i) any Planned Possessions;
 - (ii) the construction of any Expansions that may impact on the Existing Capacity;
 - (iii) the System Operating Parameters for each Coal System; and
 - (iv) any other factors that may materially impact on the Existing Capacity necessary for Aurizon Network to meet its obligations in relation to Train Service Entitlements.
- (d) Subject to **clause 3.1(f)(ii)** of this Schedule G, the MTP will separately identify where applicable:
 - (i) for Cyclic Traffics:
 - (A) the System Paths allocated to Cyclic Traffics; and
 - (B) the Train Paths allocated to non-coal traffic;

- (ii) for Timetabled Traffics, the particular Train Paths allocated in accordance with the Train Service Entitlements;
 - (iii) each Access Holder's Train Service Entitlements for each Coal System;
 - (iv) contracted Cross System Train Service traffic;
 - (v) each Access Holder's Train Paths;
 - (vi) Cross System Train Service traffic paths;
 - (vii) time allocated for Planned Possessions; and
 - (viii) any other factors known to or anticipated by Aurizon Network that may materially impact on the Existing Capacity necessary for Aurizon Network to meet its obligations in relation to Train Service Entitlements.
- (e) The MTP must specify the material assumptions that Aurizon Network made during its preparation.
- (f) Aurizon Network must, on a Monthly basis, provide the MTP for each Coal System as a complete and transparent document:
- (i) if requested, to the QCA on an unredacted basis; and
 - (ii) on its Website;
 - (A) in respect of agreements entered into after the Approval Date of the 2016 Undertaking and to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the MTP (and if those obligations permit disclosure if required by the Undertaking then for the avoidance of doubt Aurizon Network is required to disclose the information contained in the MTP), on an unredacted basis; and
 - (B) in respect of agreements entered into prior to the Approval Date of the 2016 Undertaking or if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
 - (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the MTP on an unredacted basis;
 - (2) in respect of the information referred to in **paragraph (A)** or for which consent is obtained under **paragraph (B)(1)**, on an unredacted basis; and

- (3) in respect of the information that does not satisfy **paragraph (A)** or for which consent is not obtained under **paragraph (B)(1)**:
 - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed;
 - to the extent not possible, on a redacted basis.
- (g) Aurizon Network must use reasonable endeavours to agree to confidentiality obligations that:
 - (i) do not prevent the disclosure of the information contained in the MTP; and
 - (ii) permit disclosure of information required by this Undertaking,
 But:
 - (iii) in any event, must not agree to any confidentiality obligations that prevent disclosure of the information contained in the MTP to the QCA,

provided that Aurizon Network will be deemed to have complied with its obligations under this **clause 3.1(g)** of **Schedule G** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with **clause 3.1(g)(i)** and **clause 3.1(g)(ii)**, whether or not the Access Seeker actually agrees to the inclusion of such obligations in the Access Agreement.

3.2 Modifying the MTP

- (a) Unless otherwise expressly provided in an Access Holder's Access Agreement or a Train Operations Deed (as applicable), Aurizon Network may make modifications to the MTP on a case-by-case basis only where:
 - (i) an Access Holder notifies Aurizon Network that it wishes to make a long-term Train Service Change, provided:
 - (A) that change:
 - (1) is within the scope of its Train Service Entitlement; and
 - (2) does not result in any other Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met; and

- (B) the Access Holder has given Aurizon Network reasonable prior notice of that change having regard to the necessary process to be complied with, and factors to be considered, by Aurizon Network;
- (ii) a Planned Possession is cancelled;
- (iii) a new, varied or additional Train Service Entitlement has been created, through the signing of an Access Agreement or the negotiation of a variation to an Access Agreement (including where that new or amended Access Agreement arises as a result of a Transfer), provided that the new or varied Train Service Entitlement does not result in any other Access Holder's Train Service/s or a Planned Possession, set out in the MTP, not being met;
- (iv) an Access Holder's Access Agreement allows Aurizon Network to alter the Access Holder's Train Service Entitlement – for example, by resuming Access Rights through a capacity resumption process; or
- (v) after consulting with any Access Holders (or their Train Operators, if applicable) whose Train Service/s or Train Service Entitlements are affected by the proposed modification to the MTP, and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession, where:
- (A) Aurizon Network notifies all affected Access Holders that it wishes to make a long-term Train Service Change, provided that change:
- (1) is within the scope of the relevant Access Holders' Train Service Entitlement/s; and
 - (2) is intended to accommodate:
 - the creation of a new or varied Train Service Entitlement, through the signing of an Access Agreement or the negotiation of a variation to an Access Agreement (including where that new or amended Access Agreement arises as a result of a Transfer), where that new or varied Train Service Entitlement cannot otherwise be reasonably accommodated on the MTP;
 - the creation of new Planned Possessions or the modification

- of existing Planned Possessions; or
 - any other Operational Constraint affecting the MTP; and
 - (3) where it results in any existing Access Holder's Train Service Entitlement not being met, is only made with the agreement of that existing Access Holder (such agreement not to be unreasonably withheld); or
 - (B) Aurizon Network notifies all affected Access Holders, within the time period specified in the relevant System Rules, of a long-term Train Service Change for the purpose of carrying out Major Periodic Maintenance provided that, where that change is not within the scope of an Access Holder's Train Service Entitlement, Aurizon Network has used reasonable endeavours to mitigate the impact on that Access Holder. Any limitations (if any) on Aurizon Network's ability to exercise this right will be specified in individual Access Agreements.
- (b) Aurizon Network may make modifications to the MTP where Aurizon Network and all affected Access Holders, agree in writing. Aurizon Network will invite all Access Holders (and their Train Operators, if applicable) whose Train Service Entitlements are affected by the proposed modification to the MTP to consider the modification in an appropriate forum (which may include a face to face meeting, a telephone conference or any other forum that provides the affected Access Holders with a reasonable opportunity to participate). Aurizon Network must use reasonable endeavours to provide to each affected Access Holder a copy of the proposed changes five (5) Business Days prior to the scheduled consideration of the modification in the forum.
- (c) Aurizon Network must consult with any Infrastructure Service Providers, and any Railway Manager for Private Infrastructure that is directly connected to the Rail Infrastructure, who would reasonably be determined to be affected by any modification to the MTP that is proposed to be agreed under **clause 3.2(a)(v)** or **3.2(b)** and must take into account comments it receives in preparing the MTP.
- (d) Aurizon Network must notify any person who is a Railway Manager for Private Infrastructure that is directly connected to the Rail Infrastructure who (in that capacity as a Railway Manager) would reasonably be determined to be affected by any modification to the MTP that is made under this **clause 3.2** within five (5) Business Days

of becoming aware that that person may be affected by a modification to the MTP.

- (e) Notwithstanding:
 - (i) any aspect of this **clause 3.2**, Aurizon Network must not make unilateral amendments to the MTP if there is any possibility that those amendments will materially disadvantage any Access Holder (or its Customer); and
 - (ii) any other provision of this **Schedule G**, the Undertaking or an Access Agreement, any affected Access Holder (or its Customer) may refer a change or amendment to the MTP to the QCA for determination in accordance with **clause 11.1.5**.

4 Intermediate Train Plan principles

- (a) An ITP is an intermediate scheduling step in progressing from the MTP to the DTP. Aurizon Network will consider Planned Possessions, the Train Paths and the System Paths detailed in the MTP, Train Service Entitlements, Short Term Transfers and Train Orders when developing an ITP for the Relevant Period.
- (b) The scheduling horizon of an ITP will be consistent with the period specified in the relevant System Rules for an ITP.
- (c) Train Orders for an ITP must, unless otherwise advised by Aurizon Network, be submitted to Aurizon Network:
 - (i) in the manner and timeframe specified within the relevant System Rules; or
 - (ii) if there are no relevant System Rules, before 1200 hours on the Wednesday immediately prior to the period for which an ITP is to be prepared.
- (d) Aurizon Network will plan Cyclic Traffics in the ITP in accordance with the relevant System Rules. If the process of planning Cyclic Traffics in the ITP involves the allocation of a Contested Train Path among Access Holders for Cyclic Traffic, Aurizon Network:
 - (i) may require a meeting of all affected Access Holders; and
 - (ii) will use the decision making process in **clause 8** to allocate the Contested Train Path.
- (e) Subject to **clause 4(f)(ii)** of this Schedule G, the ITP must identify all allocated Train Paths and all Train Paths allocated to known Possessions. Aurizon Network must also provide the following information to Access Holders, to the extent actually known by Aurizon Network, to enable Access Holders to make an informed assessment of the availability of System Paths:
 - (i) activities affecting the Rail Infrastructure that may:

- (A) affect the availability of the Rail Infrastructure for the operation of Train Services; and
 - (B) adversely affect the operation of Train Services on the Rail Infrastructure; and
 - (ii) the availability of mine load out and port unloading facilities.
- (f) Once it is finalised but in any event by 1600 hours on the Thursday immediately prior to the commencement of the period for the next ITP (unless otherwise stated in the System Rules), Aurizon Network must provide the ITP as a complete and transparent document to:
- (i) all Access Holders and
 - (ii) each Customer,
- on the following basis:
- (A) in respect of agreements entered into after the Approval Date of the 2016 Undertaking and to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the ITP (and if those obligations permit disclosure if required by the Undertaking, then, for the avoidance of doubt Aurizon Network is required to disclose the information contained in the ITP), on an unredacted basis; and
 - (B) in respect of agreements entered into prior to the Approval Date of the 2016 Undertaking or if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
 - (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the ITP on an unredacted basis;
 - (2) in respect of the information for which consent is obtained under **paragraph (f)(B)(1)**, on an unredacted basis; and
 - (3) in respect of the information for which consent is not obtained under **paragraph (f)(B)(1)**:
 - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed;
 - to the extent not possible, on a redacted basis.

- (g) Aurizon Network must use reasonable endeavours to agree to confidentiality obligations that:
- (i) do not prevent the disclosure of the information contained in the ITP; and
 - (ii) permit disclosure of information required by the Undertaking, but
 - (iii) in any event, must not agree to any confidentiality obligations that prevent disclosure to the QCA,

provided that Aurizon Network will be deemed to have complied with its obligations under this **clause 4.2(g)** of **Schedule G** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with **clause 4.2(g)(i)** and **clause 4.2(g)(ii)**, whether or not the Access Seeker actually agrees to the inclusion of such obligations in the Access Agreement.

- (h) Aurizon Network will notify relevant Infrastructure Service Providers and the operator of any relevant unloading facilities of the ITP in accordance with any process in the relevant System Rules for such notification.

5 Daily Train Plan principles

5.1 Purpose and form of a DTP

A DTP indicates all scheduled Train Services and Planned Possessions, Urgent Possessions and Emergency Possessions (to the extent known) for a particular day, in a form that indicates the time/distance (location) relationship of all activities on that part of the Rail Infrastructure to which the DTP relates.

5.2 Scheduling and notification of a DTP

Aurizon Network:

- (a) will schedule a DTP at least 24 hours (or such other time required under the relevant System Rules) prior to the day (commencing at 0000 hours and ending at 2359 hours) to which the DTP relates (**Day of Operation**);
- (b) will provide all Access Holders and Infrastructure Service Providers with an extract of the DTP which is relevant to their Train Paths (specifying the Train Services for the relevant Train Operators) by 1400 hours on the day prior to the Day of Operation; and
- (c) will provide each DTP as a complete and transparent document to:
 - (i) all Access Holders and
 - (ii) each Customer,on the following basis:

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

provided that Aurizon Network will be deemed to have complied with its obligations under this **clause 5.2(d)** of **Schedule G** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with **clause 5.2(d)(i)** and **clause 5.2(d)(ii)**, whether or not the Access Seeker actually agrees to the inclusion of such obligations in the Access Agreement.

5.3 Application of a DTP to performance targets

The DTP will represent the expected train operation performance target over its period and will be used as base information for performance monitoring, including for the purposes of the quarterly reports under **clause 10.3.4** of this Undertaking (for example, in applying the Allotted Time Threshold).

5.4 Scheduling a DTP in variation to the ITP

- (a) A DTP may be scheduled in variation to the ITP in accordance with the timeframes specified in the System Rules.
- (b) A request or notice by an Access Holder to Aurizon Network in relation to scheduling the DTP in variation to the ITP must be in the form reasonably required by Aurizon Network, and provided in accordance with Aurizon Network's reasonable requirements, from time to time. For clarity, Aurizon Network will notify Access Holders of its requirements:
 - (i) as at the Approval Date, within two (2) Business Days after the Approval Date; and
 - (ii) after the Approval Date, from time to time in advance (provided the notice provides reasonable time for the Access Holder to comply).
- (c) The DTP may be scheduled in variation to the ITP where at least 48 hours (or such other time required under the relevant System Rules) prior to the Day of Operation:
 - (i) an Access Holder notifies Aurizon Network that it wishes to make a short-term Train Service Change at which its Train Services, as scheduled in the ITP, operate, whether or not within the scope of its Train Service Entitlement, provided that change does not result in any other Access Holder's scheduled Train Services, or a Planned Possession, not being met;
 - (ii) Aurizon Network receives a request from an Access Holder to run an additional Train Service which is within the scope of its Train Service Entitlement or an Ad Hoc Train Service, provided that the additional Train Service or Ad Hoc Train Service, as applicable, would not result in any Access Holder's scheduled Train Services, or a Planned Possession, not being met;
 - (iii) a Planned Possession is cancelled;
 - (iv) Aurizon Network notifies all affected Access Holders that it wishes to make a short-term Train Service Change at which any scheduled Train Service/s operate, provided that:
 - (A) the change is intended to accommodate:

- (1) the modification of an existing Planned Possession;
 - (2) the creation of an Urgent Possession; or
 - (3) any other Operational Constraint affecting the DTP; and
 - (B) either:
 - (1) the change is within the scope of the relevant Access Holders' Train Service Entitlements; or
 - (2) where the change results in an Access Holder's Train Service Entitlement not being met, that Access Holder has consented to the change (which consent must not to be unreasonably withheld or delayed);
 - (v) Aurizon Network requests a short-term Train Service Change at which any scheduled Train Services operate, whether or not within the scope of the applicable Access Holders' Train Service Entitlements, for the purpose of accommodating an Emergency Possession; or
 - (vi) Aurizon Network and all affected Access Holders agree.
- (d) Aurizon Network may schedule the DTP in variation to the ITP:
- (i) under any of **clauses 5.4(c)(i) to (iii)**, without the need for consultation;
 - (ii) under **clauses 5.4(c)(iv) or (v)**, after consulting with any affected Access Holders; or
 - (iii) under **clause 5.4(c)(vi)**, after:
 - (A) inviting relevant affected Access Holders to consider the modification in an appropriate forum (which may include a face to face meeting, a telephone conference or any other forum that provides the affected Access Holders with a reasonable opportunity to participate), that occurs prior to the Day of Operation; and
 - (B) providing those affected Access Holders with a copy of the proposed modification as soon as practicable prior to the forum.
- (e) Where the DTP is scheduled in variation from the ITP under this **clause 5.4**, Aurizon Network will notify any Railway Manager for Private Infrastructure that is directly connected to the Rail Infrastructure and who may be affected by those variations. The

notification will be given to the Railway Manager in that person's capacity as a Railway Manager.

5.5 Variations to a DTP after it is scheduled

- (a) Variations to the DTP, either prior to or during the Day of Operation, may occur:
 - (i) without consultation with Access Holders, if the variation does not result in:
 - (A) those Access Holders' scheduled Train Services not being provided; or
 - (B) any Possession not being met; and
 - (ii) if **clause 5.5(a)(i)(A)** does not apply, as agreed among Aurizon Network and the affected Access Holders.
- (b) Once the DTP is scheduled, variations to the DTP may only be made where:
 - (i) in the case of an Access Holder requesting or notifying Aurizon Network seeking a variation to the DTP, the request or notice is in the form and provided in accordance with Aurizon Network's reasonable requirements from time to time (which requirements Aurizon Network will notify Access Holders in advance); and
 - (ii) any one or more of the following apply:
 - (A) each of the following is satisfied:
 - (1) before the Day of Operation, Aurizon Network receives a request from an Access Holder to run an additional Train Service which is within the scope of its Train Service Entitlement or an Ad Hoc Train Service; and
 - (2) the additional Train Service or Ad Hoc Train Service, as applicable, would not result in any existing Access Holder's scheduled Train Services not being met, or a Possession (whether a Planned Possession, Emergency Possession or Urgent Possession) not being met;
 - (B) each of the following is satisfied:
 - (1) before the relevant Train Service commences, an Access Holder notifies Aurizon Network that it wishes to make a change to the times at which its Train Service operates;

- (2) that change is within the scope of the Access Holder's Train Service Entitlement; and
 - (3) that change does not result in any other Access Holder's scheduled Train Service not being met or a Possession (whether a Planned Possession, Emergency Possession or Urgent Possession) not being met; or
 - (C) before the relevant Train Service commences, Aurizon Network notifies the Access Holder that an Emergency Possession is required.
- (c) Other than as detailed in this **clause 5.5**, once the DTP is scheduled, any changes to the plan will be reflected as deviations from the DTP, not variations to the scheduled DTP. Deviations to the DTP may occur on the Day of Operation under **clause 7** including in the event of Out-Of-Course Running. Those deviations will occur according to the Network Control principles in **clause 7**.
- (d) For clarity, if:
 - (i) a variation is requested or notified to Aurizon Network under **clause 5.5(b)(ii)(A) or (B)** and Aurizon Network (acting reasonably) refuses to make that variation; and
 - (ii) despite that refusal the relevant Access Holder seeks to operate the Train Service in accordance with that proposed variation,

then any such operation of the Train Service will be treated as a deviation from the DTP caused by the relevant Access Holder.
- (e) Where a variation to the DTP occurs under this **clause 5.5**, Aurizon Network will notify any Railway Manager and Infrastructure Service Providers for Private Infrastructure that is directly connected to the Rail Infrastructure who may be affected by those variations.

6 Effect of cancellations on other Access Agreement obligations

The cancellation of a Train Service or Train Services in accordance with the Network Management Principles does not necessarily excuse either Aurizon Network or an Access Holder from other Access Agreement obligations relating to the conduct in question.

7 Network Control principles

7.1 Objective of Network Control

A fundamental objective of Network Control is to facilitate the safe running of Train Services, and the commencement and completion of Planned Possessions, Emergency Possessions and Urgent Possessions, as scheduled in the DTP.

7.2 Effect of deviations from DTP on Day of Operation

The ability of Aurizon Network or an Access Holder to deviate from the DTP on the Day of Operation, as specified below, does not necessarily excuse either Aurizon Network or the Access Holder from any other Access Agreement obligations relating to that deviation.

7.3 General principles

- (a) The following general principles apply to Train Operators, Network Controllers and Aurizon Network (as applicable):
 - (i) the Train Operators and Network Controllers will ensure that operational safety is maintained through compliance with the Safeworking Procedures, the Safety Standards, Rollingstock Interface Standards and applicable IRMPs;
 - (ii) Train Operators will ensure that Above Rail issues, including Train crewing, locomotive and wagon availability and loading and unloading requirements, are appropriately managed to ensure that such issues do not prevent the DTP from being met;
 - (iii) Aurizon Network will manage the Rail Infrastructure based on agreed entry/exit times as specified in the DTP with the objective of managing Trains according to their schedule for on time exit, not contributing to late running and, if a Train is running late, making up time and holding the gain where reasonably possible;
 - (iv) train control and traffic management processes must consider the System Rules and Train Service Entitlements of Access Holders, with the objective of an equitable outcome maximising the ability of each Coal System to meet contractual entitlements;
 - (v) decisions involving reordering the sequence of a train's arrival at an unloader must be referred to the unloading terminal to assist with the determination of priority; and
 - (vi) at all times, the exercise of Network Controller discretion must be transparent and equitable.
- (b) The handling of Out-Of-Course Running is dependent on the particular circumstances of a rail corridor, including the traffic type

using the corridor. The management of Out-Of-Course Running will be conducted so as not to unfairly disadvantage one Access Holder over another, and as a result, the identity of an Access Holder will not of itself be a legitimate basis for Network Controllers to alter a scheduled Train Service.

7.4 Application of traffic management decision making matrix

- (a) The traffic management decision making matrix in **clause 9** will be provided to assist Network Controllers in the resolution of disputes in accordance with the general Network Control principles under **clause 7.3**.
- (b) Subject to **clause 7.4(c)**, where the operation of a Train Service differs from the DTP, Network Controllers will apply the traffic management decision making matrix in **clause 9** for the purposes of Network Control.
- (c) Aurizon Network may depart from the traffic management decision making matrix in **clause 9** in the period following a Network Incident, or a Force Majeure Event which materially affects Aurizon Network's ability to achieve the DTP, for any of the following purposes:
 - (i) ensuring Aurizon Network complies with its duties and obligations under any Law relating to safety or health including the Rail Safety Act;
 - (ii) maximising the throughput of Trains on the Rail Infrastructure; and
 - (iii) restoring normal operations on the Rail Infrastructure, provided that Aurizon Network:
 - (iv) only departs from the traffic management decision making matrix in **clause 9** where:
 - (A) it has no other options available to restore the Rail Infrastructure to normal operations; or
 - (B) the departure is required for safety reasons, and Aurizon Network uses all reasonable endeavours to minimise the length of its departure from the traffic management decision making matrix in **clause 9**, acting reasonably and having due regard to the traffic management decision making matrix in **clause 9**;
 - (v) complies with this **clause 7**; and
 - (vi) uses reasonable endeavours to return to normal Network Control procedures for resolving conflicts that arise from Out-Of-Course Running as soon as reasonably practicable after the occurrence of the Network Incident or Force Majeure Event (as applicable).

- (d) Where **clause 7.4(c)** applies, Aurizon Network will keep affected Access Holders reasonably informed of the status of the Network Incident or Force Majeure Event (as applicable) including progress towards returning to normal Network Control procedures for resolving conflicts that arise from Out-Of-Course Running.

7.5 Provision of information to Access Holders

Aurizon Network will provide Access Holders with:

- (a) real time Network Control information that indicates actual running of that Access Holder's Train Services against the relevant DTP;
- (b) upon request and subject to reasonable terms and conditions, access to Network Control diagrams that indicate actual running of that Access Holder's Train Services against the relevant DTP; and
- (c) information about the type of Train Services (for example, non-coal freight, passenger or coal Train Services) operated by other Access Holders on the same network to assist Access Holders to determine whether the Network Controller is applying the principles in this **Schedule G** in a consistent manner between Access Holders.

7.6 Monthly Train Service Entitlement notice

After the end of each Month, Aurizon Network must:

- (a) provide a notice to each Access Holder and its Customer or Train Operator, as applicable, which identifies for each origin to destination pair:
 - (i) the number of Train Paths (or, if appropriate, System Paths) that the Access Holder was entitled to under the Access Holder's Train Service Entitlement;
 - (ii) the number of Train Paths (or, if appropriate, System Paths):
 - (A) planned in the MTP, the ITP and the DTP; and
 - (B) cancelled in the ITP and the DTP,in relation to that Train Service Entitlement;
 - (iii) the number of Train Paths (or, if appropriate, System Paths) in respect of which Train Services were operated for the Access Holder under the relevant Train Service Entitlement;
 - (iv) the number of Train Paths (or, if appropriate, System Paths) cancelled in that Month and the reasons for those cancellations;
 - (v) the extent to which the Access Holder's Train Service Entitlement was used, disregarding cancelled Train Paths (or, if appropriate, System Paths); and
 - (vi) the Year-to-date Train Service Entitlement position, both for the Access Holder and for each Coal System,

for that Month; and

- (b) publish on its Website the aggregated Train Service Entitlement reconciliation reports for each Coal System.

8 Contested Train Path decision making process

8.1 Purpose

The purpose of this **clause 8** is to outline the principles that Aurizon Network will have regard to when allocating a Contested Train Path to an Access Holder for the purpose of developing the ITP (under **clause 4**) with the objective of (in the following order of precedence):

- (a) ensuring Aurizon Network meets its contractual obligations with Access Holders; then
- (b) ensuring Access Holders are not unfairly differentiated between in respect of the use of their Train Service Entitlement; then
- (c) maximising the throughput of Trains on the Rail Infrastructure subject to:
 - (i) Operational Constraints; and
 - (ii) other restrictions or constraints affecting the whole, or partial unavailability of, the Supply Chain.

8.2 TSE Reconciliation Report

- (a) For the purpose of the planning and scheduling of Train Orders³², after the end of each Relevant Period, Aurizon Network will provide a report (**TSE Reconciliation Report**) to each Access Holder and its Customers which identifies as at the end of that Relevant Period, in respect of that Access Holder's Train Service Entitlement under which Train Services were entitled to operate during that Relevant Period:
 - (i) the extent to which the Train Service Entitlement:
 - (A) was used in the Relevant Period;
 - (B) has been used in the relevant Access Provision Period to date; and
 - (C) has been used in the relevant Year to date, for each origin to destination pair of the Train Service Entitlement; and
 - (ii) the remaining balance of the Train Service Entitlement for:
 - (A) the relevant Access Provision Period; and
 - (B) the relevant Year,

³² For clarity, the TSE Reconciliation Report and the calculations made for the purposes of that report do not affect or apply in relation to the calculation of Take or Pay.

for each origin to destination pair of the Train Service Entitlement.

- (b) For the purpose of **clause 8.2(a)(i)**, the extent to which a Train Service Entitlement was or has been used in respect of a particular origin to destination pair will be calculated as the greater of:
 - (i) the number of the Train Services operated in accordance with the Train Service Entitlement for that origin to destination pair for the Relevant Period; and
 - (ii) the number of System Paths scheduled for Train Services in accordance with Train Service Entitlement for that origin to destination pair for the Relevant Period.
- (c) The principles used to determine the number of System Paths scheduled or operated for the purpose of **clause 8.2(b)** include the following:
 - (i) the point at which a schedule for Train Services is considered final will be:
 - (A) as specified in the System Rules; or
 - (B) if the System Rules do not specify that point or there are no applicable System Rules, System Paths are taken to be scheduled 48 hours prior to the Day of Operation subject to **clause 8.2(c)(i)**; and
 - (ii) the number of System Paths scheduled will be reduced by the number of scheduled System Paths not provided due to Aurizon Network Cause or a Force Majeure Event affecting Aurizon Network in the period to which the schedule applies as per **clause 8.2(c)(i)**.
 - (iii) Where the scheduled time of the Train Path (or, if appropriate, System Path) is varied in accordance with **clause 5**, that variation is not taken to involve the scheduling of more than one Train Path (or, if appropriate, System Path) unless, for clarity, that variation is a cancellation of the Train Path (or, if appropriate, System Path) in which case (subject to **clause 8.2(c)(ii)**) the Train Service Entitlement is taken to be operated in respect of that cancelled Train Path.
 - (iv) To the extent an Access Agreement requires Aurizon Network to provide to an Access Holder a reasonable alternative Train Path (or, if appropriate, System Path) or to determine whether infrastructure has not been made available due to Aurizon Network Cause or a Force Majeure Event affecting Aurizon Network, a Train Path (or, if appropriate, System Path) will be deemed to be a

reasonable alternative Train Path (or, if appropriate, System Path) where it is within the same period to which the schedule applies and it is practical for the Access Holder to use it (acting reasonably).

- (d) The remaining balance of a Train Service Entitlement, as amended from time to time, for a particular origin to destination pair for an Access Provision Period under **clause 8.2(a)(ii)(A)** is calculated as:
 - (i) the number of System Paths for that Access Provision Period that Aurizon Network is obliged to make available during that Access Provision Period in accordance with the Train Service Entitlement (including as amended from time to time); less
 - (ii) the Train Service Entitlement used in the Access Provision Period to date (determined in accordance with **clause 8.2(a)(i)(B)**).
- (e) The remaining balance of a Train Service Entitlement, as amended from time to time, for a particular origin to destination pair for the relevant Year under **clause 8.2(a)(ii)(B)** is calculated as:
 - (i) the number of System Paths for that origin to destination pair for that Year that Aurizon Network is obliged to make available during that Year in accordance with the Train Service Entitlement (including as amended from time to time); less
 - (ii) the Train Service Entitlement for a particular origin to destination pair used in the Year to date (determined in accordance with **clause 8.2(a)(i)(C)**).

8.3 Contested Train Path principles

- (a) Aurizon Network will determine which Access Holder is allocated a Train Path that is a Contested Train Path, using the following principles in order of precedence:
 - (i) Firstly, the Access Holder whose request for the Contested Train Path is within the scope of its individual Train Service Entitlement for an origin to destination pair (including any Short Term Transfers which have been effected in accordance with **clause 7.4.2(i)**).
 - (ii) If a Contested Train Path is not allocated in accordance with **clause 8.3(a)(i)**, where the relevant Access Holders agree amongst themselves who should be allocated the Contested Train Path, the Contested Train Path will be allocated as agreed by the Access Holders.
 - (iii) If there is no agreement between the relevant Access Holders under **clause 8.3(a)(ii)**:

- (A) an Access Holder submits Train Orders for less than its Train Service Entitlement for a particular origin to destination pair for a Relevant Period (**First Entitlement**); and
- (B) that Access Holder also submits Train Orders for a different Train Service Entitlement for a particular origin to destination pair for a Relevant Period in excess of its Train Service Entitlement for that origin destination pair (**Second Entitlement**),

then the path will be allocated to the Second Entitlement in the manner requested by the Access Holder, and that allocation will be deemed to be scheduled and operated against the First Entitlement.

- (iv) If there is no allocation of paths under **clause 8.3(iii)**, the Access Holder whose request for the Contested Train Path is within the scope of its relevant Train Service Entitlement adjusted for Aurizon Network Cause or a Force Majeure Event affecting Aurizon Network as follows:
 - (A) the Train Paths finally scheduled, in accordance with **clause 8.2(c)(i)**, for which Train Services did not operate due to Aurizon Network Cause or a Force Majeure Event affecting Aurizon Network Year to date; less
 - (B) the greater of:
 - (1) zero; and
 - (2) the relevant Train Service Entitlement used for Year to date less Train Service Entitlement to date.
- (v) If a Contested Train Path remains unallocated after the application of **clause 8.3(a)(iii)**, the Access Holder who is most behind for the relevant Access Provision Period, by calculating as a percentage the Train Service Entitlement for the relevant origin to destination pair used in the Access Provision Period to date as per **clause 8.2(a)(i)(B)** plus the remaining balance of the Train Service Entitlement for that origin to destination pair for the Access Provision Period compared against the Train Service Entitlement for that origin to destination pair for that Access Provision Period at the commencement of the Access Provision Period or as amended from time to time.
- (vi) If a Contested Train Path remains unallocated after the application of **clause 8.3(a)(v)**, the Access Holder who is most behind for the relevant Year, by calculating as a percentage the Train Service Entitlement for the relevant

origin to destination pair used in the Year to date as per **clause 8.2(a)(i)(C)** plus the remaining balance of the Train Service Entitlement for that origin to destination pair for the Year compared against the Train Service Entitlement for that origin to destination pair for that Year at the commencement of the Year or as amended from time to time.

- (vii) If a Contested Train Path remains unallocated after the application of **clause 8.3(a)(vi)** and a Supply Chain Group has been established to manage or oversee Supply Chain logistics for multiple Access Holders, in accordance with the direction of that body.
- (viii) If a Contested Train Path remains unallocated after the application of **clause 8.3(a)(vii)**, Aurizon Network may unilaterally determine which Train Service is scheduled, and will keep a record of that decision and the reasoning behind that decision. Aurizon Network will seek to ensure that, over time, no Access Holder is favoured over another and, where possible, if one Access Holder is favoured this time, taking into account the Train Service Entitlement held by an Access Holder, next time they are not favoured. In other words, if one Access Holder has an entitlement to ten (10) Train Services per week, and another Access Holder has an entitlement to twenty (20) Train Services per week, then it could not be said that favouritism was shown to the second Access Holder if they received priority over the first Access Holder on two out of three consecutive occasions.
- (ix) Aurizon Network will advise each Access Holder (and its Customers) of the Contested Train Path decision, including details of the contest and the principle that determined the result.

9 Traffic management decision making matrix

For the purposes of the traffic management decision making matrix below the meaning of **On Time**, **Ahead** and **Late** are determined by the scheduling of Train Paths in the DTP. For example, if a Train is travelling in accordance with the DTP path allocated to it, it is running **On Time**.

		Train A – Current Status			
		Train A	Train Running “On Time”	Train Running “Ahead”	Train Running “Late”
	Train B	Objective	On Time Exit	On Time Exit	<ol style="list-style-type: none"> 1. Lose no more time 2. Make up time 3. Hold the gain
Train B – Current Status	Train Running “On Time”	On Time Exit	Scheduled Cross	B Rule 2	B Rule 3
	Train Running “Ahead”	On Time Exit	A Rule 2	A or B Rule 2	B Rule 3
	Train Running “Late”	<ol style="list-style-type: none"> 1. Lose no more time 2. Make up time 3. Hold the gain 	A Rule 1	A Rule 1	A or B Rule 4

- Rule 1:** Train B may be given priority on condition Train A will still meet its “On Time” objective, or as permitted by rules 5, 6, 7 and 8.
- Rule 2:** Both Trains must meet their “On Time” objective.
- Rule 3:** Train A may be given priority on condition Train B will still meet its “On Time” objective, or as permitted by rules 5, 6, 7 and 8.
- Rule 4:** Priority may be given to the Train where performance indicates it will lose least or no more time and even make up time and hold the gain, or as permitted by rules 5, 6, 7 and 8.
- Rule 5:** Passenger and livestock Trains may be given priority over other Trains if the Network Controller reasonably believes that this is consistent with the objectives of the Trains in question, as specified in the Train Service

Entitlement/s for those Trains and/or the requirements of a Passenger Priority Obligation.

- Rule 6:** Where a Train is running “Late” due to a Below Rail Delay, it may be given preference over other Trains if the Network Controller reasonably believes that this is consistent with the critical objectives of the Trains in question, and that it will result in less aggregated consequential delays to other Trains than otherwise would be the case.
- Rule 7:** Where a Network Controller has to decide which of two Trains to give priority to, and both of those Trains are operated by the same Access Holder, the Network Controller may ask the Access Holder how it would prefer the Trains to be directed and, provided that taking the Access Holder’s preferred course of action does not adversely affect the Train Services of any other Access Holder, the Network Controller will follow the Access Holder’s request.
- Rule 8:** Where a Network Controller has to decide which of two Trains to give priority to, and those Trains are operated by different Access Holders, one may be given preference over the other if the Network Controller reasonably believes that this is consistent with meeting the coal supply objective(s) detailed in the System Rules.

Schedule H

Explanatory diagrams and flowcharts

The diagrams and flowcharts in this **Schedule H**:

- (a) are intended to assist users of this Undertaking to conceptualise specific processes set out in **Part 1 to Part 12** (inclusive) of this Undertaking; and
- (b) must not be used in substitution for the relevant provisions set out in **Part 1 to Part 12** (inclusive) of this Undertaking.

Negotiation process

[Drafting Note: Diagram that clearly and accurately reflects the **Part 4** processes (and showing relevant linkages to other parts of the Undertaking) to be included.]

Capacity allocation – no Extension

[Drafting Note: Diagram that clearly and accurately reflects the **Part 4** processes (and showing relevant linkages to other parts of the Undertaking) to be included.]

Schedule I

Confidentiality Agreement

[Insert Name of Discloser]

Aurizon Network Pty Ltd

Confidentiality Agreement

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Date

Parties

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

The person specified in **item 1 of schedule 1 (Counterparty)**

Background

- A The parties have agreed to enter into this agreement to facilitate the exchange of information between Aurizon Network and the Counterparty.
- B This agreement provides for the disclosure of Confidential Information between the Counterparty and Aurizon Network.
-

Agreed terms

1 Definitions

- (a) In this agreement the following terms have the following meanings:
- | | |
|---------------------|--|
| Business Day | A day which is not a Saturday, Sunday or bank or public holiday in Brisbane. |
| Purpose | The purpose for which the Confidential Information is to be used set out in item 2 of schedule 1 . |
| Transaction | The transaction for which the owner of the Confidential Information agrees to permit the Recipient with access to the Confidential Information, as set out in item 3 of schedule 1 . |
| Undertaking | The current access undertaking submitted by Aurizon Network to the Queensland Competition Authority and approved by the Queensland Competition Authority under the <i>Queensland Competition Authority Act 1997 (Qld)</i> as at the date of this agreement and as amended or replaced from time to time. |
- (b) Unless the context otherwise requires, terms defined in the Undertaking have the same meanings in this agreement.

2 Consideration

2.1 Consideration

- (a) Each party enters into this agreement for valuable consideration from the other party and receipt of the consideration is acknowledged by each party.
- (b) Without limitation to **clause 2.1(a)**, each party agrees to pay to the other party \$1.00 on demand in consideration of that other party entering into this agreement.

2.2 No offer or acceptance for Transaction

This agreement and the disclosure of Confidential Information to the Recipient under this agreement is not an offer or acceptance of an offer to enter into the Transaction. Nothing in this agreement obliges any party to enter into the Transaction.

3 Confidentiality

Each party:

- (a) undertakes to keep confidential and not disclose any Confidential Information of the other party or permit any person employed or engaged by it to disclose any such Confidential Information to any person (including other individuals employed or engaged by that party) except in accordance with this agreement or the Undertaking;
- (b) undertakes to use the Confidential Information of the other party only for the Purpose;
- (c) must secure and protect the Confidential Information of the other party from unauthorised disclosure, access or use;
- (d) is responsible for any use or disclosure of Confidential Information of the other party which is contrary to the provisions of this agreement by persons to whom the Recipient discloses the Confidential Information;
- (e) must take all steps as may be necessary to prevent any improper use or disclosure (including enforcing any confidentiality deed or confidentiality provisions contained in another arrangement under which the Recipient disclosed that Confidential Information) of Confidential Information of the other party; and
- (f) must not copy or reduce into tangible, visible or recorded form or allow to be copied or reduced into tangible, visible or recorded form, any Confidential Information disclosed to it by the other party except to the extent necessary to carry out a Purpose.

4 Exceptions

- (a) **Clause 3(a)** does not apply to the Recipient under this agreement if the owner of the Confidential Information provides its prior written approval, which approval must not be unreasonably withheld.
- (b) **Clause 3(a)** does not apply to the Counterparty if the disclosure is:
 - (i) required or compelled by any Law;
 - (ii) required or compelled by any order of a court;
 - (iii) required or compelled by notice validly issued by any Authority;
 - (iv) necessary for the conduct of any legal proceedings, dispute resolution process or audit under the Undertaking, the Act or an agreement entered with Aurizon Network;
 - (v) if the process in **clause 4(e)** is observed, required under any stock exchange listing requirement or rule;
 - (vi) necessary for the effective response to an emergency or natural disaster or for clearing an incident or emergency that is preventing the operation of Train Services on the Rail Infrastructure; or
 - (vii) to the Safety Regulator.
- (c) **Clause 3(a)** does not apply to Aurizon Network if the disclosure is permitted by **clause 3.13** of the Undertaking and Aurizon Network complies with the process set out in that clause permitting disclosure of Confidential Information.
- (d) Prior to any disclosure under **clause 4(b)(v)**, the Counterparty must:
 - (i) consult with Aurizon Network as to the nature and extent of the disclosure of the Confidential Information;
 - (ii) accept any requests made by Aurizon Network (acting reasonably) to limit the disclosure of the Confidential Information; and
 - (iii) to the extent reasonably possible, coordinate the disclosure of the Confidential Information with any similar disclosure by Aurizon Network that is required under any stock exchange listing requirement or rule relating to Aurizon Network.
- (e) For the purposes of **clause 4(a)**, it is unreasonable for the owner of the Confidential Information to refuse to approve the disclosure of its Confidential Information by the Recipient to that Recipient's external consultants, independent advisers or, if the Recipient is an Access Seeker or Access Holder, to the Recipient's Customer or Train Operator, if the Recipient enters into a contract with the recipient of the Confidential Information which:

- (i) specifies:
 - (A) the persons employed by the recipient who may have access to any Confidential Information provided under the contract; and
 - (B) that those persons must not disclose any Confidential Information provided under the contract to any other person unless otherwise agreed by the Recipient and the owner of the Confidential Information; and
 - (ii) requires the recipient to execute a confidentiality deed in favour of the owner of the Confidential Information on terms and conditions substantially similar to this agreement;
 - (iii) advises the recipient that a conflict of interest may exist with respect to the recipient providing services on a related matter to a Related Operator or Related Competitor; and
 - (iv) requires that if the external consultant or independent advisor is also advising a Related Operator or Related Competitor in relation to the same or a related matter, the recipient to ensure that those individuals are not, and will not for as long as the information remains Confidential Information, be working for a Related Operator or Related Competitor on the same or a related matter.
- (f) If consent is sought by Aurizon Network under **clause 4(a)**:
- (i) during the process of responding to an Access Application or negotiating an Access Agreement:
 - (A) where such consent has been sought during the Negotiation Period and the owner of the Confidential Information fails to respond to Aurizon Network's request for consent within five Business Days of its receipt of Aurizon Network's written request (referred to as the **Consent Response Date**), then all relevant timeframes applicable to Aurizon Network under **Part 4** of the Undertaking will be extended by the same number of days as the day on which the response is given exceeds the Consent Response Date; or
 - (B) where such consent has been sought during the Negotiation Period and the owner of the Confidential Information unreasonably refuses its consent to the disclosure of that Confidential Information, or fails to respond to Aurizon Network's request for consent within 20 Business Days of its receipt of Aurizon Network's written request, then Aurizon Network may give a

Negotiation Cessation Notice to the Access Seeker,
in accordance with **clause 4.13** of the Undertaking;
or

- (ii) during the process of administering an Access Agreement or a Train Operations Deed, if the owner of the Confidential Information fails to respond to Aurizon Network's request for consent within twenty (20) Business Days of its receipt of Aurizon Network's written request, then consent is deemed to be given.

5 Counterparty's obligations

The Counterparty:

- (a) confirms it is aware of and understands the Aurizon Network's obligations regarding Confidential Information under the Undertaking;
- (b) acknowledges it may not provide the Confidential Information received from Aurizon Network to any other party, including any person employed or engaged by it, without the consent of Aurizon Network and then only on the terms and conditions required by Aurizon Network (acting reasonably);
- (c) confirms it must secure and protect the Confidential Information received from Aurizon Network from unauthorised disclosure, access or use;
- (d) consents to Aurizon Network recording in the Confidential Information Register all information required by the Undertaking in respect of its use of the Confidential Information;
- (e) agrees to provide any information requested by Aurizon Network to enable it to complete the Confidential Information Register; and
- (f) agrees to attend any training course required by Aurizon Network (acting reasonably) in respect of the Counterparty's use and management of the Confidential Information.

6 Aurizon Network obligations

Aurizon Network agrees to comply with all obligations of Aurizon Network under **Part 3** of the Undertaking relating to Confidential Information, subject to the exceptions, exclusions and permitted disclosures of Confidential Information in the Undertaking.

7 Breach of agreement

- (a) The owner of the Confidential Information may take legal proceedings against the Recipient and/or any third party if there is any actual, threatened or suspected breach of this agreement.

- (b) The parties acknowledge that damages may be inadequate compensation for breach of this agreement and, subject to the court's discretion, the owner of the Confidential Information may seek specific performance of this agreement and may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of this agreement.

8 Termination

- (a) This agreement terminates on:
 - (i) the execution by the parties of:
 - (A) the document containing the terms of the Transaction; or
 - (B) a subsequent confidentiality agreement imposing confidentiality obligations on Aurizon Network in respect of the Confidential Information; or
 - (ii) in the case of an Access Agreement or Train Operations Deed:
 - (A) the cessation of negotiations in respect of the Transaction, in accordance with the Undertaking; or
 - (B) the withdrawal by the Discloser of its Access Application relating to the Transaction.
- (b) Where termination occurs under **clause 8(a)(i)**, this agreement terminates immediately.
- (c) Where termination occurs under **clause 8(a)(ii)(A) or (B)**, this agreement terminates immediately on the date specified in **Item 5 of schedule 1**.
- (d) To the extent permitted by law and subject to the provisions of this agreement, neither party may terminate this agreement and in no other circumstance or event may this agreement be terminated.

9 Notices

9.1 Form of Notice

Any notice, demand, invoice, process or other communication relating to this agreement (**Notice**) must be in English and may be given by an agent of the sender and may, if agreed by Aurizon Network, be in electronic form.

9.2 Method of giving Notices

A Notice may be given by being:

- (a) personally delivered to a party;
- (b) left at the party's current delivery address for service;

- (c) sent to the party's current postal address for service by pre-paid ordinary mail;
- (d) sent by facsimile transmission to the party's current facsimile number for service; or
- (e) if agreed by Aurizon Network, sent by email to the party's current email address for service.

9.3 Particulars for giving of Notices

The particulars for giving of Notices are detailed in **item 4 of Schedule 1**, or as most recently notified to the party sending the Notice.

9.4 Notice by post

Subject to **clause 9.7**, a Notice is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten (10) Business Days after posting.

9.5 Notice by fax

Subject to **clause 9.7**, a Notice is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

9.6 Notice by email

Subject to **clause 9.7**, a Notice is given if sent by email, on the next Business Day after being sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

9.7 After hours Notice

If a Notice is given:

- (a) after 5:00pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9:00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

10 General

10.1 No licence

This agreement does not grant the Recipient any licence or other rights relating to any Confidential Information or other intellectual property rights owned by the owner of the Confidential Information.

10.2 Variation

No provision of this agreement may be varied other than in writing executed by the parties to this agreement.

10.3 No assignment

No party may assign, transfer, charge or deal in any other way with the benefit of any right (or agree to do so), or create or declare (or agree to do so), or allow to arise, any trust in respect of the benefit of any right conferred by or arising under this agreement without the prior consent in writing of the other party.

10.4 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this agreement.

10.5 Counterparts

This agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one agreement.

10.6 Effect of execution

This agreement is not binding on any party unless it or a counterpart has been duly executed by each person named as a party to this agreement.

10.7 Construction

In this agreement:

- (a) any schedule and annex to it is an integral part of it and any reference to this agreement includes a reference to that schedule and annex;
- (b) the headings in it are used for ease of reference only and are not to be taken into account for the purposes of construing it;
- (c) any reference to it or any other agreement, contract, document or instrument includes any variation or replacement of any of them;
- (d) any references to any clause, schedule, annex and provision are references to that clause, schedule, annex and provision contained in it;
- (e) the words 'including', 'include' and 'includes' are to be construed as if followed by the words 'without limitation';

- (f) a reference to a person includes any company, partnership, joint venture, unincorporated association, corporation or other body corporate and a government or statutory body or authority;
- (g) words in the singular include the plural and vice versa; and
- (h) if a word or phrase is defined its other grammatical forms have corresponding meanings.

11 Governing law and jurisdiction

This agreement is governed by the laws applicable in Queensland and each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any court competent to hear appeals from any of those courts.

Schedule 1

Reference Schedule

Item	Description	Details
1	Counterparty	Name: [insert] ABN: [insert] Address: [insert]
2	Purpose	[insert] [If for negotiation of an Access Agreement or Train Operations Deed, insert: "To facilitate the negotiations in respect of the potential granting of Access by Aurizon Network under an Access Agreement or the use of that Access under a Train Operations Deed (as applicable).]
3	Transaction	[insert] [If for negotiation of an Access Agreement or Train Operations Deed, insert: "The execution of an Access Agreement or Train Operations Deed (as applicable) under which Aurizon Network agrees to provide the Counterparty with Access (under an Access Agreement) or the right to use that Access (under a Train Operations Deed).]
4	Particulars for giving Notices	Aurizon Network Delivery address: [insert] Postal address: [if there is no PO box, insert 'Same as delivery address'] Facsimile: [insert] Email address: [insert] Attention: [insert]
5		Counterparty Delivery address: [insert] Postal address: [if there is no PO box, insert 'Same as delivery address'] Facsimile: [insert] Email address: [insert] Attention: [insert]

Item	Description	Details
6	Termination date	The date that is [insert] Months after an event in clause 8(a)(i) or (ii) occurs.

Execution

Executed as an agreement.

[Appropriate execution blocks to be inserted]

Schedule J

Coal loss mitigation provisions

1 Coal loss mitigation - general coal loading, unloading, profiling and veneering obligations

1.1 Background to Coal Loss Mitigation Provisions

- (a) Across the Central Queensland coal supply chain, participants:
- (i) are committed to implementing a range of effective dust mitigation strategies including operational procedures and the application of new techniques to improve awareness and reduce the risk of environmental harm, while ensuring this aspect of the coal supply chain network continues to have community support³³; and
 - (ii) recognise the need for industry 'best practice' to mitigate coal dust, and that a whole-of-supply chain approach should provide the most effective mitigation approach to coal dust³⁴.
- (b) The following actions have been identified as 'best practice' and have proven, through extensive research and testing, to be highly effective in minimising potential dust impacts³⁵:
- (i) **(Moisture content management)** Coal producers wash their coal or blend it to achieve an optimum moisture level which reduces dust and achieves market qualities.
 - (ii) **(Improved loading practices)** Improved loading practices can reduce coal deposits on coal wagon ledges and wheel surfaces that are prone to spillage during transport. It also supports the ability to create a consistent surface of coal in each wagon.
 - (iii) **(Load profiling of coal surface)** The profile of the loaded coal wagon refers to the shape of the exposed surface of coal on the top of in the wagon. A flat surface with gradually sloping sides is a tried and proven method of dust suppression.
 - (iv) **(Veneering)** Veneering is the application of a biodegradable polymer onto the surface of the loaded coal. The veneer forms a crust over the coal load, which along with the use of

³³ CDMP, paragraph 2.

³⁴ CDMP, paragraph 1.3.

³⁵ Coal dust management plan for the South West System, released in November 2013.

- a modified loading chute suggests that a significant reduction in coal dust lift-off from wagons is achievable.
- (v) **(Ongoing dust monitoring)** Commitment to a program of ongoing dust monitoring to validate the effectiveness of mitigation measures and confirm that dust levels, particularly coal dust levels, continue to meet environmental standards.
 - (c) The principal objective of the Coal Loss Mitigation Provisions is the Prevention of Coal Loss in an effort to achieve 'best practice'.
 - (d) The significant strategies to achieve the Prevention of Coal Loss are the loading, profiling and veneering of wagons in accordance with the Standards, and implementation timeframes, provided under the Coal Loss Mitigation Provisions. This includes:
 - (i) meeting the Queensland Department of Environment and Heritage Protection's targets for coal dust emissions from wagons;
 - (ii) no parasitic or fugitive coal (other than coal dust to standard) falling from wagons; and
 - (iii) meeting height and weight requirements in relation to the loading of wagons to protect below rail assets.
 - (e) The Private Infrastructure Owner as the loading practitioner has primary responsibility to ensure wagons are loaded, profiled and veneered in a manner that achieves the Prevention of Coal Loss, and this is reflected in the Coal Loss Mitigation Provisions.

1.2 Definitions

In this **Schedule J**:

CDMP means Aurizon Network's Coal Dust Management Plan dated 22 February 2010 as approved by the Department of Environment and Heritage Protection in May 2010;

Loading Breach means, in respect of a train, a breach of **clause 1** or **clause 2** of this **Schedule J** relating to the loading of coal into the train, the veneering and profiling of coal loaded into the train and the unloading of coal from the train at the Transfer Facilities;

Preventing Coal Loss has the meaning given to the term in **clause 1.3** of this **Schedule J**;

Private Land has the meaning given to the term in the Standard Rail Connection Agreement.

Quality Management System includes the system by which the Private Infrastructure Owner manages the quality of its coal loading operations at the Transfer Facilities;

Rectification Notice has the meaning given in **clause 1.7(a)** of this **Schedule J**;

Standards has the meaning given in **clause 1.3(a)** of this **Schedule J**;

Suspension Notice has the meaning given in **clause 1.7(d)** of this **Schedule J**;

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

1.3 Meaning of Preventing Coal Loss

(a) In the Coal Loss Mitigation Provisions, **Preventing Coal Loss** means taking all reasonable and practicable measures during the handling and loading of coal at the Transfer Facilities to prevent coal loss (including emissions of coal dust and spillage from wagons) during the transport of such coal by rail on the Connecting Infrastructure or the Rail Infrastructure to satisfy (subject to **clause 1.3(b)** of this **Schedule J**) the standards, targets, levels or other measures (**Standards**) set for coal loss:

- (i) in accordance with all applicable laws; and
- (ii) in accordance with all requirements, instructions, guidelines, standards or other directions whether now or at any time in the future in effect issued or published by an Authority responsible for the administration of Environmental Laws in Queensland,

and references to **Prevents Coal Loss**, **Prevent Coal Loss** and **Prevention of Coal Loss** must be interpreted in a corresponding way.

(b) If any one or more of the Standards referred to in **clause 1.3(a)** of this **Schedule J** cannot be complied with without failing to comply with another applicable Standard, then as between those mutually inconsistent Standards, Standards referred to in **clause 1.3(a)(i)** of this **Schedule J** prevail over Standards referred to in **clause 1.3(a)(ii)** of this **Schedule J**.

1.4 General obligation

(a) Notwithstanding any other provision in the Coal Loss Mitigation Provisions, the Private Infrastructure Owner must, at all times, and without adversely affecting the capacity of the Supply Chain, use its reasonable endeavours to Prevent Coal Loss, taking into account factors which include (but are not limited to):

- (i) prevailing business conditions at the time any decision to implement a mitigation strategy is required;
- (ii) the effectiveness of the particular mitigation approach given technology and cost constraints;
- (iii) the timeframes required to implement mitigation strategies;

- (iv) the overall strategy undertaken given the specific characteristics underlying the relevant owner's contribution to dust; and
 - (v) consideration of the impact on other Supply Chain participants,
- (collectively, the **Limiting Factors**).
- (b) For the avoidance of doubt, the Private Infrastructure Owner will not be taken to have failed to Prevent Coal Loss in respect of the spillage of coal from a wagon during the transport of the coal by rail if the spillage is caused by the malfunction of the wagon's kwik drop doors.
 - (c) Without limiting any other obligation of the Private Infrastructure Owner under the Agreement, the Private Infrastructure Owner must comply with:
 - (i) all applicable Laws relating to coal loss (including the emission of coal dust);
 - (ii) all requirements, instructions, guidelines, standards or other directions relating to coal loss (including the emission of coal dust) whether now or at any time in the future in effect which would customarily be observed by a reasonable and prudent owner or operator of facilities such as the Transfer Facilities (including any such things issued or published by an Authority responsible for the administration of environmental Laws in Queensland); and
 - (iii) the Private Infrastructure Owner's obligations and the standards and requirements set out in this **Schedule J** (including the rail asset restrictions specified by Aurizon Network from time to time),

during the handling, loading and unloading of coal using the Transfer Facilities.
 - (d) The Private Infrastructure Owner must supply any labour, materials, plant, equipment and facilities required to enable it to properly perform its obligations under the Coal Loss Mitigation Provisions.

1.5 Obligation to install and operate veneering equipment

- (a) Without limiting any other obligation of the Private Infrastructure Owner under this **clause 1** of **Schedule J**, the Private Infrastructure Owner must use reasonable endeavours to, at its cost:
 - (i) install (or procure the installation of) suitable veneering equipment as part of the Transfer Facilities; and
 - (ii) after the veneering equipment is installed:
 - (A) operate (or procure the operation of) the veneering equipment; and

- (B) ensure an effective veneering agent is applied onto the exposed surface of coal loaded into wagons at the Transfer Facilities,

for the purpose of Preventing Coal Loss during transport except that it is reasonable for the Private Infrastructure Owner to not do some or all of the above as a result of the Limiting Factors.
- (b) Without limitation to **clause 1.5(a)(ii)(B)** of this **Schedule J**, the veneering agent applied in accordance with **clause 1.5(a)(ii)(B)** must:
 - (i) be applied to all loaded wagons;
 - (ii) achieve a nil dust lift off from loaded wagons regardless of coal type;
 - (iii) remain intact from the time the train enters the Rail Infrastructure until the time the train is unloaded;
 - (iv) meet the requirements of all relevant environmental Laws; and
 - (v) be accepted at the relevant unloading destination to permit unloading of wagons.
- (c) The Private Infrastructure Owner will not use or permit the use of any veneering agent, or a change in the properties of any veneering agent, without first providing to Aurizon Network the following documents and information, which must be acceptable to Aurizon Network:
 - (i) Material Data Safety Sheet;
 - (ii) toxicology reports detailing the physical and chemical makeup of the product, the effects and impact of the product and components on humans, fauna, flora, wildlife and whole ecosystems; and
 - (iii) a full list of constituents.

1.6 Monitoring

- (a) Without limiting any other provisions of the Agreement, and upon giving not less than two (2) Business Days' notice to the Private Infrastructure Owner, Aurizon Network is entitled:
 - (i) to enter and be upon Private Land:
 - (A) once every twelve (12) Months; and
 - (B) at any other time, upon receipt of consent from the relevant owner to enter and be upon Private Land, provided that Aurizon Network, acting reasonably, has formed the opinion that the Private Infrastructure Owner is not complying with its obligations under this **clause 1** of **Schedule J**; and

- (ii) to access the Transfer Facilities (including the veneering equipment),

to enable Aurizon Network, from time to time:

- (iii) to verify compliance by the Private Infrastructure Owner with its obligations under this **clause 1** of this **Schedule J**; and
- (iv) to investigate the effectiveness of the veneering equipment (and its operation) or any other measures (including the veneering agent) used by the Private Infrastructure Owner in connection with any matters referred to in **clauses 1.4** or **1.5** of this **Schedule J**,

and the Private Infrastructure Owner must also provide any reasonable assistance requested by Aurizon Network in respect of such matters (including, if requested by Aurizon Network, providing evidence from the Private Infrastructure Owner's Quality Management System or other similar system verifying the Private Infrastructure Owner's compliance with the Coal Loss Mitigation Provisions).

- (b) For the avoidance of doubt, a reference to Aurizon Network in **clause 1.6(a)** of this **Schedule J** includes a reference to the employees, agents and contractors of Aurizon Network and any third party authorised by Aurizon Network.
- (c) If Aurizon Network accesses Private Land under **clause 1.6(a)** of this **Schedule J**, Aurizon Network must, and must procure that its representatives and contractors who access the Private Land:
 - (i) comply with:
 - (A) all site and safety rules applicable to the Private Land as notified by the Private Infrastructure Owner or the owner of the Private Land prior to such access;
 - (B) any reasonable direction given by any representative of the Private Infrastructure Owner or the owner of the Private Land; and
 - (C) any other reasonable conditions specified by the Private Infrastructure Owner or the owner of the Private Land; and
 - (ii) minimise interference with the Private Infrastructure Owner's activities to the extent possible.
- (d) Aurizon Network will monitor the Private Infrastructure Owner's compliance with its obligations under this **clause 1** of **Schedule J** through, without limitation:
 - (i) the installation of coal dust monitoring equipment at various locations on the Rail Infrastructure;

- (ii) periodic assessment of the Private Infrastructure Owner's impact on coal fouling across the Rail Infrastructure; and
- (iii) the periodic observation of:
 - (A) the Private Infrastructure Owner's coal loading, profiling, veneering and other operations at the Transfer Facilities; and
 - (B) trains loaded at the Transfer Facilities during transport.
- (e) Aurizon Network must at its cost ensure that any coal dust monitoring equipment used by Aurizon Network to monitor the Private Infrastructure Owner's compliance with its obligations under this **clause 1 of Schedule J** are in proper working order and calibrated.
- (f) Within 10 Business Days after end of each Quarter, Aurizon Network will provide the Private Infrastructure Owner with a written report in respect of Aurizon Network's monitoring of Private Infrastructure Owner's compliance with its obligations under this **clause 1 of Schedule J** during that Month (together with supporting information in respect of any non-compliance detected by Aurizon Network).

1.7 Suspension of rights

- (a) If the Private Infrastructure Owner fails to carry out an obligation under the Coal Loss Mitigation Provisions, Aurizon Network may give the Private Infrastructure Owner a notice (**Rectification Notice**) requiring the Private Infrastructure Owner to:
 - (i) in the case of any default which is capable of remedy, remedy the default; and
 - (ii) in the case of a default which is not capable of remedy, take reasonable steps to prevent the reoccurrence of the event or circumstance that resulted in the default,

within the period (which must be at least 90 days) specified in the Rectification Notice.
- (b) If a Rectification Notice is given to the Private Infrastructure Owner under **clause 1.7(a)**, Aurizon Network and the Private Infrastructure Owner must meet to discuss and agree upon a reasonable program (having regard to the Limiting Factors) setting out the activities, and a timetable to undertake those activities, required to prevent the reoccurrence of the event or circumstance that resulted in default.
- (c) The Private Infrastructure Owner will keep Aurizon Network informed of the activities undertaken to comply with the Rectification Notice.
- (d) If the Private Infrastructure Owner does not comply with a Rectification Notice within the time required by the Rectification Notice then Aurizon Network may give the Private Infrastructure Owner a notice (**Suspension Notice**), suspending the Private Infrastructure

Owner's rights under the Agreement and any other agreement to utilise, and to authorise or allow others to utilise, the Connecting Infrastructure for the passage of loaded coal trains.

- (e) A Suspension Notice must specify that it is a notice given under **clause 1.7(d)** of this **Schedule J**.
- (f) A suspension of the Private Infrastructure Owner's rights in accordance with **clause 1.7(a)** of this **Schedule J** will continue until the earlier of the following dates:
 - (i) if the relevant default is capable of remedy, the date that the Private Infrastructure Owner does the things specified in **clause 1.7(a)(i)** of this **Schedule J**;
 - (ii) if the relevant default is not capable of remedy, the date that the Private Infrastructure Owner does the things specified in **clause 1.7(a)(ii)** of this **Schedule J**;
 - (iii) if Aurizon Network notifies the Private Infrastructure Owner of the cessation of the suspension, the date which Aurizon Network notifies the Private Infrastructure Owner as the date on which the suspension will cease.
- (g) If Aurizon Network exercises its right of suspension under **clause 1.7(a)** of this **Schedule J** and the Private Infrastructure Owner disputes the exercise of that right by Aurizon Network, the suspension will not take effect unless the Dispute is resolved in favour of Aurizon Network during the period of the Dispute resolution process under in accordance with **Part 11** (at which time, the suspension will take effect);
- (h) The exercise by Aurizon Network of its rights and remedies under this **clause 1.7** of **Schedule J** does not limit or restrict Aurizon Network from exercising, at any time, any other rights or remedies of Aurizon Network in respect of the relevant default (including its rights of termination under Clause 20 of the Standard Rail Connection Agreement).

1.8 Reporting

- (a) Within 15 Business Days after the end of each Quarter, the Private Infrastructure Owner must submit a written report (in the form reasonably required by Aurizon Network) to Aurizon Network in respect of any material non-compliance by the Private Infrastructure Owner with an obligation of Private Infrastructure Owner under the Coal Loss Mitigation Provisions, provided always that such reporting obligation only applies to the strategies the Private Infrastructure Owner is able to implement to Prevent Coal Loss as have been agreed between the parties.
- (b) Without limiting **clause 1.8(a)** of this **Schedule J**, within five Business Days after the occurrence of any of the following events, the Private

Infrastructure Owner must submit a written report to Aurizon Network providing reasonable details in respect of the event:

- (i) the breakdown of, or the inability to operate, any veneering equipment;
 - (ii) any damage to the Rail Infrastructure in connection with any non-compliance by the Private Infrastructure Owner with its obligations under the Coal Loss Mitigation Provisions;
 - (iii) any event arising in connection with any non-compliance by the Private Infrastructure Owner with its obligations under the Coal Loss Mitigation Provisions which interferes, or may interfere, with the proper functioning or operation of the Rail Infrastructure; and
 - (iv) any event that results, or is likely to result, in the Private Infrastructure Owner being unable to perform a material obligation under the Coal Loss Mitigation Provisions.
- (c) The Private Infrastructure Owner must:
- (i) maintain a record of the operation of the veneering equipment, including the dates and times of operation (Veneering Log); and
 - (ii) provide a copy of the Veneering Log to Aurizon Network within 24 hours of receiving a request from Aurizon Network to view the Veneering Log.

1.9 Continuous improvement

The Parties must meet at least once each Quarter to discuss:

- (a) the effectiveness of the then current practices for preventing coal loss; and
- (b) new or modified practices which could be implemented to improve the prevention of coal loss,

and use their reasonable endeavours to achieve 'best practice' (subject to the Limiting Factors, cost constraints and the potential impact on other Supply Chain participants), including (but not limited to) giving due consideration to:

- (c) the "Coal Producers Dust Mitigation Activities" outlined in Table 3.1.2 and Annexure B of the CDMP; and
- (d) the actions that have been identified as 'best practice' specified in **clause 1.1(b)** of this **Schedule J**.

2 Coal loading, profiling and veneering

2.1 Coal Loss Management

- (a) The Private Infrastructure Owner must be able to demonstrate its compliance with its obligations under this **Schedule J** through its

Quality Management System, but only to the extent it is able to implement strategies to Prevent Coal Loss.

- (b) The Private Infrastructure Owner must consider current best industry practice with respect to Preventing Coal Loss when choosing an appropriate loading methodology. Best industry practice at this date of this Agreement includes matters such as:
- (i) operating procedure review and training to reduce the sources of coal loss;
 - (ii) Quality Management System procedures and reporting to enable a 'lessons learnt' approach;
 - (iii) inbound wagon identification system to determine class of wagon about to be loaded;
 - (iv) inbound overload detection devices to measure the tare weight of each incoming wagon;
 - (v) batch weighing system to load the correct amount of coal into each wagon;
 - (vi) telescopic loading chute to profile the load in each wagon or, as an interim measure until such a chute is operating effectively, a suitable profiling blade on the exit side of the load-out;
 - (vii) outbound overload detection devices to measure the gross and bogey weights of each outgoing wagon;
 - (viii) volumetric scanning to measure the profile of each outgoing wagon; and
 - (ix) veneering spray stations on exit side of load-out (after profiling has been achieved).

2.2 General Management of Coal Loading

- (a) The Private Infrastructure Owner, in loading wagons at the Transfer Facilities, must comply with:
- (i) the wagon design maximum load and volume for wagons and the network asset restrictions including height and weight requirements specified by Aurizon Network from time to time; and
 - (ii) the rail asset restrictions specified by Aurizon Network from time to time.
- (b) The Private Infrastructure Owner must ensure the design of the Transfer Facilities and its adoption of suitable loading and unloading methodologies each achieve the following:
- (i) loading to an appropriate profile and clearance to Prevent Coal Loss en route to the unloading facilities; and

- (ii) Prevent Coal Loss from the wagons after entering the Rail Infrastructure.
- (c) The Private Infrastructure Owner must use reasonable endeavours to ensure that coal is loaded into wagons in a manner which ensures that the coal (including coal dust) cannot leave the wagon until it is unloaded from the wagon at an unloading facility.

2.3 Loading and profiling of wagons

- (a) The Private Infrastructure Owner must ensure the loading methodology (including the approach to coal profiling) chosen by the Private Infrastructure Owner Prevents Coal Loss. The Private Infrastructure Owner must demonstrate to Aurizon Network that its adopted loading methodology Prevents Coal Loss and complies with the rail asset restrictions specified by Aurizon Network from time to time.
- (b) Without limitation to the Private Infrastructure Owner's obligations regarding the loading methodology, the Private Infrastructure Owner and Aurizon Network must agree upon suitable profiling requirements having regard to the Limiting Factors, using the following requirements as 'best practice' that should be achieved (if possible):
 - (i) Prevent the loading of coal to the very edges and ends of the wagons leaving sufficient "freeboard" (i.e: - not loaded to top of wagon side) at the sides and ends of loaded wagons to Prevent Coal Loss. See **Figure 1** below.
 - (ii) The method of loading must ensure that loading is even over the length and width of each wagon up to the maximum allowable height as specified by Aurizon Network from time to time (currently 3950mm above rail level). However, achieving loading to this height and shape is ultimately dependant on the density of coal being transported,

provided that the profile must have a flat surface and spillage over the sides must be avoided.

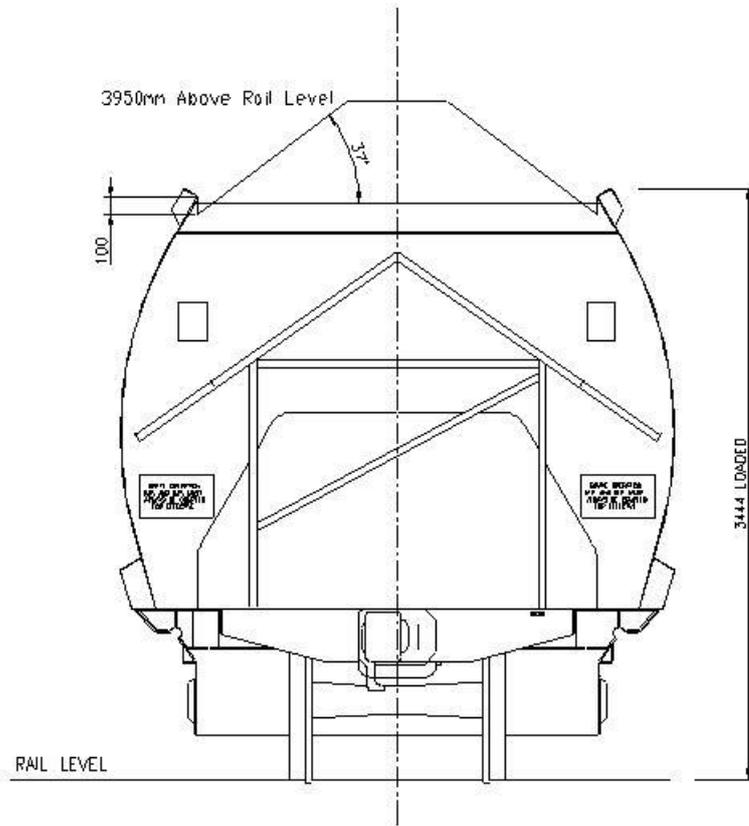


Figure 1 - End View of wagon showing maximum allowable loading profile requirements.

- (c) A suitable profiler must be used to profile the coal so as to result in a loaded wagon with a coal profile that optimises the effectiveness of veneering agents applied in order to Prevent Coal Loss. Without limiting the type of profile that the Private Infrastructure Owner may adopt, an appropriately designed and maintained telescopic loading chute can achieve a 'garden-bed' profile (standard loading profile as shown in **Figure 2** below) to mitigate the risk of coal lift-off and to optimise the effectiveness of veneering agents applied in order to Prevent Coal Loss.



Figure 2 - Top of loaded coal wagon showing 'Garden Bed' style profile.

- (d) The loading chute and associated skirts must achieve a slope on the side of the load less than the natural angle of repose of the coal and must ensure the product is not left on the wagon sills (side and end).
- (e) To the extent the Private Infrastructure Owner is able to implement strategies to Prevent Coal Loss that do not use the loading methods outlined in this **clause 2.3**, the Private Infrastructure Owner must not permit the loading of coal into wagons from:
 - (i) front-end loaders; or
 - (ii) Clam shell type loading facilities.

2.4 Parasitic and fugitive coal removed from wagons

Unless otherwise agreed by Aurizon Network, the Private Infrastructure Owner must use reasonable endeavours to remove any visible coal that has fallen onto wagon sills and surfaces or running gear immediately after the coal is loaded, in order to avoid the risk of coal falling off the wagon during transit.

2.5 Kwik Drop Doors (KDDs)

The Private Infrastructure Owner is responsible for the type of coal loaded into the wagons. The Private Infrastructure Owner must use reasonable endeavours to ensure that coal fineness and moisture content will not facilitate coal loss via the KDDs during transportation from the Transfer Facilities to the unloading facility.

Annexure 3 - Comparison of QRC mark-up against UT4

QRC Mark-up dated 17 February 2017

[Note: This drafting is focused on specific sections and does not seek to update all clause references (and other consequential amendments) throughout the undertaking beyond those sections.]

Aurizon ~~Network's~~ Network Submission Draft 30 November 2016
~~Access~~

Aurizon Network Pty Ltd

~~The 2017 Undertaking (UT4)~~

Approved by QCA on 11 October 2016



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Part 1: Preamble

1.1 Aurizon Network

Aurizon Network is a member of the Aurizon Group which operates as a leading integrated national transport provider.

1.2 Responsibilities

Aurizon Network is responsible for providing, maintaining and managing the Rail Infrastructure and for providing and managing access to it.

1.3 Access undertaking

This Undertaking governs the process by which Access will be negotiated and provided.

1.4 Approval

Aurizon Network has developed this Undertaking in accordance with section 136 of the Act. This Undertaking has been approved by the QCA in accordance with the Act.

1.5 Information

Information on obtaining Access is contained in this Undertaking. Further information can be found on the Website.

1.6 Negotiating Access

To negotiate Access please email access.services@aurizon.com.au.

Part 2: Intent and Scope

2.1 Duration

- (a) This Undertaking is effective from the Approval Date to the Terminating Date.
- (b) Following the Approval Date, Adjustment Charges will be calculated in respect of the period between the Adjustment Date and the Approval Date in accordance with Schedule F and will be payable in accordance with that Schedule. For clarity, the Adjustment Charges do not involve the retrospective application of this Undertaking, but are amounts payable under this Undertaking that have been calculated by reference to a period prior to the Approval Date.

2.2 Objective

The objective of this Undertaking is, without limitation, to:

- (a) ensure the service taken to be declared under section 250(1)(a) of the Act is provided in a manner that does not unfairly differentiate in a material way (as that term is defined in section 137(3) of the Act);
- (b) prevent Aurizon Network recovering, through the price of access to the service taken to be declared under section 250(1)(a) of the Act, any costs that are not reasonably attributable to the provision of that service;
- (c) facilitate the negotiation of access agreements by Aurizon Network and Access Seekers;
- (d) apply the provisions of the Act through:
 - (i) the establishment of processes for Access negotiations and the utilisation of Capacity that are expeditious, efficient, timely, flexible, commercial and non-discriminatory;
 - (ii) the establishment of processes and principles to provide guidance in relation to the pricing, and the terms and conditions, of Access; and
 - (iii) the establishment of processes and principles for the planning and development of Expansions and the framework for the negotiation of terms for the funding of Pre-feasibility Studies, Feasibility Studies and Expansions;
- (e) provide an efficient, effective and binding Dispute resolution process; and

- (f) provide that actions under this Undertaking are consistent with the objectives for rail under section 2(2)(d) of the TIA and that such actions and this Undertaking are also consistent with the objectives and provisions of the Act.

2.3 Behavioural obligations

In providing Access and in negotiations for Access, Aurizon Network:

- (a) must act in a manner that is consistent with the unfair differentiation obligations under sections 100(2) to (4) and section 168C of the Act.
- (b) Without limiting **clause 2.3(a)**, the steps that Aurizon Network must take to comply with this general obligation in **clause 2.3(a)** are set out in this Undertaking and include the following:
 - (i) this Undertaking must be consistently applied to ~~all~~ Access Seekers, Access Applications, negotiations for Access, Access Holders and Railway Operators;
 - (ii) Aurizon Network must not unfairly differentiate between Access Seekers, Access Holders or Railway Operators in a way that has a material adverse effect on the ability of any of them to compete with any other of them, including in relation to:
 - (A) any decision relating to whether Aurizon Network will undertake an Expansion;
 - (B) assessing, allocating and managing Capacity;
 - (C) providing scheduling and Network Control Services in accordance with the Network Management Principles;
 - (D) any decision relating to the source of funding for an Expansion;
 - (E) assessing and selecting Access Seekers, and
 - (F) any decision relating to the provision of Access to:
 - (1) a Related Operator;
 - (2) a Related Competitor; or
 - (3) a Third Party that has commercial arrangements with a Related Operator or Related Competitor.

- (c) Aurizon Network must not engage in conduct for the purpose of preventing or hindering an Access Seeker's access to the declared service within the meaning of section 104 or 125 of the Act.
- (d) Without limiting **clause 2.2(a)**, Aurizon Network must ensure that:
 - (i) all transactions between Aurizon Network and any other party in relation to Access are conducted on an arms-length basis;
 - (ii) all Access Seekers, irrespective of whether they are an Aurizon Party or a Third Party:
 - (A) are provided with a consistent level of service; and
 - (B) given an equal opportunity to obtain Access Rights,subject to the express provisions of the Act and this Undertaking; and
 - (iii) ~~—~~all decisions made under this Undertaking are made in a manner that does not unfairly differentiate in a material way (as that term is defined in section 137(3) of the Act) between any Access Seekers and/or Access Holders;
- (e) Aurizon Network must not engage in any activity or conduct (or agree to engage in such activity or conduct), either independently or with Related Operators, which has the purpose of, results in or creates, or is likely to result in or create:
 - (i) anti-competitive cost shifting;
 - (ii) anti-competitive cross-subsidies; or
 - (iii) anti-competitive price or margin squeezing.
- (f) For clarity, none of **clauses 2.3(b)(ii), 2.3(c) or 2.3(d)(iii)** prevent Aurizon Network from engaging in conduct expressly permitted by section 100(3) of the Act (subject to section 100(4) of the Act) or section 168C of the Act (subject to section 168C(3) of the Act).
- (g) If an Access Seeker or Access Holder considers that Aurizon Network has failed to comply with **clause 2.3(a) to (e)**, it may lodge a written complaint with Aurizon Network and must provide a copy of that complaint to the QCA.
- (h) Aurizon Network must:
 - (i) advise the QCA, as soon as practicable, of any complaints it receives under **clause 2.3(g)**;
 - (ii) investigate complaints received under **clause 2.3(g)**; and

- (iii) within twenty-eight (28) days after receiving such a complaint, advise the complainant and the QCA in writing of the outcome of that investigation and Aurizon Network's proposed response, if any.
- (i) If the complainant is not satisfied with the outcome of Aurizon Network's investigation, the complainant may apply to the QCA requesting an audit of the conduct that is the subject of the complaint under **clause 2.3(g)**.
- (j) If a complainant applies to the QCA in accordance with **clause 2.3(i)**:
 - (i) the QCA may request Aurizon Network to:
 - (A) engage an auditor in accordance with **clause 10.6.3**; and
 - (B) conduct an audit in accordance with **clause 10.6.4**,
 in respect of Aurizon Network's compliance with **clause 2.3(a) to (e)** as it relates to the relevant complaint.
- (k) For clarity, the rights and obligations under clause **2.3(g) to (j)** do not replace or derogate in any way from, the QCA's powers under the Act. Nothing in this Undertaking precludes an Access Seeker or Access Holder making any complaint or submission to the QCA.

2.4 Scope

- (a) This Undertaking provides only for the negotiation and provision of Access and is not applicable to the negotiation or provision of services other than Access. For clarity, "Access" in this **clause 2.4** includes all aspects of access to the service taken to be declared under section 250(1)(a) of the Act.
- (b) Access Holders are responsible for:
 - (i) the provision of any services other than Access, including Above Rail Services, required for the operation of Train Services; and
 - (ii) the necessary approvals from the owners of the land upon which the Rail Infrastructure is situated if it is not owned by Aurizon Network and Aurizon Network does not have an existing legal right to authorise Access Holders to access that land.
- (c) Aurizon Network must promptly notify the Access Holder if Aurizon Network does not own the land upon which the Rail Infrastructure is situated or have an existing legal right to authorise the Access Holder to access that land.

- (d) Nothing in this Undertaking can require Aurizon Network to act in a way that is inconsistent with its Passenger Priority Obligations or Preserved Train Path Obligations.
- (e) Nothing in this Undertaking can require Aurizon Network or any other party to an Access Agreement, executed before the Approval Date, to vary that agreement or to act in a way that is inconsistent with the relevant agreement.
- (f) Except where expressly stated in this Undertaking to the contrary, this Undertaking will not apply to the extent that it is inconsistent with an Access Agreement or a Train Operations Deed.
- (g) Nothing in this Undertaking affects the rights of Aurizon Network or other parties under the Act.

2.5 Aurizon Holdings to execute Deed

- (a) Aurizon Network must request that its Ultimate Holding Company provides the Ultimate Holding Company Support Deed (**Deed**) in the form set out in **Schedule D**.

- (b) If:

- (i) Aurizon Network fails to obtain a Deed in the form required by **clause 2.5(a)**;
- (ii) the Deed, if obtained, is not maintained in force; or
- (iii) the requirements of the Deed are not complied with,

then Aurizon Network must, from the Approval Date (in the case of **clause 2.5(b)(i)**) or the date of non-compliance (in the case of **clauses 2.5(b)(ii)** or **(iii)**):

- (iv) every three (3) Months, conduct and complete an audit of the Confidential Information Register in accordance with **Part 10** to confirm the Confidential Information Register complies with the requirements of this Undertaking for the previous three (3) Months period; and
- (v) every six (6) Months, conduct detailed training sessions in respect of Aurizon Network's statutory obligations under the Act and under **Part 3** (including regarding the management of Confidential Information) for all High-Risk Personnel,

until either:

- (vi) if **clause 2.5(b)(i)** or **(ii)** applies, Aurizon Network obtains a current Deed from the Ultimate Holding Company; or

- (vii) if **clause 2.5(b)(iii)** applies, the failure to comply with the requirements of the Deed is rectified to the satisfaction of the QCA.

If a provision of **Part 3** is inconsistent with this provision, this provision prevails.

2.6 Electricity supply and sale

- (a) To the extent that Aurizon Network sells or supplies a Related Operator with electric energy in connection with Access, Aurizon Network cannot refuse to sell or supply electric energy to another Access Seeker or Access Holder (or, if applicable, a Nominated Railway Operator).
- (b) Despite any other provision of this Undertaking, Aurizon Network will not be obliged to sell or supply electric energy to an Access Seeker or Access Holder (or, if applicable, a Nominated Railway Operator) or to agree to do so:
 - (i) if Aurizon Network is not lawfully entitled to sell or supply electric energy to the relevant Access Seeker, Access Holder or, if applicable, Nominated Railway Operator under any Law, including the *Electricity Act 1994* (Qld) and the National Electricity Rules (as defined under the National Electricity Law set out in the schedule to the *National Electricity (South Australia) Act 1996* (SA)); or
 - (ii) on terms that would be unreasonable or uncommercial.
- (c) For clarity, if a dispute arises between an Access Holder, a Nominated Railway Operator or an Access Seeker and Aurizon Network regarding a refusal by Aurizon Network to sell or supply electric energy (or procure such a sale or supply from an Aurizon Party), or the proposed terms and conditions on which Aurizon Network (or an Aurizon Party) offers to sell or supply electric energy to the Access Holder, Nominated Railway Operator or Access Seeker, any party may require the Dispute to be resolved in accordance with **clause 11.1**.

Part 3: Ringfencing

Section A – General Provisions

3.1 Organisational structure

- (a) Aurizon Network is part of the Aurizon Group and a Subsidiary of Aurizon Holdings.
- (b) Being a Subsidiary of Aurizon Holdings, Aurizon Network's financial performance, capital expenditure program and business plan are, consistent with good corporate governance, subject to oversight by the board and senior management of Aurizon Holdings.
- (c) Aurizon Network provides a regulated access service, together with providing unregulated services in competitive markets.
- (d) Aurizon Holdings, amongst other matters, provides Above Rail Services through a Related Operator.
- (e) Within the Aurizon Group, there are functional groups that provide shared support services and core corporate functions to different functional areas and parts of the Aurizon Group that include both Related Operators and Aurizon Network.
- (f) Aurizon Network is required by the TIA to maintain an independent board of directors which supervises arm's-length dealings in respect of Access between Aurizon Network and any Related Operators.
- (g) The Act:
 - (i) requires Aurizon Network to negotiate in good faith with Access Seekers to reach an Access Agreement;
 - (ii) obliges Aurizon Network in such negotiations not to unfairly differentiate between Access Seekers in a way that materially adversely affects the ability of one or more Access Seekers to compete with other Access Seekers;
 - (iii) prohibits Aurizon Network from engaging in conduct for the purpose of preventing or hindering an Access Seeker's or Access Holder's Access; and
 - (iv) deems certain types of specified conduct where Aurizon Network provides Access to itself or a Related Operator to constitute conduct that prevents or hinders an Access Seeker's or Access Holder's Access.

3.2 Purpose

- (a) The purpose of this **Part 3** is to aid Aurizon Network's compliance with the statutory obligations referred to above and to ensure that Access provided by Aurizon Network is managed and supplied independently from other members of the Aurizon Group who compete in the upstream and downstream markets that depend on Access to the service utilising the Rail Infrastructure.

3.3 Compliance declaration

- (a) As part of the compliance report required under **clause 10.5.2**, Aurizon Network must give the QCA a compliance declaration which must either:
 - (i) include a statement with the following effect: "There have been no breaches of the ringfencing arrangements set out in **Part 3** of the Undertaking and none of the matters set out in **clause 2.5(b)(i) to (iii)** have occurred during the twelve (12) Month period commencing from the date of the last declaration given under **clause 3.3(a)** of the Undertaking ending up until the day prior to the date of this declaration"; or
 - (ii) if there have been any breaches of this **Part 3** or any of the matters set out in **clause 2.5(b)(i) to (iii)** have occurred during the period for the compliance declaration, provide the following details in relation to each breach or matter:
 - (A) the nature and circumstances of the breach or matter;
 - (B) whether the breach or matter is under investigation or has been resolved; and
 - (C) any remedial actions taken or being considered in relation to the breach or matter.
- (b) The compliance declaration given under **clause 3.3(a)** must be signed by Aurizon Network's Executive Officer and the other member of the senior management team at Aurizon Network (**Other Officer**) who is most directly responsible for ensuring compliance with the ringfencing arrangements in this **Part 3**.
- (c) Subject to **clause 3.3(d)**, giving a compliance declaration under **clause 3.3(a)** that is known to be false or misleading will constitute a breach of this Undertaking by Aurizon Network.
- (d) **Clause 10.7.3(b)** applies to any compliance declaration given under **clause 3.3(a)**, including the compliance declaration signed by the Other Officer under **Clause 3.3(b)**, in which case, **clause**

10.7.3(b) will be available to that person as if **clause 10.7.3(b)** names that person.

Section B – Aurizon Network’s Functional Responsibility

3.4 Function of Aurizon Network in the Aurizon Group for the purpose of this Undertaking

- (a) The primary function of Aurizon Network for the purpose of this Undertaking is to supply the declared services contemplated by section 250(1)(a) of the Act.
- (b) Aurizon Network intends to give effect to this function by supplying the Below Rail Services in accordance with the terms of this Undertaking.
- (c) For clarity, the supply of Below Rail Services includes:
 - (i) the primary function described in **clause 3.4(a)**;
 - (ii) negotiating Access Agreements with Access Seekers and managing Access Agreements with Access Holders;
 - (iii) negotiating and managing Train Operations Deeds with Train Operators;
 - (iv) receiving, assessing and responding to Access Applications;
 - (v) providing or procuring appropriate levels of maintenance for, and renewal of, the Rail Infrastructure to ensure that the Rail Infrastructure is provided to the standard required to meet Aurizon Network’s obligations to Access Holders and, where applicable, Train Operators, the DTMR, and its infrastructure lessors;
 - (vi) assessing, allocating and managing Capacity;
 - (vii) providing scheduling and Network Control Services for Rail Infrastructure in accordance with the Network Management Principles;
 - (viii) providing use of electric transmission infrastructure on electrified sections of the Rail Infrastructure to enable Access Holders or Train Operators to run electric Train Services and (subject to **clause 2.6**) selling or supplying electric energy for traction on electrified sections of the Track, including managing electric energy supply from other parties, where an Access Seeker, an Access Holder or Train Operator requests Aurizon Network to provide that electric energy; and

- (ix) the administration of the process for network development, planning, studies and Expansions in accordance with **Part 8**.
- (d) Aurizon Network must not:
 - (i) undertake any Above Rail Services in respect of the Rail Infrastructure; or
 - (ii) undertake the operation or marketing of Train Services on the Rail Infrastructure, unless for the purpose of providing a Below Rail Service or the provision of services in respect of Private Infrastructure.
- (e) If Aurizon Network either:
 - (i) provides any services associated with the loading of vessels at a port (including providing access to those services) or holds any direct or indirect interest in any port connected to the Rail Infrastructure, whether as owner, lessee, trust unit holder, operator, manager or otherwise and whether alone or together with others; or
 - (ii) holds any direct or indirect interest in, operates or manages any coal mine or coal-extraction project connected to the Rail Infrastructure, whether as owner, lessee, trust unit holder, operator, manager or otherwise and whether alone or together with others,

then as part of the compliance report required under **clause 10.5.2** Aurizon Network must:

- (iii) confirm that, in providing access to the service taken to be declared under section 250(1)(a) of the Act, it has not engaged in any conduct that has the purpose of unfairly differentiating in a material way (as that term is defined in section 137(3) of the Act) between Access Seekers or Access Holders; and
- (iv) provide supporting evidence if requested by the QCA.

3.5 Obligation of Aurizon Network to perform Below Rail Services

- (a) The Below Rail Services must not be transferred or delegated to, contracted out to, or otherwise undertaken, by a Related Operator or Related Competitor unless the Below Rail Service relates to:
 - (i) maintenance for or renewal of the Rail Infrastructure;
 - (ii) project delivery, engineering or rail construction services in relation to the procurement, construction or design of Rail Infrastructure;

- (iii) the safe operation of the Rail Infrastructure (including any incident investigations);
 - (iv) environmental related services (including any incident investigations); or
 - (v) normal corporate governance arrangements and management reporting, including assessing the credit risk of counterparties or otherwise assessing the implications of an arrangement on Aurizon Network's access to funds or the taxation consequences of that arrangement.
- (b) Subject to **clause 3.4(d)**, and the restrictions on Aurizon Network employees undertaking certain activities in **clause 3.6**, nothing in this Undertaking:
- (i) requires Aurizon Network to perform a function that is not associated with or in respect of the provision of Below Rail Services; or
 - (ii) prevents Aurizon Network from undertaking any function which is not associated with or in respect of the provision of Below Rail Services.
- (c) Notwithstanding **clause 3.5(a)**, Aurizon Network may contract with Related Operators for the provision of Network Control Services referred to in **clause 3.4(c)(vii)** to the extent that they comprise:
- (i) Field Incident Management; or
 - (ii) Yard Control services at yards other than Major Yards.
- (d) For clarity, notwithstanding the transfer, delegation or contracting out of Below Rail Services by Aurizon Network to a Related Operator or Related Competitor under **clause 3.5(a)**, Aurizon Network remains responsible for providing Below Rail Services in accordance with this Undertaking.

3.6 Staffing of Aurizon Network

- (a) Aurizon Network must ensure that an employee engaged to work for Aurizon Network and whose duties primarily involve the provision of Below Rail Services, will:
- (i) work only for Aurizon Network; and
 - (ii) not undertake any work at the direction of a Related Operator.
- (b) Nothing in **clause 3.6(a)** restricts or prevents:
- (i) an employee from performing functions that are required to negotiate for, or provide Access to, a

Related Operator in accordance with the terms of this Undertaking;

- (ii) secondments of employees, subject to the requirements in this Undertaking on the handling of Confidential Information;
- (iii) an employee ceasing to work for Aurizon Network and commencing to work for a Related Operator, subject to the requirements in this Undertaking on the handling of Confidential Information;
- (iv) an employee undertaking any function or activity:
 - (A) required or compelled by any Law;
 - (B) required or compelled by any order of a court;
 - (C) required or compelled by notice validly issued by any Authority;
 - (D) necessary for the conduct of any legal proceedings, dispute resolution process or audit under this Undertaking, the Act or a Standard Agreement; or
 - (E) in the course of responding to an emergency or natural disaster or for clearing an incident or emergency that is preventing or impeding the operation of Train Services on the Rail Infrastructure;
- (v) an employee undertaking work providing services that do not relate, whether directly or indirectly, to the provision of Below Rail Services; or
- (vi) an employee engaged in undertaking:
 - (A) asset construction, maintenance, renewal or repair; or
 - (B) support services and/or corporate functions,

from undertaking work for any Aurizon Group business unit or corporate functional area, subject to the requirements in this Undertaking on the handling of Confidential Information.

- (c) Subject to compliance with Aurizon Network's obligations under this **Part 3**, Aurizon Network may obtain assistance in the performance by Aurizon Network of Below Rail Services and to comply with its obligations in this Undertaking from staff employed within the Aurizon Group in the provision of shared

services and corporate functions to different functional areas and parts of the Aurizon Group.

- (d) If the activities of a project working group (whose members include staff from a Related Operator or Related Competitor) associated with the operation of a Supply Chain affect or could affect the Access of Third Party Access Holders or Third Party Access Seekers, then Aurizon Network must enter into the Confidential Information Register the details (including the change in role or circumstances and the anticipated duration of that change) of any Aurizon Network employee who works in such a working group if that employee has had access, as an employee of Aurizon Network, to any Confidential Information.
- (e) Aurizon Network may not permit any secondments or other temporary transfers of employees between Aurizon Network and an Aurizon Party if the employee has had (or will have in the new role) access to Confidential Information, unless Aurizon Network:
 - (i) has given prior notice to the QCA of the details of the secondment or transfer identifying:
 - (A) the extent to which the relevant employee has, or may have, received or accessed, Confidential Information, and the nature of such information; and
 - (B) the level of risk, in terms of Aurizon Network's compliance with this **Part 3**, posed by the proposed secondment or temporary transfer;
 - (ii) takes all reasonable measures to minimise conflicts of interest for the relevant employee and the potential for misuse of Confidential Information; and
 - (iii) enters into the Confidential Information Register the details (including the change in role or circumstances and the anticipated duration of that change) of the relevant employee.
- (f) Aurizon Network must:
 - (i) at all times directly employ a regulatory affairs advisor, who will be deemed a High-Risk Person; and
 - (ii) not (except as permitted by **Clause 3.5(a)(v)** or, unless otherwise approved in writing by the QCA) assign, transfer, delegate or contract out to any Aurizon Party any regulatory function or position related to the development, application and interpretation of this Undertaking in relation to Aurizon Network.

3.7 Accounting separation

3.7.1 Preparation of financial statements

- (a) Unless otherwise approved by the QCA, Aurizon Network must develop, on an annual basis:
 - (i) general purpose financial statements for Aurizon Network in accordance with relevant legislation and applicable Australian accounting standards; and
 - (ii) a supplementary set of financial statements which:
 - (A) separately identifies Aurizon Network's business in respect of the supply of the declared services contemplated by section 250(1)(a) of the Act from other business conducted by Aurizon Group;
 - (B) identifies costs common to both Aurizon Network and Aurizon Group and the way in which such costs are allocated; and
 - (C) are otherwise developed in accordance with the methodology and format set out in the Costing Manual.
- (b) The QCA may request Aurizon Network to prepare (or Aurizon Network may prepare) a Costing Manual. The processes set out in section 159 of the Act apply to that Costing Manual.
- (c) The financial statements must:
 - (i) include the information referred to in **clause 3.7.2**;
 - (ii) be certified by Aurizon Network's Executive Officer as being in accordance with this Undertaking; and
 - (iii) audited in accordance with **clause 10.6.4**.

3.7.2 Self Insurance

- (a) The financial statements referred to in **clause 3.7.1(a)(ii)** must include details of Self-Insurance including at least the following:
 - (i) Aurizon Network's level of Self-Insurance as at the end of the relevant Year;
 - (ii) the number and type of claims (and quantum of each claim) made on the Self-Insurance in the relevant Year; and

- (iii) the number of claims made on Self-Insurance successfully resolved in the relevant Year (and quantum of each payment).
- (b) Claims made on Self-Insurance for an amount that is equal to or less than \$50,000 may be reported on an aggregated basis.

3.7.3 Audit of financial statements

- (a) An audit of the financial statements referred to in **clause 3.7.1** will be conducted:
 - (i) within six (6) Months of the end of the Year to which the financial statements relate, or such longer time as agreed by the QCA; and
 - (ii) subject to this **clause 3.7.3**, in accordance with **clause 10.6.4**.
- (b) Aurizon Network acknowledges that, in order to facilitate finalisation of the audit within the required timeframe, certain aspects of the audit may be undertaken by the Auditor at different times throughout the relevant Year.
- (c) The Auditor will:
 - (i) examine whether the financial statements referred to in **clause 3.7.1** have been developed in all material respects in accordance with this Undertaking and consistent with the format specified in the Costing Manual; and
 - (ii) prepare an audit report that specifies:
 - (A) the scope of the audit;
 - (B) the level of access that the Auditor was provided to Aurizon Network's financial information, including the relevant information systems;
 - (C) whether or not the financial statements have been developed in all material respects in accordance with this Undertaking and consistent with the format specified in the Costing Manual; and
 - (D) if the Auditor identifies that the financial statements have not been developed in all material respects in accordance with this

Undertaking and processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual, information regarding the relevant non-compliance or inconsistency.

Section C – Management of Aurizon Network

3.8 Independence of senior management

- (a) Aurizon Network must:
 - (i) ensure that Aurizon Network is managed independently from:
 - (A) Related Operators; and
 - (B) Related Competitors; and
 - (ii) take whatever steps it can reasonably take to ensure that Related Operators and Related Competitors do not participate in the process for the appointment or supervision of the executive management of Aurizon Network.
- (b) Aurizon Network must ensure that the executive management of Aurizon Network does not have any management responsibility for:
 - (i) a Related Operator; or
 - (ii) any Related Competitor.
- (c) Aurizon Network must not act on directions from a Related Operator in respect of the grant or exercise of Access Rights to, by or for the benefit of:
 - (i) any Related Operator; or
 - (ii) a Third Party Access Seeker, Third Party Access Holder or Third Party Train Operator, otherwise than with the consent of the Third Party,

provided that nothing prevents a Related Operator exercising a right or requiring Aurizon Network to comply with an obligation under an Access Agreement between Aurizon Network and that Related Operator, or under this Undertaking or the Act, as applicable.

Section D – Confidential Information

Section D1 – General provisions

3.9 No waiver or exclusion of Undertaking by voluntary agreement

- (a) Aurizon Network must not request or require any Access Seeker, Access Holder or Train Operator to waive or agree to waive any requirement or obligation on Aurizon Network under this **Part 3**.
- (b) Any purported waiver of, or agreement to waive, any requirement or obligation on Aurizon Network under this **Part 3** has no effect.
- (c) If Aurizon Network and a Third Party Access Seeker or Third Party Access Holder enter into a confidentiality agreement or deed or an Access Agreement containing confidentiality obligations in relation to the negotiation or provision of Access Rights, that agreement or deed does not reduce or derogate in any way from any requirement or obligation imposed on Aurizon Network under this **Part 3** except that if the agreement or deed prescribes an obligation or standard for performance of an act that is higher or more stringent than under this **Part 3**, the higher or more stringent standard or obligation in that agreement or deed must be met by Aurizon Network.

3.10 Request for Aurizon Network to enter confidentiality agreement

At any time prior to or during the Negotiation Period:

- (a) an Access Seeker, Third Party Access Seeker or Train Operator (as applicable) may require Aurizon Network; or
- (b) Aurizon Network may require an Access Seeker, Third Party Access Seeker or Train Operator (as applicable),

to enter into a confidentiality agreement in relation to the Confidential Information, in which case Aurizon Network and the Access Seeker, Third Party Access Seeker or Train Operator (as applicable) must enter into a confidentiality agreement which must be in the form set out in **Schedule I** unless otherwise agreed by the parties.

3.11 Overarching commitment to information security

- (a) Notwithstanding any other provision in this Undertaking, Aurizon Network must:
 - (i) except as otherwise permitted by this Undertaking, keep Confidential Information confidential and secure;
 - (ii) not disclose Confidential Information, unless in accordance with this Undertaking; and
 - (iii) use or disclose Confidential Information only in connection with the supply of Below Rail Services, as

permitted in accordance with this Undertaking but only to the extent necessary for that purpose.

- (b) Notwithstanding any other provision in this Undertaking, Aurizon Network must not use or disclose Confidential Information in a way that constitutes a breach of Aurizon Network's obligations under sections 100, 104, 125 or 168C of the Act.

Section D2 - Control framework for Confidential Information

3.12 Process for permitted disclosure of Confidential Information

- (a) Subject to **clause 3.13**, if access to, or disclosure of, Confidential Information is to be made to a Recipient, whether the Recipient is within Aurizon Network, another Aurizon Party or a Third Party, Aurizon Network must ensure that:
 - (i) the access or disclosure is permitted under this Undertaking;
 - (ii) access to that Confidential Information is limited so that disclosure to the Recipient is only to the extent necessary;
 - (iii) the Recipient is advised that the information is Confidential Information and the information is clearly identified as Confidential Information;
 - (iv) if required by **clause 3.13**, prior to the access or disclosure being granted, all information relevant to that access or disclosure is recorded in the Confidential Information Register;
 - (v) if required by **clause 3.13**, the Recipient has signed a declaration confirming its awareness and understanding of the Aurizon Group's obligations regarding Confidential Information;
 - (vi) if required by **clause 3.13** and if the Recipient is not within Aurizon Network, Aurizon Network enters into a legally enforceable agreement with the Recipient (with the same effect as the confidentiality agreement in the form set out in **Schedule I**) and on terms that are enforceable by the owner of the Confidential Information and Aurizon Network, requiring the Recipient (and any of its employees) to keep the Confidential Information confidential, and to only use it for the purpose for which it was disclosed;
 - (vii) if required by **clause 3.13** and if the Recipient is not within Aurizon Network and ongoing access to Confidential Information is to be provided, a review date is recorded in the Confidential Information Register at which access or disclosure under

clause 3.13 expires, such review date to be determined by Aurizon Network, but not to be greater than twelve (12) Months from the date of the record in the Confidential Information Register; and

(viii) if required by **clause 3.13**, the prior written consent of the owner of the Confidential Information is provided for the access or disclosure to the Recipient for the nominated purpose.

(b) If for the purposes of this Section D and in particular **Clause 3.12, 3.13 and 3.14**:

(i) the Confidential Information can reasonably be grouped together in a single category because the Confidential Information relates to the same or substantially similar subject matter; or

(ii) there is a need for multiple instances of access to or disclosure of Confidential Information, and those instances can reasonably be grouped together in a single category because they relate to the same or similar subject matter or to a recipient whose role requires repeated access to Confidential Information,

then, that Confidential Information is deemed to be one item of Confidential Information for the purpose of **clause 3.12(a), 3.13 and 3.14**.

(c) If consent is sought under **clause 3.12(a)(viii)**:

(i) such consent must not be unreasonably delayed or refused;

(ii) during the Negotiation Period while responding to an Access Application or negotiating an Access Agreement and the owner of the Confidential Information:

(A) fails to respond to Aurizon Network's request for consent within five (5) Business Days of its receipt of Aurizon Network's written request (referred to as the **Consent Response Date**), then all relevant timeframes applicable to Aurizon Network under **Part 4** will be extended by the same number of days as the day on which the response is given exceeds the Consent Response Date; or

(B) unreasonably refuses its consent to the disclosure of that Confidential Information, or fails to respond to Aurizon Network's request for consent within twenty (20) Business Days of its receipt of Aurizon Network's written request, then Aurizon Network may give a

Negotiation Cessation Notice to the Access Seeker, in accordance with **clause 4.13**; or

- (iii) during the process of administering an Access Agreement or a Train Operations Deed, if the owner of the Confidential Information fails to respond to Aurizon Network's request for consent within twenty (20) Business Days of its receipt of Aurizon Network's written request, then consent is deemed to be given.
- (d) For the purpose of disclosing Confidential Information under **clause 3.13** or recording information in the Confidential Information Register under **clause 3.14(e)**:
 - (i) if disclosure of Confidential Information is to an entity, then:
 - (A) only the entity (and not any of its directors or employees) is required to enter into any undertaking referred to in **clause 3.12(a)(vi)**; and
 - (B) the name of the entity (and not any of its directors or employees) needs to be recorded in the Confidential Information Register as the Recipient; or
 - (ii) if the disclosure of the Confidential Information is only to an individual or individuals, then:
 - (A) those individuals must enter into any declaration or undertaking referred to in **clause 3.12(a)(vi)**; and
 - (B) only the name of each individual needs to be recorded in the Confidential Information Register as the Recipient.

3.13 Disclosure of Confidential Information

- (a) If **clauses 3.13(b), 3.13(c), 3.13(d), 3.13(e) or 3.13(f)** do not apply, then subject to the restrictions in **clause 3.13(g)** Aurizon Network must comply with **clause 3.12(a)** to disclose Confidential Information to any Recipient.
- (b) If Aurizon Network complies with **clauses 3.12(a)(ii) and (iii)**, disclosure of Confidential Information by Aurizon Network to a Recipient is permitted when the disclosure is:
 - (i) required or compelled by any Law;
 - (ii) required or compelled by any order of a court;

- (iii) required or compelled by notice validly issued by any Authority;
 - (iv) necessary for the conduct of any legal proceedings, including dispute resolution or audit processes under this Undertaking, the Act, a Standard Agreement or other agreement;
 - (v) if the process in **clause 3.13(f)** is observed, required under any stock exchange listing requirement or rule (including disclosure to any Aurizon Group company so as to allow compliance with any such listing requirement or rule);
 - (vi) for the purpose of facilitating Network Control directions where the disclosure of information is by Aurizon Network in the usual course of undertaking Network Control Services;
 - (vii) necessary for the effective response to an emergency or natural disaster or for clearing an incident or emergency that is preventing the operation of Train Services on the Rail Infrastructure;
 - (viii) to the Safety Regulator; or
 - (ix) to Aurizon Network Personnel to the extent necessary to perform their duties.
- (c) If Aurizon Network complies with **clauses 3.12(a)(ii)** and **(iii)**, then disclosure of Confidential Information by Aurizon Network to a Recipient is permitted when the disclosure is:
- (i) to a Railway Manager, but only to the extent required for the purpose of negotiating or providing Access or for managing interfaces between the railways (including scheduling and other interface issues), provided that the Railway Manager has undertaken in a legally binding way (with the same effect as the confidentiality agreement in the form set out in **Schedule I**), to keep the Confidential Information disclosed to it by Aurizon Network confidential; or
 - (ii) to an infrastructure provider for infrastructure forming part of the Supply Chain for the purpose of facilitating the coordination of the capacity allocation process, provided that the infrastructure provider has undertaken, in a legally binding way (with the same effect as the confidentiality agreement in the form set out in **Schedule I**), to keep the information disclosed to it by Aurizon Network confidential and to only use that information for the purpose for which it was disclosed,

and Aurizon Network will use its best endeavours to enforce the confidentiality undertakings referred to in **clauses 3.13(c)(i) and (ii)** against the relevant third party if requested by the owner of the information.

- (d) If Aurizon Network complies with **clauses 3.12(a)(ii) and (iii)** and the information to be accessed or disclosed and a review date at which access or disclosure of that information expires is recorded in the Confidential Information Register in accordance with **clause 3.12(a)(iv) and 3.12(a)(vii)**, then disclosure of Confidential Information by Aurizon Network to a Recipient is permitted when the disclosure is to either an external legal, accounting or financial adviser or consultant (**Advisor**) or a banker, financier or other financial institution (**Financier**), and:
- (i) the Advisor's or Financier's role in advising or providing services to Aurizon Network requires the disclosure to be made;
 - (ii) the Advisor or Financier is under an obligation of confidentiality to Aurizon Network; and
 - (iii) the Advisor or Financier has been advised of the Aurizon Group's obligations under this Undertaking regarding Confidential Information.
- (e) If:
- (i) Aurizon Network complies with **clauses 3.12(a)(ii) and (iii)**;
 - (ii) the information to be accessed or disclosed and, if the Recipient is not within Aurizon Network and ongoing access to Confidential Information is to be provided, a review date at which access or disclosure of that information expires is recorded in the Confidential Information Register in accordance with **clause 3.12(a)(iv) and clause 3.12(a)(vii)**;
 - (iii) to the extent that the Recipient is within Aurizon Network, the Recipient has signed a declaration confirming its awareness and understanding of the Aurizon Group's obligations regarding Confidential Information; and
 - (iv) to the extent that the Recipient is not within Aurizon Network, Aurizon Network has entered into a legally enforceable agreement with the Recipient (with the same effect as the confidentiality agreement in the form set out in **Schedule I**) and on terms that are enforceable by the owner of the Confidential Information and Aurizon Network, requiring the

Recipient (and any of its employees) to keep the Confidential Information confidential and to only use it for the purpose for which it was disclosed,

then Disclosure of Confidential Information by Aurizon Network to a Recipient is permitted if:

- (v) the disclosure has been authorised by the owner of the Confidential Information providing its prior written consent to such disclosure or alternative use; or
- (vi) subject to the restrictions in **clause 3.13(g)**, the disclosure is to an employee of a Related Operator or Related Competitor solely for the purpose of undertaking Below Rail Services, to the extent permitted by this Undertaking, and that employee is not involved in the marketing or negotiation of Above Rail Services;
- (vii) subject to the restrictions in **clause 3.13(g)**, the disclosure is to:
 - (A) the Aurizon Holdings board of directors;
 - (B) the Aurizon Network board of directors;
 - (C) the Chief Executive Officer of the Aurizon Group;
 - (D) the Chief Financial Officer of the Aurizon Group;
 - (E) the Company Secretary of Aurizon Network or the Aurizon Group or any assistant Company Secretary;
 - (F) the General Counsel of the Aurizon Group;
 - (G) the Chief Internal Auditor of the Aurizon Group;
 - (H) the Chief Information Officer of the Aurizon Group; and
 - (I) any person providing clerical or administrative assistance to the individuals or business units identified in **clauses 3.13(e)(vii)(A) to 3.13(e)(vii)(H)**.
- (f) Subject to **clause 3.13(g)**, prior to any disclosure to satisfy a stock exchange listing requirement or rule under **clause 3.13(b)(v)**, Aurizon Network must:

- (i) consult with the owner of the Confidential Information as to the nature and extent of the disclosure of the Confidential Information;
 - (ii) consider (and, to the extent reasonably possible, comply with) any requests made by the owner of the Confidential Information (acting reasonably) to limit the disclosure of the Confidential Information; and
 - (iii) to the extent reasonably possible, coordinate the disclosure of the Confidential Information with any similar disclosure by the owner of the Confidential Information that is required under any relevant stock exchange listing requirement or rule.
- (g) If the disclosure that is required under any stock exchange listing requirement is urgent or requires immediate disclosure under those stock exchange listing rules, then Aurizon Network must use all reasonable endeavours to take the steps set out in **clause 3.13(f)**.
- (h) Aurizon Network may not disclose Confidential Information to a Recipient that is a Related Operator or an employee of a Related Operator (other than a Recipient performing the activities set out at **clause 3.5(a)(v)**) for the purpose of obtaining advice regarding:
- (i) the amendment of this Undertaking or any Standard Agreement; or
 - (ii) the interpretation of this Undertaking or any Standard Agreement.

Section D3 – Compliance monitoring and safeguards

3.14 Confidential Information Register

- (a) Aurizon Network must establish and maintain a Confidential Information Register.
- (b) Aurizon Network must, [provided it has not already done so under the 2016 Undertaking](#), develop and, within four (4) Months after the Approval Date, provide the QCA with its proposed:
 - (i) structure of; and
 - (ii) level of detail of information to be included in,

the Confidential Information Register. The QCA must approve Aurizon Network's proposal unless the QCA considers that the proposal is not sufficiently detailed or does not provide sufficient transparency, in which case, the QCA may determine, and Aurizon Network must vary accordingly, the format for the Confidential Information Register to ensure it satisfies the requirements of **clause 3.14(c)**. The format (including content) of the Confidential Information

Register may be varied from time to time by agreement between Aurizon Network and the QCA or, failing agreement, as required by the QCA.

- (c) The Confidential Information Register will contain, as a minimum:
 - (i) the identity of persons or entities who have access to Confidential Information;
 - (ii) in respect of each Recipient:
 - (A) the identity of the Recipient who has been approved in accordance with **clause 3.13(e)** to have access to the Confidential Information, and the identity of the Aurizon Network Personnel who approved that access;
 - (B) a review date at which access to that Confidential Information expires;
 - (C) the defined category of Confidential Information to which the Recipient has access (with sufficient details to enable the Confidential Information to be accurately identified);
 - (D) the purpose for which the Confidential Information is to be used by the Recipient; and
 - (E) confirmation that the Recipient has signed a declaration signifying its awareness and understanding of Aurizon Network's obligations regarding Confidential Information under this Undertaking;
 - (iii) a record of any confidentiality agreement, or confidentiality provisions contained in another arrangement, entered into by Aurizon Network in respect of Confidential Information;
 - (iv) a record of persons and entities that have signed a declaration signifying their awareness and understanding of Aurizon Network's obligations regarding Confidential Information in accordance with **clause 3.12(a)(v)**;

- (v) a record of the signing of an exit certificate by Aurizon Network Personnel working within Aurizon Network and with access to Confidential Information at the time that Aurizon Network Personnel leaves the employment of, or engagement with, Aurizon Network (whether to another business unit within the Aurizon Group on a temporary or permanent basis or a Third Party); and
 - (vi) details of any compliance issues in relation to Confidential Information where an investigation revealed a breach of Aurizon Network's obligations under this Undertaking.
- (d) An Access Seeker, Access Holder or Train Operator may, upon request, view information in the Confidential Information Register which relates to Confidential Information that it has disclosed to Aurizon Network.
- (e) Aurizon Network must provide the QCA with access to the Confidential Information Register:
- (i) each twelve (12) Months on and from the Approval Date; and
 - (ii) upon the QCA's request,
- to view the Confidential Information Register.
- (f) The QCA may require the Confidential Information Register to be subject to an audit:
- (i) in accordance with **Part 10** to confirm the Confidential Information Register complies with the requirements of this Undertaking; and
 - (ii) to confirm the processes and procedures underpinning the collection of information for the Confidential Information Register is fit for purpose, being complied with and is used in a consistent manner.

3.15 Mandatory Confidential Information training

- (a) Aurizon Network must ensure that:
- (i) all Aurizon Network Personnel; and
 - (ii) all Aurizon Group employees,
- receiving, or having access to, Confidential Information in the course of performing their duties are made fully aware of the Aurizon Group's obligations relating to the management of Confidential Information, and complete training for this purpose as contemplated in **clauses 3.15(b) and 3.17(a)**.

- (b) Aurizon Network must create, maintain and conduct, as a minimum, the following training sessions in order to promote awareness of Aurizon Network's obligations under this **Part 3**:
- (i) a briefing session which outlines Aurizon Network's statutory obligations under the Act and Aurizon Network's obligations under this **Part 3**:
 - (A) for current employees, who perform tasks relating to Below Rail Services, of an Aurizon Group entity whose role requires access to Confidential Information, within three (3) Months of the commencement of this Undertaking;
 - (B) for all new employees, who perform tasks relating to Below Rail Services, of Aurizon Group entities whose role requires access to Confidential Information, within one (1) Month after employment commences; and
 - (C) for an employee of an Aurizon Group entity whose role has changed and, as a result of the change, now performs tasks relating to Below Rail Services and requires access to Confidential Information, within one (1) Month after the change of role;
 - (ii) detailed training sessions in respect of Aurizon Network's statutory obligations under the Act, Aurizon Network's obligations under this **Part 3** (including regarding the management of Confidential Information) and Aurizon Holdings' obligations under the Ultimate Holding Company Support Deed:
 - (A) for persons who are High-Risk Personnel at the commencement of this Undertaking, within three (3) Months of the commencement of this Undertaking;
 - (B) for all persons who are added to the High-Risk Personnel Register

following the commencement of this Undertaking, within one (1) Month after they are added to the High-Risk Personnel Register; and

- (C) notwithstanding **clause 3.15(b)(ii)(A)** and **3.15(b)(ii)(B)**, for all High-Risk Personnel, at least once in every two (2) Years of continuous status as a High-Risk Person.
- (c) Aurizon Network must ensure that the Compliance Officer establishes and maintains a record of training attendances (as a yearly percentage of Aurizon Group employees) for publication in the annual compliance report prepared under **Part 10**.

3.16 High-Risk Persons

- (a) Aurizon Network must establish and maintain a High-Risk Personnel Register.
- (b) The High-Risk Personnel Register must contain:
 - (i) the identity of persons who have access to Confidential Information and either:
 - (A) is in a position to use that Confidential Information for purposes other than the supply of Below Rail Services; or
 - (B) has the capacity to determine the outcome of, or participate in, decisions of any Aurizon Group company that is not Aurizon Network,

such persons being “High-Risk Persons” or “High-Risk Personnel”;
 - (ii) the position the High-Risk Person holds; and
 - (iii) the reason why that person is listed as a High-Risk Person.
- (c) The following persons are deemed to be High-Risk Personnel for the purposes of this **clause 3.16**:
 - (i) all directors of Aurizon Network;
 - (ii) Aurizon Network’s Executive Officer and Chief Financial Officer;

- (iii) any employee of a Related Operator or Related Competitor accessing Confidential Information for the purpose of undertaking Below Rail Services, to the extent permitted by this Undertaking;
- (iv) Aurizon Network Personnel who manage the:
 - (A) negotiation and maintenance of Access Agreements and Train Operations Deeds;
 - (B) receiving, assessing and responding to Access Applications; and
 - (C) assessing, allocating and managing Capacity; and
- (v) any person referred to in **clause 3.6(f)**.
- (d) On the Approval Date and at any time requested by the QCA, Aurizon Network must provide the QCA with a copy of the High-Risk Personnel Register.
- (e) The QCA may, from time to time, declare by notice to Aurizon Network that additional persons are High-Risk Personnel, and in doing so, the QCA must provide Aurizon Network with an explanation of why each of those persons are High-Risk Personnel.

3.17 Exit certificates

- (a) Where an Aurizon Network Personnel that has had access to Confidential Information:
 - (i) leaves Aurizon Network to work for another Aurizon Group business unit, including for temporary secondments; or
 - (ii) leaves Aurizon Network to work for another employer outside the Aurizon Group,

Aurizon Network must use its best endeavours to:

 - (iii) have that Aurizon Network Personnel undergo a debriefing session provided by Aurizon Network to remind the employee (or other person) of Aurizon Network's and its own obligations relating to the management of Confidential Information; and
 - (iv) obtain an exit certificate (that includes an acknowledgement of having undergone such a debriefing process) signed by that person.
- (b) The Confidential Information Register must include a record of signed exit certificates and persons who are requested to but do not sign an exit certificate.

3.18 Security measures

- (a) Aurizon Network must use all reasonable steps to ensure that adequate security measures (physical, electronic and otherwise) are in place to ensure that only persons permitted by this Undertaking have access to Confidential Information in Aurizon Network's possession or control (whether in electronic or tangible form) and the access is only to the extent permitted for that person by this Undertaking.
- (b) Aurizon Network must ensure that all Aurizon Network Personnel are clearly identified as Aurizon Network Personnel in their dealings with Third Parties.
- (c) Aurizon Network must use all reasonable endeavours to ensure that its premises have in place adequate security measures to ensure that persons who are not Aurizon Network Personnel are unable to access the Aurizon Network offices where Confidential Information is located or stored, unless:
 - (i) access to those Aurizon Network offices is authorised by an Aurizon Network employee whose level of authority includes the right to authorise access to Aurizon Network's premises; and
 - (ii) the person is accompanied by an Aurizon Network employee at all reasonable times while in those premises.
- (d) Aurizon Network must use all reasonable endeavours to maintain a record, including reasonable details, of all persons (other than Aurizon Network Personnel) who have accessed each premise where Confidential Information is located or stored.
- (e) For the purposes of this **clause 3.18**, at any time an employee of Aurizon Network is on secondment to an Aurizon Party, that person will be considered to be staff of the Aurizon Party.
- (f) **Clause 3.18(c)** does not require that Aurizon Network be located in a different building to a Related Operator.

3.19 Decision making

- (a) Subject to **clause 3.19(b)**, Aurizon Network must comply with the following decision making process when making a decision under this Undertaking that will, or has the potential to, materially and adversely affect an Access Seeker's or Access Holder's rights under this Undertaking or an Access Holder's Access:
 - (i) the decision is made by an identified decision maker responsible for the relevant type of decision;
 - (ii) the decision is made in a manner that does not unfairly differentiate in a material way (as that term is defined

in section 137(3) of the Act) between Access Seekers and/or Access Holders in a way that has a material adverse effect on the ability of one or more of the Access Seekers or Access Holders to compete with other Access Seekers or Access Holders; and

- (iii) either:
 - (A) the decision is required in order to comply with:
 - (1) a Law;
 - (2) this Undertaking;
 - (3) the Access Agreements of adversely affected Access Holders; or
 - (4) an access code made under the Act; or
 - (B) the decision is made in accordance with Aurizon Network's documented policies and procedures; or
 - (C) the reasons for the decision are documented by Aurizon Network.
- (b) Decisions made in relation to or to prevent an emergency are exempt from the decision making process prescribed by **clause 3.19(a)**.

Section E – Complaints and Waiver

3.20 Complaint handling

- (a) If an Access Seeker, Access Holder, Train Operator or Third Party Access Seeker (**Complainant**) considers that:
 - (i) Aurizon Network has breached one or more of its obligations under this **Part 3**;
 - (ii) the Ultimate Holding Company has breached the Ultimate Holding Company Support Deed; or
 - (iii) any of:
 - (A) Aurizon Network Personnel; or
 - (B) an Aurizon Party or an employee, officer, agent or contractor of an Aurizon Party,

has breached a confidentiality deed or confidentiality provisions contained in another arrangement with Aurizon

Network under which Confidential Information was disclosed to it,

the Complainant may lodge a written complaint with Aurizon Network or the QCA or both of them and may provide a copy of any complaint lodged with Aurizon Network to the QCA.

- (b) Aurizon Network will not unreasonably prevent or hinder a Complainant from providing information or documents for the purposes of its complaint to the QCA, including by invoking any rights in relation to confidentiality that would otherwise prevent the disclosure of such information or documents.
- (c) Aurizon Network must advise the QCA, as soon as practicable, of any complaints it receives pursuant to **clause 3.20(a)**.
- (d) Aurizon Network must:
 - (i) promptly investigate complaints received under **3.20(a)**; and
 - (ii) advise the Complainant and the QCA in writing of the outcome of that investigation and Aurizon Network's proposed response, if any, no later than twenty (20) Business Days after receiving such a complaint.
- (e) Where the Complainant is not satisfied with the outcome of Aurizon Network's investigation, the Complainant may apply to the QCA seeking an audit of the relevant subject of the complaint. The QCA will consider such a request and determine whether to request Aurizon Network to conduct an audit in accordance with **clause 10.6.3**.
- (f) Aurizon Network must ensure that the Compliance Officer establishes and maintains a record of Aurizon Network's Complaint handling times under this **clause 3.20** for publication in the annual compliance report prepared under **Part 10** of this Undertaking.

Section F – Responsibility for Rail Infrastructure

3.21 Line Diagrams

- (a) The Line Diagrams indicate those parts of the Queensland rail network that are Rail Infrastructure.
- (b) During the Term, Aurizon Network must, as necessary but at intervals of no greater than six (6) Months:
 - (i) review and amend the Line Diagrams to reflect changes that have been made to the configuration or ownership of the Rail Infrastructure; and

- (ii) publish on Aurizon Network's Website:
 - (A) the current version of the Line Diagrams; and
 - (B) a description of the changes made since the immediately preceding version of the Line Diagrams.
- (c) If Aurizon Network:
 - (i) assigns or transfers ownership of existing or new Rail Infrastructure from Aurizon Network to an Aurizon Party; or
 - (ii) removes existing Rail Infrastructure (except where such Rail Infrastructure is already identified in the Line Diagrams for future removal) or amends the Line Diagrams to identify any existing Rail Infrastructure for future removal, except where the change:
 - (A) is minor or administrative in nature; or
 - (B) does not reflect a permanent reduction in Existing Capacity that would affect an Access Holder's Access other than in accordance with an Access Agreement or this Undertaking (for example, where level crossings are removed or reconfigurations of Track are undertaken),

this Undertaking ceases to apply to that Rail Infrastructure, and Aurizon Network must immediately notify the QCA with details of the assignment, transfer, removal or amendment under this **clause 3.21(c)**.

- (d) If the QCA or an Access Seeker or Access Holder is reasonably of the opinion that Line Diagrams prepared and published in accordance with **clause 3.21(b)**:
 - (i) do not indicate those parts of the Queensland rail network that are Rail Infrastructure; or
 - (ii) do not reflect that the Rail Infrastructure does not apply to this Undertaking in accordance with **clause 3.21(c)**,

the QCA or that Access Seeker or Access Holder may request in writing that Aurizon Network review and, if necessary, amend the Line Diagrams in accordance with **clause 3.21(b)**.

- (e) If Aurizon Network receives a request under **clause 3.21(d)**, Aurizon Network must:
- (i) if the QCA made the request, within thirty (30) days after receiving that request, make any necessary amendments to the Line Diagrams; and
 - (ii) if an Access Seeker or Access Holder made the request:
 - (A) promptly notify the QCA of that request;
 - (B) review the Line Diagrams;
 - (C) within thirty (30) days after receiving the request, give the QCA and the Access Seeker or Access Holder notice of whether Aurizon Network accepts the matters set out in the request and, if so, the action that Aurizon Network proposes to take; and
 - (D) make any required amendments to the Line Diagrams within fourteen (14) days after:
 - (1) where Aurizon Network has accepted the matters set out in the request, the giving of the notice under **clause 3.21(e)(ii)(C)**; or
 - (2) if there is a Dispute, the resolution of the Dispute in favour of the Access Seeker or Access Holder.
- (f) An Access Seeker or Access Holder may only refer a matter in relation to the Line Diagrams to be resolved under **Part 11**:
- (i) after Aurizon Network has notified that party in accordance with **clause 3.21(e)(ii)(C)**; or
 - (ii) if Aurizon Network fails to comply with **clause 3.21(e)(ii)**.

Part 4: Negotiation framework

4.1 Overview

- (a) The granting of Access will be underpinned by an Access Agreement that will be developed and finalised as part of the negotiation framework.
- (b) **Part 4** addresses the process by which a person may apply for, negotiate and develop an Access Agreement. In particular, under **Part 4**:
 - (i) A Prospective Access Seeker may obtain Preliminary Information prior to submitting an application for Access from the Website or, if Capacity Information is required, by lodging a request with Aurizon Network (**clause 4.2**).
 - (ii) An Access Application by an Access Seeker must be provided in the appropriate form. By submitting an Access Application, the Access Seeker agrees to be bound by this Undertaking. Aurizon Network will provide notice of any incorrectly completed sections or missing information and may request additional evidence regarding the use of Access Rights and to assess Capacity allocation (**clause 4.3**).
 - (iii) Aurizon Network will provide an Acknowledgement Notice and confirm preparation of an IAP once additional information or a properly completed Access Application is received. In specified circumstances, the negotiation process may be suspended (**clause 4.4**).
 - (iv) Aurizon Network will develop an appropriate IAP for the Access Rights sought. The Access Seeker may notify Aurizon Network regarding concerns about the IAP (**clause 4.6**).
 - (v) An Access Seeker must notify Aurizon Network if it intends to progress its Access Application based on the arrangements within the IAP (**clause 4.7**).
 - (vi) Where Access Rights cannot be provided in the absence of an Expansion, **clause 4.8** provides a process for the separation of Access Applications and suspension of the negotiation process for Access (**clause 4.8**).
 - (vii) Where multiple Access Applications for the same Access Rights are made, **clause 4.9** provides a mechanism for determining who must be treated as the Access Seeker. In these circumstances, Aurizon

Network may disclose certain information without breaching its confidentiality obligations (**clause 4.9**).

- (viii) The Negotiation Period commences once the notification of intent to progress an Access Application is provided by the Access Seeker. Specific issues are to be addressed during the Negotiation Period. Aurizon Network may provide Additional Information to the Access Seeker (**clause 4.11**).
- (ix) Aurizon Network may issue a Negotiation Cessation Notice to an Access Seeker in certain circumstances (**clause 4.13**).
- (c) A diagrammatic representation of the negotiation framework is set out in **Schedule H**.
- (d) **Part 4** must be read in conjunction with the processes outlined in **Part 7** and **Part 8**.
- (e) Any Dispute regarding a decision made, or notice given, by Aurizon Network under this **Part 4** must be notified to the QCA and Aurizon Network within ten (10) Business Days after the Prospective Access Seeker, Access Seeker, Customer, Railway Operator or Train Operator (as applicable) receives notice of Aurizon Network's decision or notice and that Dispute must be dealt with under **clause 11.1**.

4.2 Initial enquiries

- (a) Prior to submitting an Access Application, a Prospective Access Seeker may meet with Aurizon Network to discuss the Access Application process and to seek clarification of the process as outlined in this Undertaking.
- (b) Aurizon Network must promptly provide Prospective Access Seekers with information regarding the Access Application process. All Preliminary Information and the application form(s) for Access Applications must be displayed on the Website.
- (c) A Prospective Access Seeker may lodge a request for Capacity Information with Aurizon Network and Aurizon Network must provide that Capacity Information within ten (10) Business Days after receiving that request.
- (d) Aurizon Network must keep the Preliminary Information and the Capacity Information current and accurate.

4.3 Access Application

- (a) Requests for Access must be submitted to Aurizon Network in the form of an Access Application.

- (b) By submitting an Access Application, the Prospective Access Seeker agrees to be bound by all the provisions of this Undertaking as they relate to Access Seekers.
- (c) If applicable, Aurizon Network must, within ten (10) Business Days after receipt of a purported Access Application, notify the Prospective Access Seeker that:
 - (i) the purported Access Application has not been properly completed, including specifying the information required to make the application complete and compliant; or
 - (ii) Aurizon Network requests more evidence or information, to the extent reasonably required:
 - (A) regarding the Prospective Access Seeker's or Access Seeker's ability to utilise the requested Access Rights (on the basis of the factors listed in **clause 4.13(c)**);
 - (B) to satisfy Aurizon Network that the Non-availability Circumstances exist; or
 - (C) to assess the allocation of Capacity in accordance with **Part 7** and, if applicable, **Part 8**.
- (d) A person receiving a notice under **clauses 4.3(c)(i) or 4.3(c)(ii)** must provide:
 - (i) the revised Access Application; or
 - (ii) the requested evidence or information,

within twenty (20) Business Days of Aurizon Network's notice or request, as applicable, or such other period as may be agreed.
- (e) If **clause 4.3(d)** is not complied with in any respect, Aurizon Network may notify the relevant person that Aurizon Network will take no further action in relation to the request for Access and that the request for Access is deemed to be withdrawn. A notice under this **clause 4.3(e)** does not prevent a person from submitting a new request for Access.
- (f) Without otherwise affecting Aurizon Network's discretion to give a notice under **clause 4.3(e)**, Aurizon Network must provide notice to the relevant person that it will not take any further action in relation to a request for Access if that request for Access relates to a Transfer and the evidence referred to in **clause 6 of Schedule B** has not been provided.
- (g) If a Dispute arises in relation to this **Part 4** within a timeframe prescribed under this **clause 4.3**, including:

- (i) the ten (10) Business Day time period outlined in **clause 4.3(c)**; or
- (ii) the twenty (20) Business Day time period outlined in **clause 4.3(d)**,

such timeframe will be extended by the time between the issuing of a Dispute Notice and the date of resolution of the Dispute (or such longer time as may be determined by the QCA in the resolution of the Dispute and having regard to the time reasonably required to implement the steps and matters needed to give effect to the resolution).

4.4 Acknowledgement of Access Application

- (a) Within ten (10) Business Days of receiving:
 - (i) a properly completed Access Application; or
 - (ii) any further evidence or information requested under **clause 4.3(c)**,

whichever is the later, Aurizon Network will give the relevant Prospective Access Seeker a notice (**Acknowledgement Notice**):

- (iii) acknowledging receipt of the Access Application;
- (iv) confirming that Aurizon Network will prepare an IAP for the requested Access; and
- (v) confirming the date Aurizon Network received the later of:
 - (A) the properly completed Access Application; or
 - (B) any further evidence or information requested under **clause 4.3(c)**,

as applicable.

- (b) The Prospective Access Seeker's Access Application will be deemed to have been received for the purposes of this Undertaking on the later of the date the Prospective Access Seeker:
 - (i) submits a properly completed Access Application; or
 - (ii) provides to Aurizon Network any further evidence or information requested under **clause 4.3(c)**.
- (c) Subject to the Access Seeker providing a notification of intent in accordance with **clause 4.7(a)**, if relevant, the Access Seeker will be deemed to have joined the Queue in respect of the Access Rights sought on the later of the date the Access Seeker:
 - (i) submits a properly completed Access Application; or

- (ii) provides to Aurizon Network any further evidence or information requested under **clause 4.3(c)**.
- (d) Subject to **clause 4.8**, if Aurizon Network receives an Access Application for Access Rights which commence on a date more than five (5) years after the date on which the relevant Access Application would be deemed to have been received by Aurizon Network under **clause 4.4(b)**, then Aurizon Network may reject the Access Application. Rejection of the Access Application does not restrict the relevant Access Seeker from submitting a new Access Application for the same Access Rights at a later date.
- (e) Where Aurizon Network notifies an Access Seeker that Aurizon Network rejects the Access Seeker's Access Application under **clause 4.4(c) (Rejection Notice)**:
 - (i) the rejection will take effect ~~ten~~ (10) Business Days after Aurizon Network gives the Rejection Notice; and
 - (ii) the Access Application is deemed to be withdrawn from the date the rejection takes effect under **clause 4.4(d)(i)**.

4.5 Revisions to an Access Application

- (a) An Access Seeker may, by written request to Aurizon Network (acting reasonably), vary its Access Application at any time after receipt of an Acknowledgement Notice in accordance with this **clause 4.5**.
- (b) If the requested variation to the Access Application is not a Material Variation, then the Access Application is varied as requested by the Access Seeker and the process under this Undertaking for the Access Application will continue provided that:
 - (i) if a variation under **clause 4.5(a)** is received prior to Aurizon Network giving an IAP to the relevant Access Seeker; and
 - (ii) Aurizon Network has already commenced preparing the IAP,

Aurizon Network may, by notice to the Access Seeker, extend the date by which it must give the IAP to the Access Seeker by a period of no more than ten (10) Business Days.

- (c) If Aurizon Network considers a requested variation is a Material Variation, then Aurizon Network must, within ten (10) Business Days of receipt of the proposed variation under **clause 4.5(a)**, notify the Access Seeker of:
 - (i) its reasons for considering the variation is a Material Variation;

- (ii) the extent to which it is possible to separate the Access Application (as varied) so that one Access Application may proceed without containing a Material Variation;
 - (iii) the extent to which the Material Variation causes or contributes to the Access Application relating to Access Rights which cannot be provided in the absence of an Expansion;
 - (iv) the extent that Available Capacity exists which can satisfy part of the Access Rights sought by the Access Application with the proposed Material Variation; and
 - (v) the date by when Aurizon Network (acting reasonably) estimates that it will issue an IAP or revised IAP (as applicable) to accommodate the Material Variation.
- (d) If, within five (5) Business Days after receipt of a notice under **clause 4.5(c)**, the Access Seeker:
- (i) notifies Aurizon Network that it wishes to continue with the Material Variation, subject to **clause 4.5(e)**, Aurizon Network will use reasonable endeavours to accommodate the Material Variation including by issuing an IAP or a revised IAP (as applicable) in accordance with this **clause 4.5** within a reasonable time following receipt of any information requested under **clause 4.5(f)(ii)** and having regard to all relevant circumstances including:
 - (A) the nature and extent of the Material Variation; and
 - (B) the effect that the Material Variation has, or would have had, on any processes already carried out, or to be carried out, by Aurizon Network or the Access Seeker in accordance with this **Part 4** (including the extent of inconsistency with any parameters or other information upon which a relevant Capacity Analysis has been based) or any other provision of this Undertaking,
 - (ii) notifies Aurizon Network that it requires the Access Application to be separated (so that one Access Application may proceed without a Material Variation), then:

(A) in respect of the Access Rights that can be provided without a Material Variation, the Access Application will be taken to be varied to that extent and the process under this Undertaking for that varied Access Application will continue in accordance with **clause 4.5(b)**; and

(B) in respect of the Access Rights that cannot be provided without a Material Variation:

(1) those Access Rights will be deemed to be the subject of a separate Access Application; and

(2) that separate Access Application will be deemed to be received on the date that Aurizon Network was given the notice under this **clause 4.6(c)**; and

(3) the process set out in **clause 4.5(d)(i)** will apply in respect of that separate Access Application; or

(iii) either:

(A) notifies Aurizon Network that it does not wish to continue with any variation to the Access Application; or

(B) does not give Aurizon Network a notice under this **clause 4.5(d)**,

then the variation (including the Material Variation) is deemed to be withdrawn and negotiations for Access Rights outlined in this **Part 4** will proceed without the variation.

(e) If a Material Variation causes or contributes to the Access Application relating to Access Rights which cannot be provided in the absence of an Expansion (based on an Initial Capacity Assessment) and the Access Seeker notifies Aurizon Network under **clauses 4.5(d)(i)** or **4.5(d)(ii)(B)**, then:

(i) to the extent that Available Capacity exists which can satisfy part of the Access Rights sought by the Access Application with the proposed Material Variation, the IAP or revised IAP (as applicable) to be prepared under **clause 4.5(d)(i)** or **clause 4.5(d)(ii)(B)** (as applicable) will be prepared only in relation to that portion of the Access Rights that can be provided in the absence of an Expansion and **clause 4.5(j)4.5(i)**

will apply to that portion of the Access Rights sought which cannot be provided in the absence of an Expansion; or

- (ii) if Aurizon Network cannot satisfy any part of the Access Rights sought by the Access Seeker without an Expansion, ~~clause 4.5(j)~~**4.5(i)** will apply.

(f) If an IAP or revised IAP (as applicable) must be prepared by Aurizon Network under this **clause 4.5**, then:

- (i) it must be accompanied by or include a statement drawing to the Access Seeker's attention the requirements under ~~clause 4.5(h)~~**4.5(g)** and the potential consequence under ~~clause 4.5(j);4.5(i)~~;
- (ii) Aurizon Network may request the Access Seeker to provide more evidence or information, to the extent reasonably required:
 - (A) regarding the Access Seeker's ability to utilise the requested Access Rights (on the basis of the factors listed in **clause 4.13(c)**); or
 - (B) to assess the allocation of Capacity in accordance with **Part 7** and, if applicable, **Part 8**;
- (iii) the Access Seeker must provide any requested evidence or information (except to the extent the Non-availability Circumstances exist) as soon as reasonably practicable (but within no more than twenty (20) Business Days of Aurizon Network's request for that evidence or information or such other period as may be agreed); and
- (iv) if the evidence or information required to be provided by the Access Seeker under **clause 4.5(f)(iii)** is not provided to Aurizon Network within the required time period under **clause 4.5(f)(iii)**, then:
 - (A) Aurizon Network's obligations in relation to preparing the IAP or the revised IAP (as applicable) in response to the Material Variation cease;
 - (B) the Material Variation is deemed to be withdrawn; and
 - (C) negotiations for Access Rights outlined in this **Part 4** will

proceed without the Material Variation.

- (g) The Access Seeker must, within ten (10) Business Days after being given the IAP or revised IAP (as applicable) issued by Aurizon Network under this **clause 4.5** in response to a Material Variation, notify Aurizon Network that it intends to continue to negotiate for Access Rights in accordance with this Undertaking either:
 - (i) on the basis of the IAP or the revised IAP (as applicable) issued by Aurizon Network under this **clause 4.5** in response to a Material Variation; or
 - (ii) without the Material Variation to the Access Application.
- (h) If an Access Seeker notifies Aurizon Network in accordance with **clause 4.5(g)(ii)**, the Material Variation is deemed to be withdrawn and the process under this **Part 4** will continue without the Material Variation.
- (i) If:
 - (i) a request to vary an Access Application was made after the relevant Access Seeker has given Aurizon Network a notification of intent under **clause 4.7** in respect of that Access Application and Aurizon Network notifies the Access Seeker under **clause 4.5(c)** that it considers all or a portion of the requested variation is a Material Variation;
 - (ii) Aurizon Network has received a notice under **clause 4.5(g)(i)** and there was a portion of the Material Variation that could not be provided in the absence of an Expansion (based on an Initial Capacity Assessment) under **clause 4.5(e)(i)**;
 - (iii) **clause 4.5(e)(ii)** applies; or
 - (iv) the Access Seeker does not notify Aurizon Network in accordance with **clause 4.5(g)**,

then the following apply:

- (v) where **clause 4.5(i)(i)** applies:
 - (A) the Material Variation is deemed to be withdrawn by the Access Seeker and, for clarity, the process under this **Part 4** will cease in respect of that Material Variation; and

- (B) the process under this **Part 4** will continue for the Access Application;
 - (vi) the relevant Access Application (including the Material Variation) or, in the case of **clause 4.5(i)(ii)**, the relevant portion of the Access Application (including the relevant portion of the Material Variation), is deemed to be withdrawn by the Access Seeker and, for clarity, the negotiation process under this **Part 4** will cease in respect of that Access Application or, in the case of **clause 4.5(i)(ii)**, the relevant portion of the Access Application; and
 - (vii) except where that Access Seeker has notified Aurizon Network to the contrary, a new request for Access in respect of the whole or any part of the Material Variation or Access Application (as applicable) withdrawn under **clause 4.5(i)(v)** or **(vi)** is deemed submitted to Aurizon Network on the date of Aurizon Network's notice given under **clause 4.5(c)**, and the negotiation process for that new request for Access will start at the beginning of the process under this **Part 4**.
- (j) If a change described in **clause 4.10.1(c)(ii)** or **4.10.1(c)(iii)** constitutes a Material Variation, references in this **clause 4.5** to Access Seeker will be taken to refer to the incoming Access Seeker from the date when the incoming Access Seeker replaces the existing Access Seeker in accordance with **clause 4.10.1(c)(ii)** or **4.10.1(c)(iii)** as applicable.
- (k) Subject to **clause 4.5(i)**, the negotiation process under this **Part 4** is suspended for the period:
- (i) from (and including) the time that the Access Seeker requested the Material Variation; and
 - (ii) until (and including) the time when:
 - (A) the request for Material Variation is deemed to be withdrawn under **clauses 4.5(d)(iii), 4.5(f)(iv)(B)** or **4.5(h)**; or
 - (B) following the issue of an IAP or revised IAP in response to the Material Variation under this **clause 4.5**, Aurizon Network is notified under **clause 4.5(i)**,

(Suspension Period).

4.6 Indicative Access Proposal

- (a) Aurizon Network will review the information received and assess the Access Application to develop an IAP for the type of Access Rights being sought and having regard to the appropriate form of Access Agreement referred to in **clause 5.1(c)**.
- (b) If an Access Application is received by Aurizon Network and Aurizon Network considers (acting reasonably) that the Capacity is constrained, as soon as practicable or in any case no later than the date of the provision of the IAP or revised IAP, Aurizon Network must advise the Access Seeker of this and, to the extent that the relevant information is available at the relevant time, provide reasons why such constraint cannot be mitigated except through an Expansion.
- (c) The IAP will outline:
 - (i) the Rollingstock and Rollingstock Configuration;
 - (ii) the relevant operating characteristics;
 - (iii) an Initial Capacity Assessment (which is subject to confirmation by a Capacity Analysis prepared in accordance with **clause 4.11.2(a)(v)**) together with Aurizon Network's assumptions regarding Rollingstock, section run times and loading and unloading times used in preparing that assessment (but, for clarity and efficiency, Aurizon Network may use all or part of any pre-existing Capacity assessment to the extent that it is appropriate to do so);
 - (iv) whether any other requests for Access exist that, if approved, would affect Aurizon Network's ability to grant the Access Rights sought by the Access Seeker;
 - (v) an initial estimate of the Access Charge applicable to the Train Service proposed and details of how the initial estimate has been calculated, including where **clauses 6.2.2, 6.2.3 or 6.2.4** apply details of how those clauses have been applied in calculating the initial estimate;
 - (vi) details of any further information reasonably required from the Access Seeker in preparation for the negotiation stage; and
 - (vii) where the grant of Access Rights will require the construction of an Expansion, information identifying the likely need for an Expansion and identifying the Expansion, including likely timeframes, to the extent that this information exists and is reasonably available to, and can lawfully be provided by, Aurizon Network.

- (d) The IAP contains indicative arrangements only and does not oblige Aurizon Network to provide Access.
- (e) Subject to any suspension of the negotiation process under **clauses 4.5(l) or 4.8(d)** occurring before the IAP is provided to the Access Seeker, or an extension of the relevant date under **clause 4.5(b)**, Aurizon Network will provide the IAP to the Access Seeker within twenty (20) Business Days of the date of the Acknowledgement Notice. However, where, due to the complexity of the Access Application or other extenuating circumstances, it is not reasonable to provide an IAP within that period, Aurizon Network may, by notice to the Access Seeker (to be given as soon as practicable and in any case no later than fifteen (15) Business Days after the Acknowledgement Notice), extend the period for the giving of an IAP by up to a further twenty (20) Business Days. This period may be further extended by agreement between Aurizon Network and the Access Seeker.
- (f) Unless otherwise agreed by Aurizon Network and the Access Seeker, the IAP expires sixty (60) Business Days after the later of:
 - (i) the date of its provision to the Access Seeker; and
 - (ii) the date of issue of a revised IAP (if any) under **clause 4.6(h)**,

provided that where:

- (iii) the negotiation process has been suspended under **clause 4.5(i)4.5(k) or clause 4.8(a)**; and
- (iv) Aurizon Network provided the IAP to the Access Seeker prior to that suspension commencing,

the expiry date is extended by the period during which the negotiation process was suspended.

- (g) If the Access Seeker believes, acting reasonably, that the IAP has not been prepared in accordance with this Undertaking and would therefore not be an appropriate basis for continuing with the negotiation process under this Undertaking, the Access Seeker will notify Aurizon Network of its concerns within twenty (20) Business Days of being provided with the IAP, or such other timeframe as Aurizon Network and the Access Seeker agree.
- (h) Aurizon Network will respond to the concerns of any Access Seeker notified under **clause 4.6(g)** including, where appropriate, by making revisions to the IAP:
 - (i) within ten (10) Business Days after being notified under **clause 4.6(g)**; or
 - (ii) if due to the complexity of the concerns or other extenuating circumstances it is not reasonable to

provide a response within that ten (10) Business Day period, a reasonable period notified by Aurizon Network to the Access Seeker within five (5) Business Days after the Access Seeker's notice to Aurizon Network under **clause 4.6(g)**.

- (i) If a Dispute arises in relation to this **Part 4** within a timeframe prescribed under this **clause 4.6**, including (but not limited to):
 - (i) the twenty (20) Business Day time period outlined in **clause 4.6(e)** (or, if extended in accordance with that clause, such extended timeframe); and
 - (ii) the sixty (60) Business Day time period outlined in **clause 4.6(f)** (or, if extended in accordance with that clause, such extended timeframe),

such timeframe will be extended by the time between the issuing of a Dispute Notice and the date of resolution of the Dispute (or such longer time as may be determined by the QCA in the resolution of the Dispute and having regard to the time reasonably required to implement the steps and matters needed to give effect to the resolution). Aurizon Network has no obligation to produce an IAP for an Access Seeker that notifies Aurizon Network that the Access Seeker no longer wishes to proceed with its Access Application.

4.7 Notification of intent

- (a) If an Access Seeker intends to progress its Access Application on the basis of the arrangements outlined in the IAP, the Access Seeker must notify Aurizon Network of its intention prior to the expiry of the IAP in accordance with **clause 4.6(f)**. Notification must be in the form set out in the IAP.
- (b) Where an Access Seeker does not notify Aurizon Network under **clause 4.7(a)**, the Access Application and the IAP are deemed to be withdrawn on the IAP's expiry date.

4.8 Access Applications that require Expansions

- (a) If an Access Application is received by Aurizon Network which is, in part, for Access Rights which cannot be provided in the absence of an Expansion, Aurizon Network must notify the Access Seeker of the portion of the Access Rights being sought which can be provided without an Expansion as soon as practicable or in any case no later than the date of the provision of the IAP under **clause 4.6(e)**.
- (b) Within five (5) Business Days of receipt of notice from Aurizon Network under **clause 4.8(a)**, the Access Seeker must notify Aurizon Network whether or not it requires the Access Application to be separated as contemplated by this clause.

- (c) If the Access Seeker elects for the Access Application to be separated:
- (i) the Access Rights that can be provided without an Expansion will:
 - (A) be deemed to be the subject of one Access Application made on the date the Access Seeker's original Access Application was deemed to be received under **clause 4.4(b)**; and
 - (B) proceed in accordance with the process under this **Part 4**;
 - (ii) the Access Rights that can be provided only with an Expansion will be deemed to be the subject of a second Access Application made on the date the Access Seeker's original Access Application was deemed to be received under **clause 4.4(b)**; and
 - (iii) the separation of the Access Application into two Access Applications will occur without having to follow the process under **clause 4.5**.
- (d) The following provisions will apply where the Access Seeker elects that the Access Application will not be separated and in respect of the second Access Application referred to in **clause 4.8(c)(ii);** or where an Access Application is received by Aurizon Network in respect of Access Rights which can only be provided with an Expansion:
- (i) **clauses 8.2 to 8.9** will apply;
 - (ii) the negotiation process for Access may be suspended (before or after the provision of an IAP) by either Aurizon Network or the relevant Access Seeker giving notice to the other (provided that a notice given under this clause must give reasons for the suspension); and
 - (iii) a suspension of the negotiation process under **clause 4.8(d)(ii)** continues until the date that:
 - (A) Aurizon Network and the Access Seeker enter into an agreement as to how an Expansion is to be funded in accordance with **clause 8.2.1(c)(ii)**;
 - (B) a determination of a relevant Dispute specifies, subject to the terms of this Undertaking what Expansion is required and how

- that Expansion is to be funded;
or
- (C) Aurizon Network and the Access Seeker agree to restart or continue negotiations for Access in parallel with any negotiations over funding of the required Expansion.
- (e) When the negotiation process is suspended in accordance with **clause 4.8(d)(ii)**, Aurizon Network:
- (i) may request at intervals not more than every six (6) Months that the Access Seeker confirm, in writing:
- (A) the Access Seeker's ongoing requirement for the Access Rights;
- (B) the reasonable likelihood that the Access Seeker will be able to utilise the requested Access Rights at the proposed date of commencement of those Access Rights (on the basis of the factors listed in **clause 4.13(c)**) and provide any relevant information or evidence requested by Aurizon Network (acting reasonably); and
- (C) any material change to the information contained in their Access Application or provided in respect of the matters referred to in **clause 4.3(d)**; and
- (ii) must, as soon as practicable, notify the Access Seeker of any changes to an Expansion that will impact the proposed timing or provision of Access relevant to the Access Seeker's Access Application.
- (f) If the document or information referred to in **clause 4.8(e)(i)** is not provided to Aurizon Network within the period that is twenty (20) Business Days after Aurizon Network's request, Aurizon Network may notify the relevant person that Aurizon Network will take no further action in relation to the request for Access and that the request for Access is deemed to be withdrawn. A notice under this **clause 4.8(f)** does not prevent a person from submitting a new request for Access.

- (g) Where a Provisional Capacity Allocation (as defined under **clause 8.5(b)(ii)**) has been granted to an Access Seeker, Aurizon Network may, acting reasonably and in good faith, suspend negotiations with other Access Seekers for Access Rights which, if the holder of the Provisional Capacity Allocation executes an Access Agreement in respect of the Provisional Capacity Allocation, cannot be provided in the absence of an Expansion, pending the outcome of negotiations with the holder of the Provisional Capacity Allocation.

4.9 Multiple applications for the same Access

- (a) If more than one party has submitted an Access Application for the same Access Rights and:
 - (i) one of the parties that has applied for Access is the Customer Access Seeker:
 - (A) this Undertaking and Aurizon Network will treat the Customer Access Seeker as the sole Access Seeker and the other relevant Access Seekers' Access Applications for the same Access Rights as having been withdrawn; and
 - (B) Aurizon Network must negotiate solely with that Customer Access Seeker; or
 - (ii) the only parties that applied for Access are Railway Operators then, to the extent that each Railway Operator is either:
 - (A) currently engaged in negotiations with a Customer in respect of a potential haulage agreement in respect of the Access Rights being sought; or
 - (B) a party to an existing haulage agreement with the Customer in respect of the Access Rights being sought;
- then:
- (C) this Undertaking and Aurizon Network will treat the Railway Operators as Access Seekers; and

- (D) Aurizon Network will negotiate with each of those Railway Operators until an alternative Railway Operator is (or Railway Operators are) nominated in writing by the Customer to Aurizon Network.
- (b) Notwithstanding any other provision in this **Part 4**, if **clause 4.9(a)(ii)** applies, Aurizon Network is not obliged to enter into an Access Agreement with a Railway Operator until a nomination for a Railway Operator is received from the relevant Customer.
- (c) Aurizon Network may, for the purpose of **clause 4.9(a)**, disclose to the Customer that an Access Application by an Access Seeker in respect of that Customer has been received (that disclosure will not constitute a breach of the confidentiality obligations owed by Aurizon Network under **Part 3**).
- (d) Access Applications that constitute:
 - (i) Mutually Exclusive Access Applications will be dealt with in accordance with **clause 7.5**; and
 - (ii) Competing Applications will be dealt with in accordance with **clause 7.5.2(c)**.

4.10 Requirements for Customers, Customer Access Seekers and Train Operators

4.10.1 Customers and Customer Access Seekers

- (a) A Customer Access Seeker may (in its absolute discretion) give notice to Aurizon Network nominating a Railway Operator (**Nominee Operator**) to act on its behalf for the purpose of assisting the Customer Access Seeker with its Access Application including in negotiations with Aurizon Network for the requested Access. Unless the Customer Access Seeker's nomination expressly indicates otherwise or the nomination is revoked by notice to Aurizon Network:
 - (i) the Nominee Operator will, for the purpose of this Undertaking, be taken to be the Customer Access Seeker's agent in relation to the Access Application including for the giving of any notices that may or are required to be given under this Undertaking (but not for the execution of any Access Agreement or other agreement); and
 - (ii) despite any other provision to the contrary in this Undertaking, any information disclosed to the Nominee Operator by Aurizon Network or disclosed to Aurizon

Network by the Nominee Operator will be treated as though it was disclosed to or by the Customer Access Seeker, as applicable.

- (b) If Aurizon Network receives notices from both the Nominee Operator and the Customer Access Seeker in respect of the same requirement under this Undertaking or the same subject matter, the Nominee Operator's notice is of no effect and will be disregarded by Aurizon Network.
- (c) At any time during negotiations under this **Part 4**:
- (i) a Customer Access Seeker may withdraw any nomination made under **clause 4.10.1(a)** or replace that nomination by nominating a different Railway Operator to act on its behalf;
 - (ii) a person may take over an Access Seeker's Access Application where that person is the Customer for that Access Seeker; or
 - (iii) a Customer Access Seeker may nominate a Railway Operator ~~under clause 4.10.1(a)~~ [to take over the Customer Access Seeker's Access Application and replace the Customer Access Seeker as the Access Seeker for that Access Application.](#)

by notice to Aurizon Network and to the relevant Railway Operator or Access Seeker (as applicable).

- (d) From the date on which Aurizon Network is given a notice under:
- (i) **clause 4.10.1(c)(i)** withdrawing a nomination, the relevant Railway Operator will cease to be a Nominee Operator for the purpose of **clause 4.10.1(a)** and Aurizon Network must immediately cease providing the Railway Operator with any information in respect of the relevant Access Application;
 - (ii) **clause 4.10.1(c)(i)** nominating a different Railway Operator, that Railway Operator will become the Nominee Operator (replacing the Railway Operator who was previously nominated) for the purpose of **clause 4.10.1(a)** and Aurizon Network must immediately cease providing the exiting Railway Operator with any information in respect of the relevant Access Application;
 - (iii) **clause 4.10.1(c)(ii)**, the Customer will become the Access Seeker (replacing the existing Access Seeker) for the relevant Access Application; or
 - (iv) **clause 4.10.1(c)(iii)** and a notice from the relevant Railway Operator accepting the Customer Access

Seeker's nomination, the Railway Operator will become the Access Seeker (replacing the existing Customer Access Seeker) for the relevant Access Application.

- (e) If a person becomes the Access Seeker for an Access Application (replacing the existing Access Seeker) under **clause 4.10.1(d)(iii)** or **(iv)** (as applicable), that person by doing so agrees to be bound by all the provisions of this Undertaking as they relate to Access Seekers.
- (f) If a transfer of an Access Application occurs in accordance with **clause 4.10.1(d)(iii)** or **(iv)**, then:
 - (i) Aurizon Network must provide the incoming Access Seeker with a copy of:
 - (A) the Access Application;
 - (B) notices and other documents (including any IAP) given to or by the outgoing Access Seeker by or to Aurizon Network as expressly required to be given in accordance with this Undertaking; and
 - (C) any other documents exchanged between Aurizon Network and the outgoing Access Seeker that are material to the Access Application and any related negotiations,
except to the extent that providing that information would:
 - (D) be in breach of Aurizon Network's confidentiality obligations under **Part 3**; or
 - (E) disclose information to the incoming Access Seeker that is commercially sensitive to the outgoing Access Seeker or that is not required to be disclosed to the incoming Access Seeker in order to progress the Access Application (or both); and
 - (ii) on Aurizon Network's written request, the incoming Access Seeker must provide to Aurizon Network or procure for Aurizon Network:

- (A) appropriate replacement information to the extent reasonably required; or
- (B) authority from the outgoing Access Seeker that Aurizon Network may continue to use the relevant information provided by the outgoing Access Seeker in relation to the Access Application and any related negotiations.

4.10.2 Train Operators

- (a) A request by a prospective Train Operator for Aurizon Network to enter into a Train Operations Deed must be provided in writing and:
 - (i) identify the relevant Access Holder (or Access Seeker) and, if that Access Holder (or Access Seeker) is the Train Operator, also identify the relevant Customer; and
 - (ii) contain the information required by an Access Application and any other information reasonably required by Aurizon Network to assess the request and complete the Train Operations Deed.
- (b) A negotiation process will apply to the prospective Train Operator as specified in **clause 4.11**.
- (c) By submitting a request under **clause 4.10.2(a)**, the prospective Train Operator agrees to be bound by all the provisions of this Undertaking as they relate to Train Operators.

4.11 Negotiation process

4.11.1 Negotiation Period

- (a) A Negotiation Period in respect of:
 - (i) an Access Seeker's Access (including negotiation of the terms and conditions of the relevant Access Agreement in accordance with **Part 5**) commences on the date on which the Access Seeker notifies Aurizon Network in accordance with **clause 4.7**; and
 - (ii) a Train Operator's Train Operations Deed commences on the date that Train Operator has provided to Aurizon Network all of the relevant information referred to in **clause 4.10.2**.
- (b) Once the Negotiation Period has commenced, the Access Seeker or Train Operator, as applicable, and Aurizon Network will

begin negotiations as soon as reasonably possible in relation to an Access Agreement or Train Operations Deed (as applicable).

(c) If the Access Seeker or Train Operator, as applicable, and Aurizon Network are required to comply with **clause 6.13 (Access Conditions)**, the negotiation process under this **Part 4** will be suspended with effect on and from the date of submission of a report by Aurizon Network to the QCA in accordance with **clause 6.13.2(a)** until the date of receipt of a decision by the QCA, in accordance with **clause 6.13.2**, to either approve or refuse to approve the proposed Access Conditions.

(d) An Access Seeker's Negotiation Period ceases on:

- (i) the execution of an Access Agreement in respect of the Access sought by the Access Seeker;
- (ii) Aurizon Network receiving notification by the Access Seeker that it no longer wishes to proceed with its Access Application;
- (iii) Aurizon Network issuing a Negotiation Cessation Notice to the Access Seeker under **clause 4.13(a)**;
- (iv) the date:
 - (A) nine (9) Months after the commencement of the Negotiation Period except where **clause 4.11.1(c)(iv)(B)** applies; or
 - (B) where the negotiation process has been suspended in accordance with **clause 4.5(k)** or **clause 4.11.1(c)**, nine (9) Months, plus the number of days of the Suspension Period, after the commencement of the Negotiation Period,

unless:

- (C) both parties agree to extend the Negotiation Period, in which case the Negotiation Period will continue until the expiry of the agreed extended period; or
- (D) a Dispute arises between the parties in relation to this **Part 4** within the Negotiation Period, in which case, the Negotiation Period will, subject to **clause**

4.13, be extended by the time between the issuing of a Dispute Notice and the date of the resolution of the Dispute (or such longer time as may be determined by the QCA in the resolution of the Dispute and having regard to the time reasonably required to implement the steps and matters needed to give effect to the resolution); or

(v) subject to **clause 4.11.1(d)**, Aurizon Network no longer being able to offer Access to the Access Seeker under the terms of the IAP, either because of:

(A) Available Capacity being reduced; or

(B) Infrastructure Enhancements subsequently committed to adversely impacting the ability to develop Infrastructure Enhancements contemplated by the IAP; or

(vi) as otherwise provided in accordance with this Undertaking.

(e) If:

(i) Aurizon Network can no longer offer Access to the Access Seeker under the terms of the relevant IAP because of a reason set out in **clause 4.11.1(c)(v)(A)** or **4.11.1(c)(v)(B)**; and

(ii) either the remaining Available Capacity can satisfy part of the Access Rights sought by the Access Seeker or the contemplated Infrastructure Enhancements can be altered to provide all or part of the Access Rights sought,

Aurizon Network will notify the Access Seeker of that event and the portion of the Access Rights being sought which can be provided and:

(iii) in that notice, to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed, provide the Access Seeker with an objective, evidence-based explanation as to why Available Capacity is being reduced or Infrastructure Enhancements subsequently committed to adversely impacting the ability to develop Infrastructure Enhancements contemplated by the IAP;

- (iv) if requested by the Access Seeker within ten (10) Business Days after the Access Seeker is given such a notice, prepare and issue to the Access Seeker a revised IAP in accordance with **clause 4.6** in relation to that portion of the Access Rights that can be provided; and
- (v) if, within ten (10) Business Days after being given the revised IAP, the Access Seeker notifies Aurizon Network that it intends to continue to negotiate for Access Rights on the basis of the revised IAP, the negotiation process outlined in this **Part 4** will recommence from that point.

Aurizon Network's obligation under this **clause 4.11.1(d)**, to the extent that it relates to Infrastructure Enhancements, is subject to Aurizon Network's obligations under **Part 8** and Aurizon Network is not required to do anything in accordance with this **clause 4.11.1(d)** that would cause or contribute to it failing to comply with **Part 8**.

- (f) For clarity:
 - (i) to the extent that all or part of the Access Rights sought by the Access Seeker cannot be provided due to there being insufficient remaining Available Capacity or the contemplated Infrastructure Enhancements cannot be sufficiently altered as contemplated by **clause 4.11.1(d)(ii)**; or
 - (ii) the negotiation process is not recommenced under **clause 4.11.1(d)(v)** in respect of all or part of the Access Rights sought by the Access Seeker,

then the Negotiation Period in respect of those relevant Access Rights will have ceased and any future request by the Access Seeker in respect of those Access Rights will be treated as a new Access Application.

- (g) A Train Operator's Negotiation Period ceases on:
 - (i) the execution of the Train Operations Deed;
 - (ii) Aurizon Network receiving notification by the Train Operator that it no longer wishes to negotiate or enter into the Train Operations Deed;
 - (iii) Aurizon Network issuing a Negotiation Cessation Notice to the Train Operator under **clause 4.13**;
 - (iv) the expiration of nine (9) Months from the date that the Train Operator is nominated by the relevant Access Holder or Access Seeker, as the case may be, unless:
 - (A) both parties agree to extend the Negotiation Period, in which case

- the Negotiation Period will continue until the expiry of the agreed extended period; or
- (B) a Dispute arises between the parties in relation to this **Part 4** within the Negotiation Period, in which case, the Negotiation Period will, subject to **clause 4.13**, be extended by the time between the issuing of a Dispute Notice and the date of the finding (or such longer time as may be determined by the QCA in the resolution of the Dispute);
- (v) the Access Seeker being given a Negotiation Cessation Notice in respect of its Access Application and that Negotiation Cessation Notice has taken effect in accordance with **clause 4.13**; or
- (vi) a notice is given by Aurizon Network under **clause 4.12(d)**.

4.11.2 Issues to be addressed during negotiation

- (a) During the Negotiation Period, Aurizon Network and the Access Seeker or Train Operator, as applicable, will negotiate and endeavour to agree on the elements comprising, for an Access Seeker, the relevant form of Access Agreement referred to in **clause 5.1(c)** for the type of Access Rights being sought or, for a Train Operator, the matters to be completed in the relevant Train Operations Deed. In order to facilitate this process:
 - (i) an Access Seeker must (if it has not done so already) nominate its Train Operator by notice to Aurizon Network;
 - (ii) Aurizon Network must provide to the Access Seeker Additional Information (together with any requested Capacity Information) relevant to the rail corridor applicable to the Access Seeker's Access Application and that information must be the most current available to Aurizon Network and be provided within a reasonable timeframe;
 - (iii) the Access Seeker (or its nominated Train Operator) must prepare an Operating Plan;
 - (iv) Aurizon Network must provide an Access Charge, determined in accordance with the pricing principles set out in **Part 6**, including advice as to whether

Aurizon Network has applied **clause 6.3** or **clause 6.4** in determining the Access Charge and if so:

- (A) the factor associated with the Access Seeker's proposed Access that results in a different cost or risk to Aurizon Network;
 - (B) the impact that the factor has on the Access Charge; and
 - (C) how that impact on the Access Charge was determined;
- (v) Aurizon Network must undertake a Capacity Analysis and an investigation of operational impacts and any Expansions necessary to accommodate Access by the Access Seeker are to be advised by Aurizon Network except to the extent that Aurizon Network considers that such matters are not required;
 - (vi) Aurizon Network must provide the definition of the relevant Train Service Entitlement and, where applicable, the initial timetable for the proposed Train Services; and
 - (vii) the Access Seeker (or its nominated Train Operator) must demonstrate that the Rollingstock and Rollingstock Configurations for which the Access Rights are applicable are subject to certificates of compliance or a Compliance Statement (as that term is defined in the Train Operations Deed), as applicable, with the Rollingstock Interface Standards.
- (b) Without limiting the matters that an Access Seeker or a Train Operator and Aurizon Network may address during the Negotiation Period, Aurizon Network (jointly with the Access Seeker or Train Operator) will, or will commence to, conduct an Interface Risk Assessment and prepare an IRMP during the Negotiation Period in accordance with the provisions set out in a Standard Access Agreement or a Standard Train Operations Deed (as applicable) in respect of such matters:
 - (i) if requested by the Access Seeker or Train Operator; and
 - (ii) it is reasonably necessary to do so prior to the Access Seeker or Train Operator and Aurizon Network executing an Access Agreement or Train Operations Deed, as applicable.
 - (c) It would be reasonably necessary to conduct an Interface Risk Assessment for the purposes of **clause 4.11.2(b)** in the following circumstances:

- (i) the relevant Access relates to the transportation of coal from a new mine or load out facility;
- (ii) the Access Seeker (or, the relevant Train Operator) is seeking to operate new Rollingstock, is not an Access Holder or is not currently operating Rollingstock on the Rail Infrastructure; or
- (iii) the proposed operation, movement, provisioning or other operational aspects of the Train Services or proposed Rollingstock relating to the requested Access Rights will differ from existing Train Services operated on the Rail Infrastructure by the Access Seeker (or the relevant Train Operator) including where:
 - (A) there are reversing or special shunting movements that will be necessary for the proposed Train Services;
 - (B) there is a different driver methodology that applies to, or number of train drivers for, the Trains for the proposed Train Services;
 - (C) the Trains for the proposed Train Services will have a different operating direction (including loading or unloading direction) from that which the relevant Rail Infrastructure, loading or unloading facility or other relevant infrastructure was designed for (for example, entering a balloon loop in the opposite direction to what the balloon loop was designed for);
 - (D) the Trains for the proposed Train Services are proposed to operate at a speed greater than any speed limit or speed restriction that applies at any point on the Rail Infrastructure to be used by the Train Services;
 - (E) the proposed Train Services will not be able to meet nominated section running times for the relevant Reference Train Service

- or, if there is no relevant Reference Train Service, the section running times that typically apply to the relevant Rail Infrastructure;
- (F) the Rail Infrastructure is required to be extended, enhanced, expanded, augmented, duplicated or replaced in order for the relevant Access Rights to be used – for example, the installation of open door sensors; and
 - (G) there has been a change in the Access Seeker's (or relevant Train Operator's) or Aurizon Network's accreditation or Safety Management System under the Rail Safety Act.
- (d) During the Negotiation Period, Aurizon Network may seek further information that is reasonably required to address any matters referred to in this **clause 4.11.2** or information or evidence of the Access Seeker's ability to utilise the requested Access Rights (on the basis of the factors listed in **clause 4.13(c)**) and from other providers of infrastructure to be used as an entry or exit point to the Rail Infrastructure, such as owners or operators of unloading facilities. The Access Seeker must provide the information and evidence requested within twenty (20) Business Days of the request (or such other period as may be agreed with Aurizon Network) and facilitate the provision of such information from Third Parties, as applicable.
- (e) The Access Seeker does not fail to comply with a request by Aurizon Network under **clause 4.11.2(d)** where the Non-availability Circumstances are satisfied.
- (f) In respect of the details required to be developed by the parties in accordance with **clauses 4.11.2(a)** and **4.11.2(b)**, the parties may agree, for example:
- (i) to finalise certain aspects after the execution of the Access Agreement or the Train Operations Deed, as applicable;
 - (ii) to make the commencement of Train Services under the Access Agreement or the Train Operations Deed, as applicable, subject to the satisfaction of conditions (including, for example, the completion of schedules to the Access Agreement or the securing of access rights

- to an unloading facility or the securing of access to adjoining infrastructure); or
- (iii) to include mechanisms in the Access Agreement or the Train Operations Deed, as applicable, to address any subsequent cost or operating impacts arising in connection with the matters referred to in **clauses 4.11.2(f)(i) and 4.11.2(f)(ii)** that have not been expressly addressed either as part of the relevant Reference Train Service or in the negotiation of the relevant Access Agreement or Train Operations Deed.

4.12 Negotiation of Access Agreements and Train Operations Deeds

- (a) Each Access Holder or Access Seeker:
 - (i) may be present and participate in any negotiation between Aurizon Network and a Train Operator for a Train Operations Deed (and Operating Plan) in respect of the Access Holder's Access Rights (or Access Seeker's proposed Access Rights);
 - (ii) may not participate in negotiations between Aurizon Network and a Train Operator that relate to Access Rights for a different Access Holder or Access Seeker; and
 - (iii) may require Aurizon Network to permit its Train Operator to be present at, and participate in, all negotiations between Aurizon Network and the Access Holder or Access Seeker for Access Rights proposed to be wholly or partially utilised by that Train Operator.
- (b) In negotiating an Access Agreement and for the purposes of this **Part 4**, if the Access Holder or Access Seeker does not provide required information regarding Rollingstock and Rollingstock Configurations for the required Train Services, Aurizon Network may assume:
 - (i) a Reference Train Service in respect of the Rollingstock and Rollingstock Configurations; and
 - (ii) such other Above Rail operational matters as are reasonably necessary (having regard to any existing standard manner of conducting Above Rail Services on the relevant parts of the Rail Infrastructure).
- (c) If one or more Train Operations Deeds are negotiated between Aurizon Network and the relevant Train Operator(s), the Train Operations Deed(s) must not (alone, or in aggregate if there is more than one) grant rights to utilise the Rail Infrastructure that

exceed the corresponding Access Rights granted, or to be granted, to the relevant Access Holder or Access Seeker.

- (d) If, for whatever reason (except by reason of execution of the Access Agreement):
 - (i) negotiations in respect of the Access Agreement expire or are terminated;
 - (ii) the Access Seeker ceases to be an Access Seeker in respect of the Access Rights that relate to the relevant Train Operations Deed; or
 - (iii) where the Access Holder has already executed an Access Agreement, the Access Holder ceases to be an Access Holder in respect of the Access Rights that relate to the relevant Train Operations Deed,

then Aurizon Network will, by notice to the Train Operator, terminate its negotiations in respect of the corresponding Train Operations Deed.

4.13 Cessation of negotiations

- (a) At any time during a Negotiation Period, Aurizon Network (acting reasonably):
 - (i) may give a Negotiation Cessation Notice to an Access Seeker or a Train Operator, as applicable, if:
 - (A) the Access Seeker or Train Operator, as applicable, fails to comply (after being issued with any notices required under this Undertaking) with the relevant obligations and processes contained in this Undertaking, and such non-compliance is material;
 - (B) there is no reasonable likelihood that the Access Seeker or the Train Operator will comply with the terms and conditions of an Access Agreement or Train Operations Deed, as applicable, in a material way;
 - (C) the Access Seeker or its Train Operator, as applicable, fails to comply with **clause 4.8(e)**;
 - (D) the Access Seeker or Train Operator, as applicable, has no

- genuine intention of obtaining Access Rights or has no reasonable likelihood of utilising Access at the level sought;
 - (E) subject to **clause 11.1.4(f)**, the Access Seeker or Train Operator, as applicable, does not comply with a determination of an expert in accordance with **clause 11.1.4**; or
 - (F) the Access Seeker or the Train Operator, as applicable, does not comply with a determination of the QCA under **clause 11.1.5** in relation to a Dispute, and
- (ii) must give a Negotiation Cessation Notice to an Access Seeker where:
- (A) the Access Seeker's Customer notifies Aurizon Network that they no longer agree to the Access Seeker negotiating an Access Agreement based on the transport of their coal; or
 - (B) if the relevant Access Application relates to a Transfer, either the Customer of the Access Holder that holds the Transferred Access Rights (if any) or the Transferee's Customer (if any) notifies Aurizon Network that they no longer agree to the Transfer.

For clarity, an Access Holder's or Access Seeker's negotiations of an Access Agreement are not affected if negotiations of a Train Operations Deed between Aurizon Network and a Train Operator nominated by the Access Holder or Access Seeker under **clause 4.9(a)(ii)(D)** cease.

- (b) Without limitation to **clause 4.13(a)(i)(B)**, **clause 4.13(a)(i)(B)** is deemed satisfied, if:
- (i) the Access Seeker or the Train Operator, as applicable, is subject to an Insolvency Event; or
 - (ii) the Access Seeker or the Train Operator, as applicable, or a Related Party of the Access Seeker or

Train Operator, is currently, or has in the previous two years been, in Material Default of:

- (A) any Access Agreement or Train Operations Deed, as applicable; or
- (B) any other agreement where its performance under that other agreement is relevant to its likely performance under any proposed Access Agreement or Train Operations Deed, as applicable.

(c) Without limitation to **clause 4.13(a)(i)(D)**:

(i) **clause 4.13(a)(i)(D)** is deemed satisfied in relation to an Access Seeker or Train Operator (as applicable) in relation to coal carrying Train Services, where:

(A) for an Access Seeker in respect of the negotiation of an Access Agreement, the Access Seeker:

(1) is seeking Access Rights that will be used for a person other than the Access Seeker (that is, a person who will be a Customer); and

(2) has no reasonable likelihood of having a Customer for those Access Rights (provided that any consideration of reasonable likelihood must disregard the effect of granting the Access Rights to the Access Seeker on the Access Seeker's ability to attract a Customer in the future); or

(B) for a Train Operator in respect of the negotiation of a Train Operations Deed, the Train Operator ceases to be a Train Operator for the relevant Access Seeker or Access Holder; or

(ii) where **clause 4.13(c)(i)** does not apply, the following factors must be considered in relation to whether **clause 4.13(a)(i)(D)** is satisfied:

(A) whether the Access Seeker (or its Customer) has secured, or is reasonably likely to secure, Supply Chain Rights;

(B) whether the Access Seeker, if not a Railway Operator, has

- secured, or is reasonably likely to secure, a rail haulage agreement for the operation of the Train Services the subject of the Access Application or if a Railway Operator has entered into, or is reasonably likely to enter into, a rail haulage agreement with a Customer for the use of Access Rights sought (provided that any consideration of the reasonable likelihood must disregard the effect of granting the Access Rights to the Railway Operator on the Railway Operator's ability to attract a Customer in the future);
- (C) whether the Access Seeker or a Railway Operator is reasonably likely to have facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Services to utilise the Access Rights sought;
- (D) whether the Train Operator no longer meets the criteria outlined in **clauses 4.9(a)(ii)(A)** and **4.9(a)(ii)(B)**; and
- (E) where the Access Rights are sought to transport the output of a mine, whether the anticipated output of the mine is reasonably likely to support utilisation of the Access Rights sought and all relevant existing Access Rights relevant to that mine.
- (d) Despite any other provision, where:
- (i) Aurizon Network gives a Negotiation Cessation Notice under this **clause 4.13**; and
- (ii) the person to whom it was given wishes to commence a Dispute in respect of the giving of that Negotiation Cessation Notice,

the person must give a Dispute Notice in accordance with **clause 11.1.1(a)** within ten (10) Business Days after that Negotiation Cessation Notice is given.

- (e) Where Aurizon Network gives a Negotiation Cessation Notice, that Negotiation Cessation Notice has no effect until:
 - (i) the expiry of the period under **clause 4.13(d)** without a relevant Dispute Notice being given to Aurizon Network; or
 - (ii) where a Dispute Notice is given to Aurizon Network within that period, the Dispute is resolved in favour of Aurizon Network.

Part 5: Access Agreements

5.1 Development of Access Agreement

- (a) The granting of Access will be underpinned by an Access Agreement that will be developed and finalised under **Part 4** of this Undertaking (**Negotiation Process**).
- (b) The parties to the Access Agreement will be Aurizon Network and the Access Holder. The Access Holder need not be the Railway Operator for the relevant Train Services.
- (c) The terms of an Access Agreement must be:
 - (i) for coal carrying services, the Standard Access Agreement; and
 - (ii) for non-coal carrying services, an Access Agreement consistent with the Standard Access Agreement amended to reflect the fact that the Access is for non-coal carrying services.
- (d) Despite **clause 5.1(c)**, the Access Seeker may agree with Aurizon Network during the Negotiation Process to vary the terms of the Standard Access Agreement and any provision of this Undertaking incorporated by reference into the Standard Access Agreement (including **clauses 7.4.2** (Transfers), **7.4.3** (Relinquishments) and **7.6** (Capacity resumption)), in which case, any amendments proposed to those terms must be negotiated by both Aurizon Network and the Access Seeker acting reasonably and in good faith.
- (e) Where the terms of an Access Agreement cannot be agreed within the time set out in **clause 4.11.1(c)(iv)**, and the matter is referred for dispute resolution under **Part 11**, any Dispute will be resolved by the QCA or an expert, as applicable, by completion of:
 - (i) where Access is required for coal carrying services, the Standard Access Agreement; and
 - (ii) where Access is required for non-coal carrying services, an Access Agreement which is consistent with the Standard Access Agreement, amended to reflect the fact that the Access is for non-coal carrying services.
- (f) Aurizon Network must not agree to include in an Access Agreement a term that limits its ability to require the Access Holder to disclose to Aurizon Network all information required by Aurizon Network (acting reasonably) to prepare and publish the MTP.

- (g) Once the Access Seeker notifies Aurizon Network that it is satisfied with the terms and conditions of the Access Agreement provided to it, Aurizon Network must, as soon as reasonably practicable, provide the Access Agreement (or, where appropriate, an amendment to an existing Access Agreement) in final form, which reflects the agreement reached between Aurizon Network and the Access Seeker, to the Access Seeker for execution.
- (h) The parties must execute the final form of the Access Agreement:
 - (i) produced by the QCA or an expert in resolving a Dispute referred to in **clause 5.1(e)**; or
 - (ii) accepted by the Access Seeker under **clause 5.1(g)**,
 as soon as reasonably practicable after resolution of the Dispute or Aurizon Network delivers it to the Access Seeker (as applicable).
- (i) Aurizon Network must execute an Access Agreement with an Access Seeker up to two (2) years prior to the commencement of Train Services under the Access Agreement or such longer period as may be agreed.
- (j) Where an Access Seeker is seeking Access Rights that are additional rights to, or a variation of, an existing Access Agreement to which the Access Seeker is a party, nothing in this Undertaking obliges Aurizon Network to agree to terms in respect of those Access Rights that are consistent with that existing Access Agreement.

5.2 Access Charges under Access Agreements

- (a) An Access Holder's Train Service Entitlement may be comprised of various different types of Train Services described by reference to the characteristics set out in Part A, Schedule 2 of the Standard Access Agreement. The Standard Access Agreements refer to each type of Train Service as a "Train Service Type".
- (b) In the circumstances described in **clause 5.2(a)**, the Access Charges may be calculated by reference to each type of Train Service.

5.3 Development of Train Operations Deed

- (a) To use the Access Rights granted under an Access Agreement, the Access Holder must procure a Train Operations Deed is negotiated as part of the Negotiation Process.
- (b) The parties to the Train Operations Deed will be Aurizon Network and the Train Operator for the relevant Train Services.
- (c) The terms of the Train Operations Deed must be the Standard Train Operations Deed.

- (d) Despite **clause 5.3(c)**, the Train Operator may agree to vary the terms of the Train Operations Deed, in which case any amendments proposed to those terms must be negotiated by both Aurizon Network and the Train Operator acting reasonably and in good faith.
- (e) Where the terms of a Train Operations Deed cannot be agreed, and the matter is referred for dispute resolution under **Part 11** any Dispute will be resolved by the QCA or an expert, as applicable, by completion of (and incorporating amendments agreed by Aurizon Network and the Train Operator and not in dispute in respect of) a Standard Train Operations Deed.
- (f) Once the Train Operator and, if different, the Access Holder, has notified Aurizon Network that it is satisfied with the terms and conditions of the Train Operations Deed provided to it, Aurizon Network will, as soon as reasonably practicable, provide the Train Operations Deed (or, where appropriate, an amendment to an existing Train Operations Deed) in final form, which reflects the agreement between Aurizon Network and the Train Operator (and, if different, the Access Holder), to the Train Operator for execution.
- (g) The parties must execute the final form of the Train Operations Deed:
 - (i) produced by the QCA or an expert in resolving a Dispute referred to in **clause 5.3(e)**; or
 - (ii) accepted by the Access Seeker under **clause 5.3(f)**,as soon as reasonably practicable after resolution of the Dispute or Aurizon Network delivers it to the Train Operator (as applicable).
- (h) Aurizon Network must execute a Train Operations Deed with a Train Operator at any time after the related Access Agreement has been entered into but, in any event, prior to the commencement by that Train Operator of relevant Train Services under the related Access Agreement. For clarity, this **clause 5.3(h)** does not restrict the execution of subsequent Train Operations Deeds that relate to different Train Services or the execution of subsequent Train Operations Deeds with different Railway Operators that relate to the same Train Services.

Part 6: Pricing principles

6.1 Application of pricing principles

- (a) Aurizon Network will apply the pricing principles set out in this **Part 6** in developing Access Charges and Reference Tariffs.
- (b) To the extent that any of those pricing principles conflict, Aurizon Network will apply the pricing principles in the order of precedence identified below (from highest to lowest):
 - (i) **clause 6.2** to **clause 6.5** (price differentiation and new Reference Tariffs);
 - (ii) **clause 6.6** (pricing limits);
 - (iii) **clause 6.7** (Rail Infrastructure utilisation);
 - (iv) **clause 6.8** (revenue adequacy); and
 - (v) all remaining provisions of **Part 6**.
- (c) In this **Part 6**, where Access Rights have been, or are to be, granted under an Access Agreement, the relevant Access Holder and all of that Access Holder's Train Operators will be treated as a single entity so that a reference to:
 - (i) an Access Seeker is a reference to the Access Seeker and its Train Operators collectively; and
 - (ii) an Access Holder is a reference to the Access Holder and its Train Operators collectively.
- (d) For clarity, all references in this Undertaking to Access Seekers and Access Holders include Related Operators (where applicable).

6.2 Price differentiation

6.2.1 *Limitations on price differentiation*

- (a) Aurizon Network will not differentiate Access Charges between any combination of Access Seekers and Access Holders (including combinations involving only Access Seekers or only Access Holders) except as permitted by this **Part 6**.
- (b) Except as permitted by this **Part 6**, Aurizon Network will not set charges that discriminate in favour of any:
 - (i) Related Operator; or
 - (ii) Related Party,

and must ensure that its Access Charges for any Related Operator or Related Party:

- (iii) comply with this **Part 6**;

- (iv) are equivalent to its Access Charges for other Access Seekers or Access Holders (as applicable) in similar circumstances; and
- (v) do not have the purpose of preventing or hindering an Access Seeker's or Access Holder's Access in a way that would contravene Aurizon Network's obligations under sections 104 or 125 of the Act.

6.2.2 *Default application of Reference Tariff*

Subject to **clause 6.2.3**, where there is an applicable Reference Tariff, the Access Charge formulated by Aurizon Network for an Access Seeker will be calculated in accordance with the Reference Tariff.

6.2.3 *Price differentiation where a Reference Tariff applies*

- (a) Subject to **clause 6.13** (Access Conditions), Aurizon Network may seek to commercially negotiate and agree a reasonable Access Charge with an Access Seeker at any time that varies from the applicable Reference Tariff to recognise a difference in cost or risk associated with the provision of Access to a Train Service that has different characteristics to the Reference Train Service. However, the applicable Reference Tariff will apply unless and until any such Access Charge has been approved by the QCA.
- (b) If, after the Commencing Date, Aurizon Network enters into an agreement separate from the Access Agreement for a Customer Specific Branch Line which provides for Aurizon Network to earn revenue that is in addition to the ongoing Access Charge (for example, an upfront contribution or Access Facilitation Charge), Aurizon Network must exclude the cost components separately funded through the additional revenue (for example, the value of any relevant Customer Specific Branch Line to the extent supported by the additional revenue) from the cost base (including the asset base) used to determine:
 - (i) that ongoing Access Charge for Train Services using that Customer Specific Branch Line; and
 - (ii) the applicable Reference Tariff.
- (c) The rtp for a Train Service will be calculated in accordance with the following principles:
 - (i) rtp is deemed to equal one where:
 - (A) the maximum number of proposed Train Services at full utilisation exceeds the maximum number of Reference Train Services at full utilisation; and

(B) the scheduled section running times of the proposed Train Service are the same as the nominated section running times for the Reference Train Service; and

(ii) where **clause 6.2.3(c)(i)** does not apply, the number of reference Train Paths used by the proposed Train Service will be determined as follows:

$$rtp = \max[(A/B), (B/A)]$$

where:

A is the maximum number of Reference Train Services at full utilisation; and

B is the maximum number of the proposed Train Services at full utilisation;

(iii) the maximum number of Train Paths available for a Reference Train Service and for the proposed Train Service will be determined using a readily available simulation package; and

(iv) for the purpose of **clauses 4.6(c)(v)** and **4.11.2(a)(iv)** (as applicable), Aurizon Network will advise the Access Seeker how it has determined the value of rtp,

unless the QCA approves an alternative methodology, on the request of Aurizon Network, for the purpose of this clause, in which case rtp will be calculated in accordance with that approved alternative methodology.

6.2.4 Price differentiation where no Reference Tariff applies

If there is no applicable Reference Tariff (for example, because the relevant Train Service is a non-coal carrying Train Service), the Access Charge formulated by Aurizon Network for an Access Seeker may vary from the Access Charges for other Access Seekers or Access Holders. However, such variation may only be in respect of other Train Services that provide the same type of transport service (for example, transporting passengers (where the relevant Access Seeker's proposed Train Services transport passengers) or transporting the same commodity (where the relevant Access Seeker's proposed Train Services transport a commodity)) in the same geographical area as that Access Seeker's proposed Train Services, on a unit rate basis to reasonably reflect, over time:

- (a) changes or differences in the cost or risk relevant to Aurizon Network providing Access; or
- (b) Changes in Market Circumstances; or

- (c) limitations on Available Capacity in accordance with **clause 6.7.1(b)**.

6.2.5 Consequences if contravention of Part 6

- (a) If an Access Holder (**Aggrieved Access Holder**) suspects that after entering into an Access Agreement with Aurizon Network, Aurizon Network has subsequently entered into an Access Agreement with another Access Holder for a like Train Service (where a like Train Service is one that transports the same specified commodity in the same specified geographic area), and the subsequent Access Agreement contains an Access Charge in contravention of **Part 6**, the Aggrieved Access Holder may notify a Dispute by giving a Dispute Notice under **Part 11**.
- (b) In the event a Dispute is notified under **Part 11** in accordance with **clause 6.2.5(a)**, the QCA may give one or more notices to Aurizon Network under section 150AA of the Act to find out whether Aurizon Network is complying with this Undertaking.
- (c) In respect of any dispute notified under **clause 6.2.5(a)**:
 - (i) the Dispute must be resolved by the QCA under **clause 11.1.5**, disregarding **clauses 11.1.2 to 11.1.4**;
 - (ii) the QCA must resolve the Dispute by identifying whether it considers that a contravention of **Part 6** has occurred, based on the information before the QCA at the time and reasonable inferences from that information (including any information sought under **clause 6.2.5(a)**);
 - (iii) if a contravention is identified to have occurred under **clause 6.2.5(c)(ii)**, the QCA may give directions to Aurizon Network to resolve the Dispute, which may include a specific direction that Aurizon Network offer the Aggrieved Access Holder either:
 - (A) an Access Charge calculated on the same basis as the relevant like Train Service; or
 - (B) if the QCA considers appropriate, a particular Access Charge that in the QCA's view neutralises the effect of the contravention; and
 - (iv) on receiving any such specific direction, Aurizon Network must within five (5) days make a legally binding offer to the Aggrieved Access Holder to give effect to that direction.

6.3 Access Charges for new coal carrying Train Services

6.3.1 Determination of Access Charges

- (a) Where an Access Seeker or Access Holder seeks Access Rights for new or additional coal carrying Train Services, this **clause 6.3** (subject to **clause 6.4**) applies to determine the Access Charges payable by the Access Seeker or Access Holder.
- (b) The Access Charges applicable for a new coal carrying Train Service will be calculated under **clause 6.3.1(c)** separately for non-electric Access Charges (tariffs AT₁ to AT₄ collectively) and electric Access Charges (tariff AT₅).
- (c) The Access Charges applicable for a new coal carrying Train Service will be the higher of (on a \$/ntk basis):
 - (i) the relevant Reference Tariff (including any Reference Tariff determined in accordance with **clause 6.4**) applied to that Train Service, less the annual maximum allowable revenue (calculated in the same manner as for the relevant Reference Tariff) derived from the Approved PIC (if any); and
 - (ii) the Minimum Revenue Contribution, calculated as the sum of the Incremental Costs of using any Rail Infrastructure specifically for the new coal carrying Train Service and the higher of:
 - (A) any applicable Expansion Costs (as determined in accordance with **clause 6.4**); and
 - (B) as applicable:
 - (1) for non-electric Access Charges, the sum of:
 - the relevant AT₂ component of the relevant Reference Tariff (adjusted for any variation that will be made in accordance with **Schedule F** for that Train Service for a Cross System Train Service); and
 - fifty percentage points (50%) of the AT₃ component of the relevant Reference Tariff (adjusted for any variation that will be made in accordance with **Schedule F** for that Train Service for a Cross System Train Service) for the distance that the

- Train Service will travel on the
mainline of that Coal System; or
- (2) for electric Access Charges, zero.
- (d) Where an Access Charge is determined in accordance with **clause 6.3.1(c)**:
- (i) the requirements under **clause 6.3.1(c)** must be reapplied to review and reset the Access Charge whenever there is a change to the relevant Reference Tariff or the Approved PIC;
 - (ii) an Access Agreement may include provisions to ensure that the effect of **clause 6.3.1(d)(i)** is reflected in the Access Agreement;
 - (iii) despite **clause 6.3.1(d)(ii)**:
 - (A) the application and reapplication of **clause 6.3.1(c)** is deemed to form part of the Reference Tariff that is applicable to the relevant Train Service; and
 - (B) where the reapplication of **clause 6.3.1(c)** results in a different Access Charge that different Access Charge is deemed to be a change to the relevant Reference Tariff including for the purpose of **clause 6.5.2(a)(i)**.
- (e) Where an Access Seeker has requested Access Rights (other than as a Renewal) that do not require an Expansion and two or more Reference Tariffs are expressed to apply in relation to the Access Rights in the relevant Coal System, then the Reference Tariff used to formulate the relevant Access Charges is that Reference Tariff which is the highest on a \$/ntk basis. For clarity:
- (i) for a Cross System Train Service, this clause would be applied separately in relation to each relevant Coal System; and
 - (ii) for a Renewal, the relevant Reference Tariff will be the Reference Tariff that applied or would have applied in relation to the Access Seeker's existing Access Agreement.

6.3.2 QCA approval of Private Incremental Costs

- (a) Without limitation and following consultation with Aurizon Network, the QCA may approve the prudent and efficient value of Private Incremental Costs associated with Private Infrastructure, on request from an Access Seeker ("**Approved PIC**"), to the extent that the QCA is satisfied that this expenditure is for the prudent and efficient value of the assets that are used to provide the relevant Train Services over Private Infrastructure.

- (b) In determining prudence and efficiency of Private Incremental Costs under **clause 6.3.2(a)**, the QCA may have regard to the following (without limitation and in the QCA's absolute discretion):
- (i) the scope of works for a capital expenditure project (including whether the requirement for the works is prudent and efficient);
 - (ii) the standard of works for a capital expenditure project (including whether the standard could be expected to deliver the requirements for that capital expenditure project without it being overdesigned or likely to deliver a capital works project which is beyond the requirements of its scope); and
 - (iii) whether the costs of the capital expenditure project are prudent and efficient, having regard to the scope and standard of work undertaken or to be undertaken for the capital expenditure project.
- (c) If the QCA is requested to determine the prudence and efficiency of Private Incremental Costs under **clause 6.3.2(a)**, before the Private Incremental Costs are incurred, the QCA may include as conditions of its approval for any Private Incremental Costs:
- (i) the assumptions relevant to its approval including:
 - (A) cost to construct;
 - (B) time for completion of; and
 - (C) estimated capacity to be delivered by,
 the Private Incremental Costs;
 - (ii) other matters considered by the QCA to be material to its approval; and
 - (iii) the period of time in which the approval has effect (and if the project is not completed within the nominated time, the QCA may decide the approval ceases to have effect).
- (d) If the QCA is requested to determine the prudence and efficiency of Private Incremental Costs under **clause 6.3.2(a)** after the Private Incremental Costs are incurred:
- (i) the Access Seeker may request the QCA to take into account only information and analysis that the Access Seeker could reasonably be expected to have considered or undertaken at the time that the relevant Private Incremental Costs were incurred; and
 - (ii) the QCA will consider this request as part of its determination.

- (e) For clarity:
 - (i) when considering the Private Incremental Costs, the QCA may refuse to approve an Access Seeker's proposal and instead approve a lesser amount as the Approved PIC; and
 - (ii) the Approved PIC is zero unless and until the QCA approves the relevant Private Incremental Costs under this **clause 6.3.2**.
- (f) The value of the Approved PIC is to be maintained in the same way as the Regulatory Asset Base is maintained in accordance with **Schedule E**.
- (g) When determining the amount of the Approved PIC, the QCA may make such adjustments to the Private Incremental Costs as it considers appropriate to be satisfied under **clause 6.3.2(a)**.

6.4 Access Charges for coal carrying Train Services that require an Expansion

6.4.1 Expansion pricing principles

- (a) Where an Access Seeker or Access Holder seeks Access Rights for coal carrying Train Services that require an Expansion (**Expanding User**), this **clause 6.4** applies to identify the appropriate Access Charges payable by the Expanding User.
- (b) This **clause 6.4** is intended to be read in conjunction with **Part 8** of this Undertaking and is subject to **clause 6.3** (use of Private Infrastructure).
- (c) The methodology set out in this **clause 6.4** will apply on an individual Coal System basis.
- (d) The remainder of this **clause 6.4** articulates the following principles (applying the definitions set out below), known as the "**Expansion Pricing Principles**":
 - (i) Expanding Users should generally pay an Access Charge that reflects at least the full incremental costs (capital and operating) of providing additional Capacity;
 - (ii) subject to **clause 6.4.1(d)(iv)**, Non-Expanding Users should not experience a material increase in Reference Tariffs due to an Expansion triggered by Expanding Users;
 - (iii) if Expanding Users face a higher cost than Non-Expanding Users, a zero contribution to Aurizon Network's Common Costs from Expanding Users is generally acceptable; and

- (iv) an allocation of the Expansion Costs to Non-Expanding Users may be appropriate where an Expansion has clear benefits to those Non-Expanding Users.
- (e) For the purposes of this **clause 6.4**:
 - (i) “**Consensus**” means all Expansion Stakeholders have notified Aurizon Network that they consider that a particular draft Pricing Proposal from Aurizon Network for an Expansion represents an acceptable distribution of Expansion Costs and apportionment of Volume Risk that is consistent with the Expansion Pricing Principles;
 - (ii) “**Consensus Expansion**” means an Expansion for which Consensus has been achieved by Aurizon Network as anticipated in **clause 6.4.2**;
 - (iii) “**Customised Expansion**” means an Expansion that is not a Consensus Expansion or an Endorsed Expansion where the indicative Reference Tariff for the Pricing Proposal is a bespoke solution determined by applying **clause 6.4.3(d)** and the Expansion Pricing Principles in **clause 6.4.1**, taking into account the extent of any agreement between Expansion Stakeholders;
 - (iv) “**Endorsed Expansion**” means an Expansion that is not a Consensus Expansion where the indicative Reference Tariff for the Pricing Proposal is a formulaic solution determined by applying **clause 6.4.5**;
 - (v) “**Expansion Cost**” has the meaning given by **clause 6.4.4(a)(ii)**;
 - (vi) “**Expansion Stakeholders**” means all Expanding Users and all Non-Expanding Users for an Expansion;
 - (vii) “**Non-Expanding Users**” means Access Seekers and Access Holders within a Coal System that are not Expanding Users for an Expansion to that Coal System;
 - (viii) “**Socialisation**” means the full or partial aggregation of the Expansion Costs of a new Expansion with the costs associated with one or more existing Reference Tariffs for the same Coal System in order to determine a common Reference Tariff; and
 - (ix) “**Substitutable Train Service Entitlements**” or “**Substitutable TSEs**” means that an Access Holder has one or more existing Train Service Entitlements in a Coal System that can be used as an alternative to

the one or more Train Service Entitlements with the same origin created by the Expansion.

6.4.2 Consensus Expansion

- (a) Before Aurizon Network submits a Pricing Proposal to the QCA under **clause 6.4.4**, Aurizon Network must approach Expansion Stakeholders in good faith to seek to facilitate a Consensus on a Pricing Proposal. Aurizon Network must provide reasonable information as requested by each Expansion Stakeholder to facilitate a Consensus. The QCA may participate in any consultation processes undertaken by Aurizon Network with Expansion Stakeholders at the QCA's absolute discretion.
- (b) Aurizon Network must keep the QCA informed of progress in facilitating a Consensus by providing updates to the QCA on any significant developments or otherwise as requested by the QCA.
- (c) If a Consensus has not been reached by the date for the completion of the Feasibility Study, or Aurizon Network or any Expansion Stakeholder can otherwise provide evidence to the QCA that a Consensus will not be achieved by that date, or any further time period has lapsed under **clause 6.4.2(d)**, then:
 - (i) Aurizon Network (or the Expansion Stakeholder, if applicable, copying Aurizon Network) will consult with the QCA whether further time should be allocated to facilitate a Consensus; and
 - (ii) unless the QCA responds to Aurizon Network within ten (10) Business Days requesting further time to be allocated, the Expansion must be treated by Aurizon Network as either a Customised Expansion or Endorsed Expansion (as applicable).
- (d) If the QCA requires an extension of time under **clause 6.4.2(c)(ii)**, then Aurizon Network must continue to seek a Consensus until that time has lapsed, at which point Aurizon Network will consult with the QCA again under **clause 6.4.2(c)**. For clarity, the QCA may require multiple extensions of time to occur.

6.4.3 Other Expansions

- (a) Unless otherwise agreed by the QCA, an Expansion with no Substitutable TSEs and that is not a Consensus Expansion will be treated as an Endorsed Expansion.
- (b) An Expansion that is not a Consensus Expansion or an Endorsed Expansion will be treated as a Customised Expansion.
- (c) For an Endorsed Expansion, the indicative Reference Tariff for the Pricing Proposal that is submitted by Aurizon Network under

clause 6.4.4 will have multi-part pricing and price discrimination to aid efficiency in which:

- (i) Expanding Users will pay the Expansion Tariff that is calculated in accordance with this **clause 6.4.5**; and
 - (ii) Non-Expanding Users will pay the System Reference Tariff on a basis consistent with the cost allocation principles approved by the QCA under clause 6.4.4(e)(i) and adjusted in accordance with **clause 6.4.5(f)**.
- (d) For a Customised Expansion, the indicative Reference Tariff must give effect to the Expansion Pricing Principles set out in **clause 6.4.1**, taking into account the extent of any agreement between Expansion Stakeholders, and the factors set out in section 138(2) of the Act.

6.4.4 Pricing Proposal

- (a) If an Expanding User seeks Access Rights for coal carrying Train Services that require an Expansion, Aurizon Network will, as part of its Feasibility Study for that Expansion, submit to the QCA a proposal with the following elements:
- (i) a determination whether the Expansion involves any Substitutable TSEs;
 - (ii) a proposed allocation of costs arising from the Expansion (including a detailed breakdown of the estimated capital, maintenance and operating costs for the Expansion) (**Expansion Costs**) between the Expansion Stakeholders (including on a Coal System basis if the Expansion relates to more than one Coal System);
 - (iii) any proposed allocation of future renewal costs for the relevant Coal System between Expansion Stakeholders;
 - (iv) a proposed apportionment of volume risk arising from the Expansion (e.g. arising from differences between forecast and actual railings) (**Volume Risk**) between the Expansion Stakeholders (including on a Coal System basis if the Expansion relates to more than one Coal System) if applicable;
 - (v) all calculations made in applying this **clause 6.4.4**;
 - (vi) if the Expansion is an Endorsed Expansion, a determination as to which of the following clauses will apply:

- (A) **clause 6.4.5(c)** – the Coal System has no existing Expansion Tariff;
 - (B) **clause 6.4.5(e)(ii)** – the Coal System has an Expansion Tariff, but no Socialisation will occur;
 - (C) **clause 6.4.5(e)(vi)** – the Coal System has one or more existing Expansion Tariffs and Socialisation will occur to the extent determined under **clause 6.4.5(e)**;
- (vii) if the Expansion is not a Consensus Expansion, an identification of the extent to which consultation by Aurizon Network with Expansion Stakeholders has occurred;
 - (viii) if the Expansion is a Consensus Expansion, all relevant details of the Consensus and copies of all correspondence with Expansion Stakeholders confirming the Consensus and evidencing the Consensus and terms of the Consensus,

and the resulting indicative Reference Tariffs that are proposed by Aurizon Network for the Expansion (**Pricing Proposal**).

- (b) Aurizon Network must provide to the QCA:
 - (i) information explaining the manner in which the Pricing Proposal is consistent with the Expansion Pricing Principles in **clause 6.4.1** and the factors set out in section 138(2) of the Act (including the conditions for any Socialisation);
 - (ii) such other supporting information for the QCA’s consideration to justify or explain Aurizon Network’s approach; and
 - (iii) such further information as is requested by the QCA to enable the QCA to consider the Pricing Proposal.
- (c) The QCA must:
 - (i) publish the Pricing Proposal;
 - (ii) invite persons (including all Expansion Stakeholders) to make submissions on the Pricing Proposal within a reasonable time period specified by the QCA; and
 - (iii) provide Aurizon Network and Expansion Stakeholders with a draft decision and a reasonable opportunity to respond to that draft decision.

- (d) The parties agree that any Pricing Proposal that is submitted to the QCA under this Undertaking should be made in the form of an application for a ruling under Division 7A of Part 5 of the Act, unless the QCA requests otherwise. If an application is made for a ruling under Division 7A of Part 5 of the Act, **clauses 6.4.4(e) to 6.4.4(h)** are subject to the application of Division 7A of Part 5 of the Act.
- (e) The QCA may:
 - (i) approve the Pricing Proposal; or
 - (ii) refuse to approve the Pricing Proposal, with reasons provided to Aurizon Network.
- (f) If the QCA approves the Pricing Proposal, the QCA may state in its ruling that it will no longer apply if there is a material change in circumstances. In such circumstances, the QCA may invite Aurizon Network to submit an updated Pricing Proposal (and application under Division 7A of Part 5 of the Act, if applicable).
- (g) If the QCA refuses to approve a Pricing Proposal or invites Aurizon Network to submit an updated Pricing Proposal, Aurizon Network will, if applicable, submit a replacement Pricing Proposal to the QCA (and application under Division 7A of Part 5 of the Act, if applicable).
- (h) Aurizon Network must notify the QCA immediately upon becoming aware that a change in circumstances has arisen in relation to the Pricing Proposal, including any calculations or information used in the course of preparing the Pricing Proposal.

6.4.5 Calculation of indicative Reference Tariff for Endorsed Expansions

- (a) This **clause 6.4.5** applies only to an Endorsed Expansion.
- (b) Socialisation of an Endorsed Expansion involves the aggregation of the Expansion Costs of a new Expansion (**New Expansion**) with the costs associated with one or more existing Expansion Tariffs for the same Coal System in order to identify common Expansion Tariffs. For an Endorsed Expansion, Socialisation is assessed for tariffs AT₁ to AT₄ (collectively) independently from Socialisation for tariff AT₅. The iterative methodology set out in the remainder of this **clause 6.4.5** must be applied to both sets of tariffs independently.
- (c) If a Coal System has no existing Expansion Tariff, an Expansion Tariff for the Expansion, applicable to the Expanding User, will be calculated in accordance with **clause 6.4.6(a)**, subject to adjustment under **clause 6.4.5(e)**.
- (d) If a Coal System has one or more existing Expansion Tariffs, an Expansion Tariff for the Expansion will be calculated in accordance with the iterative methodology for socialising

Expansions set out in **clause 6.4.5(e)**. Aurizon Network must apply this methodology and include its associated calculations in the Pricing Proposal under **clause 6.4.4(a)** based on:

- (i) the Expansion Costs after adjustment in accordance with the proposed cost allocation principles;
 - (ii) forecast volumes arising as a result of the Expansion as set out in the Feasibility Study; and
 - (iii) the analysis being undertaken on a forward-looking basis, looking at the effect:
 - (A) at the end of each Quarter after the earliest contracted commencement of Access by Access Holders whose Access Agreements were conditional on the relevant Expansion (**Initial Access Holders**); until and including
 - (B) the peak point for contracted Access by the Initial Access Holders.
- (e) Iterative methodology for socialising Expansions:
- (i) **Step One:** Aurizon Network must calculate:
 - (A) which of the existing Expansion Tariffs applicable to the relevant Coal System is the highest on a \$/ntk basis after being adjusted in a manner consistent with the proposed cost allocation principles based on the Expansion's Projected Cost (**Highest Expansion Tariff**); and
 - (B) whether the Highest Expansion Tariff would, on a \$/ntk basis, decrease if the Highest Expansion Tariff and the Expansion Costs of the New Expansion were socialised (**Tariff Decrease**).
 - (ii) **Step Two:** If under Step One, a Tariff Decrease would not occur, then the Highest Expansion Tariff will not be socialised with the Expansion Costs of the New Expansion unless otherwise agreed by the QCA. A new Expansion Tariff, applicable to the New

- Expansion, will be established in accordance with **clause 6.4.6(a)**.
- (iii) **Step Three:** If under Step One, a Tariff Decrease would occur, then the Highest Expansion Tariff will be socialised with the Expansion Costs of the New Expansion to determine a common Expansion Tariff (**Socialised Tariff**).
 - (iv) **Step Four:** Aurizon Network must calculate whether the remaining next Highest Expansion Tariff for the relevant Coal System would, on a \$/ntk basis, decrease if that next Highest Expansion Tariff and the Socialised Tariff as referred to in Step Three were socialised (also, a **Tariff Decrease**).
 - (v) **Step Five:** Aurizon Network will repeat Steps Three to Five until either there is no further Tariff Decrease or all Expansion Tariffs have been socialised. Where Socialisation occurs in a previous iteration of Steps Three to Five, references to Expansion Costs of the New Expansion in Step Three will be taken to be references to the costs associated with the Socialised Tariff from the last iteration.
 - (vi) **Step Six:** Once the iteration in Steps Three to Five has been completed, the common Expansion Tariff for the New Expansion and the other socialised Expansions will be the Socialised Tariff from the last iteration, subject to adjustment under **clause 6.4.5(f)**.
- (f) If, following the application of **clauses 6.4.5(c)** or **6.4.5(e)**, the new or varied Expansion Tariff is lower than the System Reference Tariff for the Coal System on a \$/ntk basis, Aurizon Network must include a positive contribution to its Common Costs in the Expansion Tariff that has the effect of increasing the Expansion Tariff and reducing the System Reference Tariff so that these Reference Tariffs are equivalent on a \$/ntk basis. The contribution to Aurizon Network's Common Costs will be calculated based on contracted volumes. The contribution to Aurizon Network's Common Cost will be assessed for Tariffs AT₁ to AT₄ (collectively) independently from Tariff AT₅.

6.4.6 Reference Tariffs

- (a) Every Expansion Tariff must have a separate:
 - (i) relevant Allowable Revenue (adjusted to recognise all revenue that Aurizon Network receives from all sources that enables it recover the costs of the Expansion); and
 - (ii) GtK Forecast based on 100% contracted volumes,

that can be used to calculate that Expansion Tariff under **Schedule F**. For clarity, an Expansion Tariff will be calculated based on contracted volumes and, when a Take or Pay applies to the Expansion, it will be calculated in accordance with **clause 3.3(n) of Schedule F**.

- (b) If two (2) or more Expansion Tariffs continue to exist for any Coal System, Aurizon Network must undertake a review in consultation with the QCA at least once every twelve (12) Months, whether Socialisation of any of those Expansion Tariffs should occur.
- (c) The indicative Reference Tariff identified in the Pricing Proposal under **clauses 6.4.4 to 6.4.6** should be proposed to apply instead of the System Reference Tariff for the Coal System.

6.4.7 Formalisation of Pricing Proposal

- (a) For Aurizon Network to formalise the indicative Reference Tariff determined under **clause 6.4.4**, it should prepare and submit to the QCA a draft amending access undertaking to vary this Undertaking consistent with, and to give effect to, any Pricing Proposal that has been approved by the QCA under **clause 6.4.4**.
- (b) Aurizon Network acknowledges that in the absence of a draft amending access undertaking approved by the QCA under Part 5 of the Act:
 - (i) the Pricing Proposal pursuant to **clause 6.4.4** may be the subject of a dispute notified under section 112 of the Act; and
 - (ii) the QCA may give a direction under section 139 of the Act, if the QCA considers it appropriate to do so.

6.4.8 Allocation of Asset Replacement and Renewal Expenditure

- (a) Subject to **clause 6.4.6(a)**, all Asset Replacement and Renewal Expenditure in respect of capital expenditure projects relating to a Coal System must only be included in the capital costs relevant to the calculation of the System Reference Tariff.
- (b) To the extent that Asset Replacement and Renewal Expenditure is necessary for an Expansion to which an Expansion Tariff applies or will apply, then that Asset Replacement and Renewal Expenditure will be treated as part of the cost of that Expansion subject to any applicable Cost Allocation Proposal accepted by the QCA under **clause 6.4.3**.

6.4.9 Indicative Access Charge

- (a) Where **clause 6.4** applies in respect of an Expansion and the applicable Reference Tariff has not yet been determined, this does not affect Aurizon Network's obligations to negotiate Access and enter into an Access Agreement provided that Aurizon

Network may enter into an Access Agreement with the relevant Access Seeker on the basis of an indicative Access Charge (taking into account any applicable Pricing Proposal accepted by the QCA under **clause 6.4.4**) subject to the Access Agreement including provisions which provide that after the applicable Reference Tariff is determined:

- (i) the Access Agreement will be amended to include an Access Charge based on that Reference Tariff; and
- (ii) the Access Seeker and Aurizon Network will account to each other for any under or over recovery of Access Charges during the period when the indicative Access Charge was applied.

6.4.10 *Interaction with Access Charges for new or additional coal carrying Train Services that involve the use of Private Infrastructure*

- (a) Where a new or additional coal carrying Train Service involves the use of Private Infrastructure, **clause 6.4** and **clause 6.3.1(c)** must be applied concurrently for the purposes of setting an Access Charge.

6.5 Process for acceptance of new Reference Tariff

6.5.1 *Process*

- (a) Where Aurizon Network is negotiating Access Charges for Access Rights and a new Reference Tariff is to be applied under **clause 6.4** in respect of those Access Charges, Aurizon Network will submit a proposed new Reference Tariff to the QCA. The QCA will:
 - (i) publish the proposed Reference Tariff;
 - (ii) invite persons to make submissions on the proposed Reference Tariff to the QCA within a reasonable period of time specified by the QCA; and
 - (iii) consider any submission it receives within that period of time.
- (b) The QCA may approve a proposed Reference Tariff for a new Reference Train Service only if the QCA:
 - (i) is satisfied that the proposed Reference Tariff is consistent with this Undertaking;
 - (ii) considers it appropriate to do so having regard to the factors listed in section 138(2) of the Act; and
 - (iii) for a resubmitted proposed Reference Tariff, is satisfied that Aurizon Network has in all material respects addressed the matters referred to in the relevant notice by the QCA under **clause 6.5.1(f)**.

- (c) If the QCA approves the proposed Reference Tariff:
- (i) it will apply from the earlier of:
 - (A) the date of the QCA's decision; and
 - (B) if Aurizon Network and the Access Seeker have entered into an Access Agreement under **clause 6.4.9**, the date of that Access Agreement,except where the QCA specifies a later date in its decision, in which case the proposed Reference Tariff will apply from that date;
 - (ii) the QCA will give Aurizon Network a notice stating the reasons for its decision at the time of publishing its decision; and
 - (iii) Aurizon Network must:
 - (A) publish a new version of **Schedule F** which includes the new Reference Tariff; and
 - (B) advise Access Holders and Access Seekers, in respect of the Train Services to which the new Reference Tariff applies, that the new Reference Tariff has been approved.
- (d) If the QCA is considering refusing to approve the proposed Reference Tariff:
- (i) it must give Aurizon Network a draft of its decision (including a statement of both its reasons and the way in which it considers the proposed Reference Tariff should be amended);
 - (ii) Aurizon Network may, within twenty (20) Business Days after being given that draft decision (or such longer period as agreed by the QCA), revise the proposed Reference Tariff and/or provide additional information supporting its view that the proposed Reference Tariff should be approved; and
 - (iii) the QCA must consider that revision and/or additional information when deciding whether to approve or refuse to approve the proposed Reference Tariff.
- (e) If the QCA refuses to approve the proposed Reference Tariff, the QCA must give Aurizon Network a notice of the QCA's decision

(including a statement of both its reasons and the way in which it considers the proposed Reference Tariff should be amended).

- (f) If the QCA refuses to approve the proposed Reference Tariff, Aurizon Network may resubmit the proposed Reference Tariff with amendments and **clauses 6.5.1(a) to (e)** apply to that resubmitted Reference Tariff.
- (g) For the purposes of this **clause 6.5.1**:
 - (i) a proposed Reference Tariff submitted by Aurizon Network must include a new or reviewed Allowable Revenue and Gtk Forecast to the extent applicable to that proposed Reference Tariff; and
 - (ii) the QCA in approving a proposed Reference Tariff must also approve the new or reviewed Allowable Revenue and Gtk Forecast.

6.5.2 Access Charge review provisions

- (a) Without limitation to **clause 6.4.9**, Aurizon Network or an Access Seeker may seek to agree review provisions in an Access Agreement that is being negotiated to enable the Access Charge to be adjusted from time to time in order for those Access Charges to be consistent with changes in:
 - (i) (if a Reference Tariff applies to the Train Service) the applicable Reference Tariff (including any matters under **Schedule F**); and
 - (ii) (if no Reference Tariff applies to the Train Service) the Access Charges agreed with other Access Seekers in respect of Train Services transporting the same commodity within the same geographical area as that Access Seeker's proposed Train Service.
- (b) A Standard Access Agreement must contain review provisions in compliance with this **clause 6.5.2**.

6.6 Pricing limits

6.6.1 Application of pricing limits

- (a) Aurizon Network will, in setting the Access Charges for an Access Seeker's proposed Train Services, establish and observe upper and lower limits for the Access Charge(s):
 - (i) for individual Train Services; and
 - (ii) for combinations of Train Services comprised of the proposed Train Services and other Train Services to the extent that they use the same Rail Infrastructure as that which would be used by the proposed Train Services,

at levels:

- (iii) which ensure there is no Cross Subsidy between individual Train Services or combinations of Train Services (as applicable); and
 - (iv) determined in accordance with **clause 6.6.2**.
- (b) Subject to the approval of the QCA, Aurizon Network may:
- (i) establish a new Reference Tariff; or
 - (ii) vary an existing Reference Tariff in a way,

that is inconsistent with **clause 6.6.2(a)(ii)**, for the primary purpose of promoting efficient investment by either Aurizon Network or another person in the relevant Supply Chain.

6.6.2 *Setting price limits*

- (a) In setting the Access Charges for an Access Seeker's proposed Train Services, Aurizon Network will do so such that, over the Evaluation Period, the Expected Access Revenue for any one of those Train Services and any combination of Train Services comprised of the proposed Train Services and other Train Services to the extent that they use the same Rail Infrastructure as that which would be used by the proposed Train Services is:
- (i) no less than the level that will recover the expected Incremental Cost of providing Access for that Train Service or that combination of Train Services (as applicable); and
 - (ii) no more than the level that will recover the expected Stand Alone Cost of providing Access for that Train Service or that combination of Train Services (as applicable).

6.6.3 *Application of Maximum Allowable Revenue*

- (a) Without limitation to **clause 6.6.2(a)**, where it is necessary to calculate the price limit referred to in **clause 6.6.2(a)(ii)** for the purposes of setting or reviewing a Reference Tariff, the Stand Alone Cost for the Evaluation Period for the Train Services to which the Reference Tariff relates will be the Maximum Allowable Revenue.
- (b) The Maximum Allowable Revenue means the aggregate of the maximum amount of Expected Access Revenue attributable to a section of Rail Infrastructure for the relevant Train Services using that section of Rail Infrastructure over the Evaluation Period.
- (c) The Maximum Allowable Revenue will be measured such that the net present value of the cashflows associated with providing Access for the relevant Train Services over the Evaluation Period is zero. This measurement can be expressed as:

$$0 = -AV_0 + \sum_{t=1}^n \frac{(MAR_t - C_t - M_t - T_t)}{(1 + ROA)^t} + \frac{AV_n}{(1 + ROA)^n}$$

where:

- AV_0 is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Services, assessed in accordance with **clause 6.6.3(e)**, at the commencement of the Evaluation Period;
- n is the number of years in the Evaluation Period;
- t is each year within the Evaluation Period from 1 to n ;
- MAR_t is the Maximum Allowable Revenue for the Train Services expressed as revenue that may be earned in each year of the Evaluation Period;
- C_t is the capital expenditure for assets reasonably expected to be required for the Stand Alone provision of Access for the Train Services in each year of the Evaluation Period;
- M_t is the Efficient Cost, including operating and maintenance costs, business and corporate overheads and QCA Levy, reasonably expected to be incurred for the Stand Alone provision of Access for the Train Services in each year of the Evaluation Period;
- ROA is the relevant rate of return commensurate with the commercial and regulatory risks involved in nominal post tax terms (with the cost of debt expressed on a before tax basis), as agreed by Aurizon Network and the QCA or, failing such agreement, as determined by the QCA;
- T is the tax expense assessed through the application of the statutory tax rate for corporations to the taxable income reasonably expected to be earned through the Stand Alone provision of Access for the Train Services in each year of the Evaluation Period, where such tax expense is reduced in each year by the application of the gamma factor, reflecting the market value of dividend imputation, as agreed by Aurizon Network and the QCA or, failing such agreement, as determined by the QCA; and
- AV_n is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Services, assessed in accordance with **clause 6.6.3(e)**, at the end of the Evaluation Period.
- (d) For the purpose of determining the variables under **clause 6.6.3(c)**, the assumed traffic task resulting from the Train Services over the Evaluation Period is the forecast, as reasonably determined by Aurizon Network, for the traffic task

resulting from the Train Services over the Evaluation Period (including making allowance for any changes in traffic task that are expected to result from the commencement of projects that impact significantly on the traffic task).

- (e) The value of assets used in **clause 6.6.3(c)** will be determined by reference to:
 - (i) the Regulatory Asset Base, as maintained in accordance with **Schedule E**; or
 - (ii) if a value cannot be determined under **clause 6.6.3(e)(i)**, the Depreciated Optimised Replacement Cost methodology.

6.7 Pricing objectives

6.7.1 Rail Infrastructure utilisation

- (a) Aurizon Network may establish different Access Charges for non-coal carrying Train Services serving different markets or commodities to maximise the commercially viable use of Capacity while meeting, in aggregate, the Common Costs.
- (b) Subject to **clause 6.7.1(c)**, if Aurizon Network can evidence to the QCA that:
 - (i) the Available Capacity is insufficient to satisfy the requests for Access Rights of all current and likely Access Seekers; and
 - (ii) an Expansion to provide additional Capacity is not commercially feasible in the circumstances,

then:

- (iii) Aurizon Network may determine the highest Access Charge for a Train Service that it is likely to achieve from the current or likely Access Seekers based on the characteristics of the relevant Reference Train Service for the applicable Coal System (including the terms of the relevant Standard Access Agreement) (**Maximum Access Charge**);
- (iv) the Maximum Access Charge may be quoted to all Access Seekers in respect of the Available Capacity irrespective of:
 - (A) any Access Seeker's ability to contribute to the Common Costs; or
 - (B) the Access Charges payable in existing Access Agreements for similar Train Services; and

- (v) if Aurizon Network:
 - (A) has received Mutually Exclusive Access Applications;
 - (B) chooses to allocate Available Capacity to one of those Access Seekers for an Access Charge less than the Maximum Access Charge; and
 - (C) another of those Access Seekers is willing to pay an Access Charge equal to the Maximum Access Charge,

then, when determining the Maximum Allowable Revenue in accordance with **clause 6.6.3** for Train Services using that constrained section of Rail Infrastructure, the Access Charge for the Access Seeker will be assumed to be the Maximum Access Charge. For the purpose of **clause 6.7.1(b)(iv)(B)**, Aurizon Network does not make a choice to allocate Available Capacity in a particular way where Aurizon Network's allocation is necessary for compliance with any Law (including any Passenger Priority Obligation or Preserved Train Path Obligation).

- (c) **Clause 6.7.1(b)** does not apply in respect of setting Access Charges in relation to Train Services for which a Reference Tariff applies. For clarity, as Reference Tariffs are intended to apply to all coal carrying Train Services, **clause 6.7.1(b)** will not apply in respect of coal carrying Train Services.

6.8 Revenue adequacy

Aurizon Network is entitled to earn revenue from the provision of Access that is at least enough to:

- (a) meet the Efficient Costs of providing Access; and
- (b) provide a rate of return on the value of assets commensurate with the regulatory and commercial risks involved.

6.9 Reference Tariffs

6.9.1 *Application of Reference Tariffs*

- (a) A Reference Tariff is one means by which Aurizon Network provides Access Seekers with information about the matters listed in sections 101(2)(a) to (c) of the Act, but is not intended to fully discharge Aurizon Network's obligations under those sections.
- (b) Unless otherwise approved by the QCA or unless otherwise required by the QCA under the Act, Aurizon Network must

calculate the Access Charges for all coal carrying Train Services to which a Reference Tariff applies on a basis that comprises all of the following elements:

- (i) an incremental maintenance component that is levied on a gtk basis – referred to as AT₁;
- (ii) an incremental capacity component that is levied on a Train Path basis – referred to as AT₂;
- (iii) a component that is levied on a ntk basis – referred to as AT₃;
- (iv) a component that is levied on a nt basis – referred to as AT₄;
- (v) an electric access tariff that is levied on an egtk basis (if appropriate) – referred to as AT₅;
- (vi) an electric energy charge that is levied on an egtk basis (if appropriate) – referred to as EC; and
- (vii) the QCA Levy levied on a nt basis,

and including any other amount that may be included in an Access Charge in accordance with this Undertaking.

6.9.2 *Review of Reference Tariffs*

Schedule F will specify the period for which a Reference Tariff is effective and how the Reference Tariff may be reviewed during that period.

6.9.3 *Publishing updated Schedule F*

Where any matters in **clauses 7 to 12** of **Schedule F** are amended or varied from time to time, including where the QCA approves any revisions or other adjustments to Allowable Revenues, Gtk Forecasts or Reference Tariffs in accordance with this Undertaking, Aurizon Network must publish a new version of those **clauses 7 to 12** of **Schedule F** which includes that amendment, variation, revision or adjustment.

6.10 *Structure of non-Reference Tariff Access Charges*

Where there is no Reference Tariff applicable for a Train Service (for example, a passenger or non-coal freight Train Service), the structure of Access Charges for that Train Service will be negotiated with the relevant Access Seeker depending on their particular requirements and, without limiting Aurizon Network's and the relevant Access Seeker's discretion to agree a structure, may include any one or more of the following:

- (a) an initial upfront component as a condition to being granted Access Rights;
- (b) an ongoing periodic fixed component independent of the level of usage of the Rail Infrastructure; and

- (c) one or more ongoing variable components based on usage of the Rail Infrastructure.

6.11 QCA Levy

Access Charges for any Train Service may include a QCA Levy component to be collected for the QCA by Aurizon Network. This component of Access Charges will, where applicable, be determined from year to year based on the QCA Levy levied by the QCA to Aurizon Network and allocated amongst Train Services in a manner approved by the QCA.

6.12 Regulatory Asset Base

Aurizon Network will maintain the Regulatory Asset Base in accordance with Schedule E.

6.13 Access Conditions

6.13.1 *Negotiation of Access Conditions*

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

6.13.2 *Approval of Access Conditions*

- (a) If Aurizon Network intends to commence negotiating Access Conditions (or continue doing so where negotiations for the provision of Access were already underway at the Approval Date) it must issue to all relevant Access Seekers, Customers and the QCA a report which details:
 - (i) the Access Conditions that Aurizon Network is seeking from any Access Seeker;
 - (ii) quantification of the additional costs or risks Aurizon Network is exposed to (the **Additional Risks**), which it is seeking to mitigate through the Access Conditions;
 - (iii) why Aurizon Network's exposure to the Additional Risks would not be:
 - (A) reasonably mitigated by an Access Agreement which permits Aurizon Network to charge Access Charge(s) calculated in accordance with a Reference Tariff based on the Approved WACC and 100% Take or Pay commitments; or

- (B) more efficiently mitigated through insurance or other financial instruments;
 - (iv) to the extent that the Access Conditions being sought indicate Access Charges ~~being calculated based on or~~ any other monetary consideration (whether under an Access Agreement or other agreement) being payable, evidence that:
 - (A) ~~adjustments to cash flows, evidence that~~ there are risks not mitigated by the other Access Conditions being sought, and the adjustments are reflective of the possible outcomes and probabilities of the outcomes as a consequence of such risks; and/or
 - (B) ~~a Varied WACC, evidence that~~ there is either a materially different risk-free rate or debt margin, the cost of funding in anyway or that, as a result of the Aurizon Network funding a capital expenditure project, Aurizon Network would have a materially different gearing ratio or credit rating, from that which was assessed at the time the Approved WACC was determined by the QCA; and
 - (v) confirmation that Aurizon Network considers the proposed Access Conditions would not contravene a provision of this Undertaking or the Act.
- (b) If the QCA has reason to believe that Aurizon Network has commenced negotiating Access Conditions in respect of the provision of Access prior to providing a report as required by ~~clause 6.13.2(a)~~, it may require Aurizon Network to:
 - (i) produce a report in accordance with ~~clause 6.13.2(a)~~ within ten (10) Business Days; and
 - (ii) cease negotiating Access Conditions until such a report has been provided.
- (c) Aurizon Network and the Access Seekers may, after Aurizon Network has provided the report required by ~~clause 6.13.2(a)~~, negotiate for sixty (60) days on the terms of those Access Conditions, provided that:
 - (i) either Aurizon Network or any Access Seeker may apply to the QCA for an extension to the negotiation period (subject to the period not being extended to more than one hundred and twenty (120) days unless a majority of Access Seekers request such an extension); and

- (ii) an Access Seeker may refer the proposed Access Conditions to the QCA for a determination at any time during the negotiation period (although the QCA may decline to make a determination until the negotiation period has expired where it considers a prior referral is vexatious or the referring party has not engaged in the negotiation of Access Conditions in good faith).
- (d) Following receipt of the report required by **clause 6.13.2(a)**, the QCA will invite and consider comments from relevant stakeholders regarding the proposed Access Conditions.
- (e) To the extent that all Access Seekers agree to the Access Conditions sought by Aurizon Network during the period in **clause 6.13.2(c)**, the QCA will approve the proposed Access Conditions, unless the QCA is satisfied:
 - (i) it would be contrary to the public interest, including the public interest in having competition in markets;
 - (ii) it is reasonably expected to disadvantage Access Seekers, Access Holders, or other stakeholders which will not be parties to the Access Agreements containing the Access Conditions;
 - (iii) Aurizon Network has failed to provide Access Seekers with the report required by **clause 6.13.2(a)**; or
 - (iv) it would contravene a provision of this Undertaking or the Act.
- (f) To the extent that only some or none of the Access Seekers agree to the Access Conditions sought by Aurizon Network during the period in **clause 6.13.2(c)**, the QCA may approve the proposed Access Conditions if it is satisfied that:
 - (i) the Access Conditions are reasonably required in order to mitigate Aurizon Network's exposure to the Additional Risks associated with providing Access;
 - (ii) Aurizon Network's exposure to the Additional Risks would not be:
 - (A) reasonably mitigated by an Access Agreement which permits Aurizon Network to charge Access Charge calculated in accordance with a Reference Tariff based on the Approved WACC and 100% Take or Pay commitment; or
 - (B) more efficiently mitigated through insurance or other financial instruments;
 - (iii) to the extent ~~a proposed Access Condition includes Access Charges being based on adjustments to cash~~

~~flows~~, there are risks not mitigated by other Access Conditions being sought, and [Aurizon Network will receive monetary compensation for them](#), that the ~~adjustments are~~[compensation is](#) reflective of the possible outcomes and probabilities of the outcomes as a consequence of such risks;

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

6.13.3 Prohibited Access Conditions

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

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

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

Part 7: Available Capacity allocation and management

7.1 Application

- (a) This **Part 7** addresses the allocation and management of Capacity, including in circumstances where there is insufficient Available Capacity to satisfy all of the Access Applications submitted to Aurizon Network. In particular, under its provisions:
- (i) Aurizon Network may refuse to grant Access Rights if the relevant Access Seeker has not demonstrated to Aurizon Network's satisfaction (acting reasonably and in good faith) that it can utilise those Access Rights (**clause 7.2.1**).
 - (ii) Aurizon Network must maintain a Capacity Notification Register and a Committed Capacity Register (**clause 7.2.2** and **clause 7.2.3**).
 - (iii) Aurizon Network will be obliged to give priority to the granting of Access Rights to a Renewing Access Seeker in respect of a Renewal in certain circumstances (**clause 7.3**).
 - (iv) Standard Access Agreements permit an Access Holder or an Access Holder's Customer to Transfer Access Rights in accordance with this Undertaking. Aurizon Network has obligations in relation to the allocation of Capacity to facilitate a Transfer (**clause 7.4.2**).
 - (v) Short Term Transfers will be required to meet specified requirements (**clause 1.1.1(a)**).
 - (vi) Standard Access Agreements permit an Access Holder to relinquish Access Rights in accordance with this Undertaking. Aurizon Network has obligations in relation to the management of that relinquishment (**clause 7.4.3**).
 - (vii) Aurizon Network will notify Access Seekers if their Access Applications are Mutually Exclusive Access Applications and assist them to modify their Access Applications to seek to avoid them being Mutually Exclusive Access Applications (**clause 7.5.1**).
 - (viii) Where Aurizon Network has received Mutually Exclusive Access Applications, Aurizon Network will form a queue to determine which Access Seeker will be allocated Available Capacity (**clause 7.5.2**).

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

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

7.2 Capacity allocation and registers

7.2.1 *General requirement for allocation*

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

- (a) whether the Access Seeker:
 - (i) (or its Customer) has secured, or is reasonably likely to secure, Supply Chain Rights;

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

7.2.2 Capacity Notification Register

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

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

7.2.3 Committed Capacity Register

- (a) Aurizon Network must maintain a Committed Capacity Register that identifies:
 - (i) each Access Holder with Access Rights under an Access Agreement;
 - (ii) DTMR in respect of its Committed Capacity;
 - (iii) any other party that has an interest in existing Access Rights and wishes to be included in the Committed

Capacity Register and has notified Aurizon Network of that interest, in which case, the register must include:

- (A) the Committed Capacity or Access Rights in which they have an interest; and
- (B) the nature of that interest.

- (b) Where an Access Seeker requests Access which will:
 - (i) commence within two (2) Years after the expiration of an existing Access Right (other than an Access Right in respect of coal carrying Train Services); and
 - (ii) utilise Capacity that will only become available following the expiration of that Access Right,

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

7.3 Renewals

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

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

- (b) For the purpose of **clause 7.3(a)**, Aurizon Network will disregard any change to the origin or destination of the relevant Train Services in considering whether the relevant Access Rights are equivalent Access Rights so long as the Train Services for the Renewal:
 - (i) continue to have substantially the same Train Paths as the existing Train Services. For clarity, the Train Services for the Renewal may include a longer haul than the existing Train Services;

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

(c) For clarity:

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

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

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

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

- (iii) the relevant Access Holder, where the Access Holder has no Customer, or otherwise the relevant Access Holder's Customer, has notified Aurizon Network that the Access Holder does not intend to seek a Renewal; or
- (iv) the Renewing Access Seeker has not (other than because of a delay by or breach of this Undertaking by Aurizon Network) executed an Access Agreement for that Capacity with Aurizon Network under this

clause 7.3 at least twelve (12) Months prior to the expiry of the Access Rights (or such later date as agreed between Aurizon Network and the Renewing Access Seeker).

(e) Aurizon Network may refuse to negotiate, or to enter into, an Access Agreement with a Renewing Access Seeker for a Renewal more than five (5) years prior to the expiry of the Access Rights. For clarity, a refusal by Aurizon Network to negotiate an Access Agreement as a result of the operation of this **clause 7.3(e)** does not affect the Renewing Access Seeker's right to seek a Renewal under this **clause 7.3** within the period that is five (5) years prior to the expiry of the Access Rights.

(f) If a Renewing Access Seeker is seeking a Renewal at least twelve (12) Months (or such other later date as agreed between Aurizon Network and the Renewing Access Seeker) but no more than sixty (60) Months (or such earlier date as agreed between Aurizon Network and the Renewing Access Seeker) prior to the expiry of the relevant Access Rights, then:

(i) the term of an Access Agreement relating to the Renewal must be:

(A) for coal carrying Train Services, the lesser of ten (10) years and the remaining life of the relevant mine (as evidenced to Aurizon Network's satisfaction (acting reasonably) by the Renewing Access Seeker); or

(B) for other Train Services, the lesser of ten (10) years and the same length of time as the term of the relevant current Access Agreement; and

(ii) if:

(A) the Renewing Access Seeker's Access Application is not seeking a Renewal for; or

(B) the Renewing Access Seeker does not agree to an Access Agreement for,

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

(g) While this **clause 7.3** sets out how Aurizon Network will differentiate in the treatment of a Renewing Access Seeker as

compared to other Access Seekers, this **clause 7.3** does not affect the rights and obligations of the Renewing Access Seeker or Aurizon Network under **Part 4** or **Part 5** or the remaining provisions of this **Part 7** except as set out in this **clause 7.3**.

- (h) For clarity:
- (i) a Renewing Access Seeker must complete and submit an Access Application for Access Rights it is seeking to renew; and
 - (ii) subject to this **Part 7**, the negotiations for those Access Rights will be conducted in accordance with **Part 4** and **Part 5**, including:
 - (A) the Negotiation Cessation Notice provisions under **clause 4.13**;
 - (B) the Renewing Access Seeker and Aurizon Network beginning negotiations as soon as reasonably possible once the relevant Negotiation Period has commenced under **clause 4.11.1(a)**; and
 - (C) both the Renewing Access Seeker and Aurizon Network negotiating the terms of the relevant Access Agreement for the Renewal acting reasonably and in good faith under **clauses 5.1(c)** and **5.1(d)**.
 - (i) Aurizon Network acknowledges that any provision under **Part 4** which permits Aurizon Network:
 - (i) to treat an Access Application as being withdrawn (except where the Access Seeker expressly withdraws the Access Application); or
 - (ii) to cease negotiation under **clause 4.11.1(c)(v)** or otherwise issue a Negotiation Cessation Notice because there is insufficient Available Capacity,

does not apply in respect of a Renewal.

7.4 Dealing with Access Rights

~~7.4.1~~ Transfers Assignments

7.4.1

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

~~7.4.2~~ **Transfers**

~~(a)~~ If:

- ~~(i)~~ Subject to clause 1.1.1(a), an Access Holder (or a Customer) (**Transferor**) ~~intends to~~ may undertake a Transfer ~~of all or part of its~~ to another Access Rights; ~~Holder~~ or
- ~~(ii)~~ an Access Holder utilises Access Rights to provide Train Services for Seeker (or on behalf of a Customer, and that a Customer (also a Transferor) intends to undertake a Transfer of all or part of those Customer Access Rights;

~~(b)~~ to itself or a third party (each a Seeker) (Transferee), the Transferor must give Aurizon Network reasonable notice of its intention to do so (Notice of Intention to Transfer.) in accordance with this clause 7.4.

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

~~(b)~~ **7.4.2 Transfer must: Notice**

~~(i)~~ ~~(a)~~ specify full details A Transferor and Transferee must provide written notice of the proposed Transfer including to Aurizon Network (Transfer Notice) which specifies:

~~(i)~~ the date on which the Transfer is to take effect (Transfer Date) and to terminate (if any);

~~(A)~~ ~~(ii)~~ the Access Rights which the Transferor proposes to Transfer (Nominated Access Rights) by describing:

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

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

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

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

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

- ~~•~~ where the Notice of Intention to Transfer is received at least five

~~(5) Business Days prior to close of Train Orders for the first day of the proposed Short Term Transfer Period, no earlier than the first day of the Relevant Period for those Train Orders; or~~

- ~~• where a Notice of Intention to Transfer is received less than five (5) Business Days prior to close of Train Orders for the first day of the proposed Short Term Transfer Period, no earlier than the first day of the next Relevant Period; and~~

~~(2) for a transfer under **clause 7.4.2(g)**, is:~~

- ~~• where the Notice of Intention to Transfer is received at least seven (7) Business Days prior to close of Train Orders for the first day of the proposed Short Term Transfer Period, no earlier than the first day of the Relevant Period for those Train Orders; and~~
- ~~• where a Notice of Intention to Transfer is received less than seven (7) Business Days prior to close of Train Orders for the first day of the proposed Short Term Transfer Period, no earlier than the first day of the next Relevant Period; and~~

~~(D) the date on which the Transfer of the Nominated Access Rights is to terminate (if any); and~~

~~(E) all Access Agreements the Transferor may have relating to the origin and destination of the Nominated Access Rights; and~~

~~(ii) if it is a Transfer under **clause 7.4.2(f)** or **clause 7.4.2(g)** be accompanied by a notice completed by the Transferee which must, as a minimum, contain:~~

~~(A)(iii) the Access Rights the Transferee proposes to acquire from the Transferor (**Transferred Access Rights**) by describing:~~

~~(1)(A) the number and type of Train Services ~~the Transferee proposes to acquire;~~~~

- ~~(2)(B)~~ the proposed origin and destination ~~for the Transferred Access Rights;~~ and
- ~~(3)(C)~~ if the Transferred Access Rights require any Capacity which is required in addition to the Available Capacity that will be created by the relinquishment of the Nominated Access Rights as part of the proposed Transfer; (Ancillary Access Rights);
- (iv) the Access Agreement which the Nominated Access Rights are proposed to be transferred from, which must be the Transferor's most recently executed Access Agreement relating to the origin and destination of the Nominated Access Rights (to the extent sufficient to satisfy the Transfer);
- (v) either:
- (A) the Access Agreement under which the Transferred Access Rights are proposed to be added which must:
- (1) have existing Train Service Entitlements from the origin for the Transferred Access Rights; and
- (2) where there is more than one agreement that satisfies **clause 7.4.2(a)(v)(A)(1)**, must be the most recently executed Access Agreement; or
- (B) if no existing Access Agreement, exists a short form Access Application completed by the Transferee which includes the information listed in **Schedule B, Part 6** in respect of the Transferred Access Rights;
- (vi) evidence that the Transferor's and Transferee's Customers (as applicable) have consented to the Transfer (including if a Customer is comprised of more than one entity, each entity comprising the Customer); and
- (vii) evidence that the Transferee (or its Customer, ~~if any~~) will be reasonably likely to be able to utilise the Transferred Access Rights based on whether:
- ~~(B)(A)~~ the Transferee (or its Customer) has secured, or is reasonably likely to secure, Supply Chain Rights for the Transferred Access Rights from the Transfer Date;
- ~~(C)~~ unless either:

- ~~(1)(B)~~ evidence that the Transferee is a Railway Operator, the Transferee (or its Customer) has secured or is reasonably likely to secure, a rail haulage agreement for the Transferred Access Rights from the Transfer Date; or
- ~~(2)(C)~~ the details of any changes the Transferee or its Railway Operator is reasonably likely to any nominations of a have access to facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Operator previously given to take into account the proposed Transfer of Services to utilise the Transferred Access Rights; and
- (D) ~~all Access Agreements~~ the Transferee (or its Customer ~~or Train Operator, as applicable~~) may ~~is~~ reasonably likely to have to which sufficient product (whether through the anticipated output of a mine or otherwise) to utilise the Transferred Access Rights ~~could be added (if any); or~~
- ~~(iii)~~ if it is not a Transfer under **clause 7.4.2(f)** or **clause 7.4.2(g)** be accompanied by an Access Application completed by the Transferee which must, as a minimum, contain the information listed in **Schedule B, Part 6**.
- ~~(c)~~ The Access Application to be completed and submitted by the Transferee under **clause 7.4.2(b)(iii)**:
- ~~(i)~~ must be an Access Application in the form required to satisfy **Part 4** for the Transferred Access Rights if the Transferee (or its Customer or Train Operator) does not have an existing Access Agreement to which the Transferred Access Rights could be added; or
- ~~(ii)~~ may be a short form Access Application that provides the information required in **clause 7.4.2(b)(ii)** if the Transferee (or its Customer or Train Operator) does have an existing Access Agreement to which the Transferred Access Rights could be added.
- ~~(d)~~ If either:
- ~~(i)~~ the Transferee does not have an existing Access Agreement to which the Transferred Access Rights could be added; or
- ~~(ii)~~ **clause 7.4.2(f)** or **clause 7.4.2(g)** does not apply;
- ~~(b)~~ then, If a Transfer Notice includes a short form Access Application in accordance with **clause 7.4.2(a)(v)(B)**, subject to this **Part 7**, the negotiation process for those Transferred Access Rights will be

conducted in accordance with **Part 4**. For clarity and without limiting the provisions of **Part 4** that apply to the Access Application, nothing in this **clause 7.4.2** affects the application of **clauses 4.3(f)** and **4.13(a)(ii)** to the Access Application. on an expedited basis in accordance with **Part 4**.

Customer Initiated Transfers

- (e) ~~_____~~ If **clause 7.4.2(a)(ii)** applies:
- (i) ~~_____~~ the Notice of Intention to A Transfer must be given to the Access Holder at the same time it is given to Aurizon Network;
 - (ii) ~~_____~~ a Transfer (including Notice for a Short Term Transfer) will only be effective under this **clause 7.4.2** if:
 - (A) ~~_____~~ the origin and destination of, and commodity for, the Transferred Access Rights are the same as the origin and destination of, and commodity for, the Nominated Access Rights;
 - (B) ~~_____~~ the Transferee's new or varied Access Agreement includes a provision, on terms and conditions satisfactory to Aurizon Network, under which the Transferee agrees to pay all Adjustment Charges (**Transferred Adjustment Charges**) that, but for the Transfer of the Nominated Access Rights under this **clause 7.4.2**, are, or would have become, payable by the Access Holder in relation to Train Services operated for the Access Holder utilising the Nominated Access Rights prior to the commencement of the Transferee's new or varied Access Agreement (whether or not those Adjustment Charges are approved by the QCA before or after the commencement of the Transferee's new or varied Access Agreement);
 - (C) ~~_____~~ the Customer (including for the avoidance of doubt, if the Customer is comprised of more than one entity, each entity comprised in the Customer) has warranted to Aurizon Network that it is the sole end Customer of the Train Services utilising the Nominated Access Rights;
 - (D) ~~_____~~ if the Customer is comprised of more than one entity, each entity comprised in the Customer has confirmed to Aurizon Network that it agreed to the giving of the Notice of Intention to Transfer; and
- (E) (c) ~~_____~~ the Customer has must be provided Aurizon Network with a legally enforceable written undertaking (including, if required by Aurizon Network, security for the due and proper performance of that

undertaking) indemnifying Aurizon Network for all Claims (including consequential loss) of any nature suffered or incurred by, or made or brought against, Aurizon Network in connection with:

- (1) ~~the Transfer (including any costs arising in respect of any Claim by the Access Holder); and~~
- (2) ~~any failure by the Transferee to pay all Transferred Adjustment Charges when due.~~

~~Transfer~~ ~~no additional~~ if Ancillary Access Rights are not required

~~(f)(i) Unless Aurizon Network notifies the Transferor and the Transferee under **clause 7.4.2(m)** within at least five (5) Business Days after receipt of the Notice of Intention to Transfer, the Transfer of the Nominated Access Rights to the Transferee will take effect in accordance with **clause 7.4.2(k)** if: prior to close of Train Orders for the period commencing on the Transfer Date; and~~

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

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

~~(iii)(ii) the Transferee has provided the details of any changes required, at least seven (7) Business Days prior to any nominations close of a Train Operator previously given to take into account Orders for the Transferred Access Rights period commencing on and from the Transfer Date;~~

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

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

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

7.4.3 Criteria for a Transfer to take effect

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

~~(iv)(i) the origin for the Transferred Access Rights is on the same Mainline Path as the Nominated Access Rights ~~and is either~~~~

~~the same origin as the Nominated Access Rights or closer to the destination for the Nominated Access Rights;~~

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

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

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

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

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

(ii) requires Ancillary Access Rights—~~and~~.

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

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

(iv) if:

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

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

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

(c) If a Short Term Transfer:

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

(ii) requires Ancillary Access Rights.

Aurizon Network must undertake a Rapid Capacity Assessment **required**

- ~~(g) — Aurizon Network must, within five (5) Business Days after receipt of the Notice of Intention to Transfer, notify the Transferor and the Transferee:~~
- ~~(i) — under **clause 7.4.2(m)**; or~~
 - ~~(ii) — that a Rapid Capacity Assessment is required;~~
- ~~and, if it provides a notice under **clause 7.4.2(g)(ii)**, commence that Rapid Capacity Assessment if:~~
- ~~(iii) — the Transferee (or its Customer or Train Operator) has an existing Access Agreement in respect of the nominated origin and destination to determine whether there is sufficient Available Capacity for the Transferred Access Rights (which has Transfer provisions which are consistent with **clause 7.4.2**);~~
 - ~~(iv) — the Transferee has provided evidence reasonably establishing it (or its Customer) will have Supply Chain Rights;~~
 - ~~(v) — the Transferee has provided the details of any changes to any nominations of a Train Operator previously given to take into account the Transferred Access Rights on and from the Transfer Date;~~
 - ~~(vi) — the Transferred Access Rights use the same Mainline Path as the Nominated Access Rights;~~
 - ~~(vii) — the origin for the Transferred Access Rights requires Ancillary Access Rights in addition. Aurizon Network must promptly provide written notice to the Nominated Access Rights;~~
 - ~~(viii) — the destination for the Transferred Access Rights is in the same port precinct as the destination for the Nominated Access Rights; Transferor and~~
 - ~~(ix) — the Train Services for the Transferred Access Rights is the same as the nature or type Transferee of Train Services for the Nominated Access Rights;~~
- ~~and on completion the outcomes of the Rapid Capacity Assessment (which must be completed within two (2) Business Days from the commencement of the Rapid Capacity Assessment): including full details of the assessment.~~
- ~~(x) — If Aurizon Network must promptly notify the Transferor and the Transferee of:~~
- ~~(A) — the result of the Rapid Capacity Assessment;~~
 - ~~(B) — if the Rapid Capacity Assessment indicates there is sufficient Available Capacity (if the Nominated Access Rights is deemed to be Available Capacity~~

for the purposes of the Rapid Capacity Assessment) for the Transferred Access Rights:

- (1) that the Transfer of the Nominated Access Rights to the Transferee will take effect in accordance with **clause 7.4.2(k)**; and
- (2) details of the calculation of the Transfer Fee (if any) that is payable in respect of the determines (acting reasonably) a Transfer; and

~~(C)(d)~~ if the Rapid Capacity Assessment indicates does not comply with this clause 7.4.3 (including if there is insufficient Available Capacity (if the Nominated Access Rights is deemed to be Available Capacity for the purposes of the Rapid Capacity Assessment) for the Transferred Access Rights, under clause 7.4.3(c), it must promptly provide written notice (including reasons) to the Transferor ~~may request Aurizon Network to conduct a detailed assessment of the Notice of Intention to Transfer, in which case, clause 7.4.2(b)(iii) and 7.4.2(d) will apply~~ and the Transferee.

7.4.4 Effect of Short Term Transfers

~~(h)~~ If:

- (i) a Transfer is to take effect in accordance with **clause 7.4.2(f) or 7.4.2(g)(xi)** (as applicable); and
- (ii) the Transfer Period:
 - (A) is for twelve (12) Months or less (**Short Term Transfer Period**); and
 - (B) does not extend beyond the end of the term of the Transferor's Access Agreement referred to in **clause 7.4.2(k)(iii)**:

~~(Short Term Transfer)~~ then, for the Short Term Transfer Period, subject to **clause 7.4.2(q)**:

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

~~(iii)(e)~~ no Transfer Fee or Relinquishment Fee is payable in respect of a Short Term Transfer;

~~(iv)(f)~~ the Transferred Access Rights will be taken to be Access Rights for an additional Train Service Type under the Transferee's nominated Access Agreement for the Transfer Period;

~~(v)(g)~~ the Nominated Access Rights will be taken to have been relinquished for the Train Service Type specified in the Notice of Intention to

Transfer [Notice](#) for the ~~Short Term Transfer Period~~ as specified in the ~~Short Term Transfer Notice~~;

- ~~(vi) — the Train Service Entitlement(s) for the Nominated Access Rights will be taken to be removed from Appendix B to Schedule 2 (or the corresponding clause in a Pre-Approval Date Coal Access Agreement) of the Transferor's Access Agreement referred to in **clause 7.4.2(k)(iii)**, and the Nominated Monthly Train Services for each Month during the Short Term Transfer Period reduced accordingly; and~~
- ~~(vii) — the Transferred Access Rights will be taken to be additional Train Service Entitlement(s) for the relevant Train Service Description(s) under the Transferee's Access Agreement referred to in **clause 7.4.2(k)(iv)** as specified in the Notice of Intention to Transfer, except that:
 - ~~(A) — in item 1.2 of Schedule 2 (or the corresponding clause in a Pre-Approval Date Coal Access Agreement):
 - ~~(1) — 'Train Service Compliance Date' and 'Train Service Commitment Date' will be taken to be the Transfer Date;~~
 - ~~(2) — 'Train Service Expiry Date' will be taken to be the last day of the Short Term Transfer Period;~~~~
 - ~~(B) — in item 1.3 of Schedule 2 (or the corresponding clause in a Pre-Approval Date Coal Access Agreement):
 - ~~(1) — 'Origin' will be taken to be the 'Origin'; and~~
 - ~~(2) — 'Destination' will be taken to be the 'Destination';~~
 - ~~(3) — 'Loading Facility' will be the 'Loading Facility';~~
 - ~~(4) — 'Unloading Facility' will be the Unloading Facility; and~~
 - ~~(5) — the 'Maximum Time at Loading Facility' and 'Maximum Time at Unloading Facility' will be the periods,~~
~~specified in the Notice of Intention to Transfer;~~~~
 - ~~(C) — in item 1.3 of Schedule 2 (or the corresponding clause in a Pre-Approval Date Coal Access Agreement), the 'Loaded distance from Origin to~~~~

~~Destination (km)' and the 'Empty distance from Destination to Origin (km)' will be the distances from the 'Short Term Origin' specified in the Notice of Intention to Transfer to the 'Short Term Destination' specified in the Notice of Intention to Transfer;~~

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

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

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

~~(i) **Transition** the Transferee's Access Agreement will be taken to be varied to include, in respect of the Transferred Access Rights, an Access Charge Rate that is set by reference to the same Reference Tariff as the~~ Nominated Access Rights ~~to~~.

7.4.5 Effect Long Term Transfers

If a Long Term Transfer meets the requirements of **clause 7.4.3**, Aurizon Network must promptly provide the Transferor and Transferee

~~(k) If the criteria outlined in either **clause 7.4.2(f)** or **(g)** is satisfied, (and their respective Operators, if any) written notice approving the Long Term Transfer and~~ then on and from the ~~later of:~~

~~(i) the Transfer Date; and~~

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

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

- ~~(iii) — the Nominated Access Rights are removed from the Transferor's (or its Customer's or Train Operator's, as applicable) Access Agreement which:~~
 - ~~(A) — relates to Train Services in respect of the origin and destination of the Nominated Access Rights; and~~
 - ~~(B) — was entered into first in time as determined on the following basis:
 - ~~(1) — a Pre-30 June 2006 Coal Access Agreement is deemed to have been entered into prior to any other Access Agreement;~~
 - ~~(2) — a Pre-1 October 2010 Coal Access Agreement is deemed to have been entered into prior to any other Access Agreement excluding a Pre-30 June 2006 Coal Access Agreement; and~~~~
- ~~(3)(i) — a Pre-Approval Date Coal Access Agreement is deemed to have been entered into prior to any other Access Agreement excluding a Pre-30 June 2006 Coal Access Agreement or a Pre-1 October 2010 Coal Access Agreement; and identified in the Transfer Notice; and~~
- ~~(iv)(ii) — the Transferred Access Rights are granted to the Transferee for the Transfer Period under the Access Agreement ~~nominated by or entered into by the Transferee except if the Transferee has more than one existing Access Agreement to which the Transferred Access Rights could be added, the Transferred Access Rights must be added to the Access Agreement that was entered into last in time as determined on the following basis:~~ identified in the Transfer Notice or otherwise entered into by the Transferee.~~
 - ~~(A) — a Pre-30 June 2006 Coal Access Agreement is deemed to have been entered into prior to any other Access Agreement;~~
 - ~~(B) — a Pre-1 October 2010 Coal Access Agreement is deemed to have been entered into prior to any other Access Agreement excluding a Pre-30 June 2006 Coal Access Agreement;~~
 - ~~(C) — a Pre-Approval Date Coal Access Agreement is deemed to have been entered into prior to any other Access Agreement excluding a Pre-30 June 2006~~

~~Variations to relevant Access Agreement~~

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

(b) Each of the parties to a Long Term Transfer referred to in **clause 7.4.50** will promptly after the approval of the Long Term Transfer ensure:

- (i) Aurizon Network and the Access Holder ~~entering~~enter into an agreement, ~~in a form reasonably acceptable to the Access Holder and Aurizon Network,~~ to vary the terms of the Access Holder's Access Agreement to address the relinquishment of the Nominated Access Rights (including any variations to the Access Charge Rates);
- (ii) if the Transferred Access Rights are being granted under an existing Access Agreement between Aurizon Network and the Transferee, Aurizon Network and the Transferee ~~entering~~enter into an agreement, ~~in a form reasonably acceptable to the Transferee and Aurizon Network,~~ to vary the terms of that Access Agreement to accommodate the Transferred Access Rights (including: any variations to the Access Charge Rates and the term of the agreement);
 - ~~(A) any variations to the Access Charge Rates;~~
and
 - ~~(B) the provision of security or additional security in respect of the Transferred Access Rights as a result of the transfer of the Transferred Access Rights, to the extent that Aurizon Network, acting reasonably, requires that security or additional security;~~
- (iii) if the Transferred Access Rights are being granted under a new Access Agreement between Aurizon Network and the Transferee, that Access Agreement:
 - (A) has been negotiated and agreed in accordance with ~~the requirements of this Undertaking;~~clause 7.4.2(i); and
 - (B) (except for a condition in relation to the grant of the Transferred Access Rights taking effect under

this ~~clause 7.4.2~~ **7.4.5(A)** is unconditional and binding upon the Transferee;

~~(iv)~~ (iv) ~~the Transferee providing~~ the Transferor and the Transferee vary the relevant Train Operations Deeds (or train operator agreements) (if any) to (as applicable) exclude the Nominated Access Rights and include the Transferred Access Rights for the Transfer Period;

~~(iv)~~ (v) ~~the Transferee provides~~ Aurizon Network with security in respect of the Transferred Access Rights to the extent ~~that Aurizon Network, acting reasonably, requires that security or additional security requested by Aurizon Network in accordance with this Undertaking;~~ by Aurizon Network in accordance with this Undertaking; and

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

~~(m) — If Aurizon Network determines it cannot effect the proposed Transfer under any of **clauses 7.4.2(f) or (g)**, it must provide reasons with its notice to the Transferor and the Transferee to explain its decision.~~

~~(n) — If an Access Holder requests Aurizon Network to amend an Access Agreement to permit the Transfer of its Access Rights in accordance with this **clause 7.4.2** and Aurizon Network agrees, within three (3) Months of that request, Aurizon Network and the Access Holder must negotiate in good faith and enter into an agreement, in a form reasonably acceptable to Aurizon Network and the Access Holder, to vary the terms of the Access Agreement to incorporate the terms of this **clause 7.4.2** (including a right to require security or additional security in respect of Transferred Access Rights if the Access Holder's Access Rights are increased as a result of a Transfer of Access Rights). For clarity, Aurizon Network is not obliged to amend Access Agreements executed prior to the Approval Date in a manner which is inconsistent with this **clause 7.4.2**.~~

Workability of Transfer provisions

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

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

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

~~(iii) — submit to the QCA either:~~

~~(A) — proposed amendments to this **clause 7.4.2** that Aurizon Network (acting reasonably) considers~~

~~necessary to improve the workability of the transfer of Access Rights; or~~

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

~~in which event:~~

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

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

~~(vi) if either:~~

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

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

~~(C) the QCA disagrees with Aurizon Network's reasons provided under **clause 7.4.2(o)(iii)(B)**,~~

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

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

7.4.6 Transfer Fee

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

~~(i) a Transfer is for a period of more than twelve (12) Months in length;~~

~~(ii)(i) despite **clause 7.4.2(q)(i)**, the Long Term Transfer Period for the Nominated Access Rights, when aggregated with the sum of the Transfer Periods of all previous Transfers of Access Rights for Train Services~~

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

~~(iii)(ii)~~ (ii) both the Nominated Access Rights and the Transferred Access Rights are not for coal carrying services; ~~or~~

~~(iv)~~ (iv) ~~the Reference Tariff used to calculate the Access Charge for the Nominated Access Rights is not the same as that used to calculate the Access Charge for the Transferred Access Rights.~~

~~(+)(b)~~ (b) Aurizon Network must:

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

at the following times:

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

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

(B) where Ancillary Access Rights are required, within [insert]; and [QRC note: for further consideration and discussion.]

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

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

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

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

- (i) the Nominated Access Rights were not transferred; and
- (ii) the Train Services were not operated for the Transferor for a reason other than Aurizon Network Cause,

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

~~(t)~~(d) Despite any other provision in this **clause 7.4.2**, ~~if~~ no Transfer Fee is payable:

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

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

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

~~then the Transfer Fee will be zero.~~

~~(u)~~(e) If the Transferor has not paid (or commenced a dispute in respect of the calculation of) the Transfer Fee within twenty (20) Business Days after the latest of:

- (i) the Transfer Date;
- (ii) the date Aurizon Network gives the Transferor a notice under **clause 7.4.2(r)(iii); 7.4.6(b)(iii)**;
- (iii) the date that Aurizon Network gives the Transferor a valid tax invoice in respect of the Transfer Fee; and
- (iv) in respect of payment only, the date any dispute regarding the calculation of the Transfer Fee is determined,

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

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

General

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

7.4.7 ~~For clarity, a change in the nomination of a Train Operator by an Access Holder does not constitute a Transfer.~~ Customer Initiated Transfers

- (a) Where an Access Holder holds all or part of its Access Rights for a Customer, that Customer may seek to transfer those Access Rights (to the extent held for the Customer's benefit) to itself so that the Customer becomes the Access Holder in respect of those Access Rights provided that the Customer is not seeking any change to the origin and destination of, or the commodity for, the Access Rights (Customer Initiated Transfer).
- (b) Where a Customer seeks to undertake a Customer Initiated Transfer, the Customer must provide written notice to Aurizon Network and the Access Holder (CIT Notice) which specifies:
 - (i) the date on which the Customer Initiated Transfer is to take effect (CIT Date) and to terminate (if any);
 - (ii) the Access Rights which the Customer is seeking to transfer from the Access Holder to itself (CIT Access Rights) by describing:
 - (A) the number and type of Train Services to be transferred (which must be an even number of Train Services (each service being a one way Train Service)) from the Access Holder; and
 - (B) the origin and destination of the Access Rights; and
 - (iii) any changes to the type of Train Services which the Customer requires once the Customer Initiated Transfer takes effect.
- (c) A Customer Initiated Transfer must meet the following conditions:
 - (i) the Transferee agrees to pay all Adjustment Charges (Transferred Adjustment Charges) that, but for the

Transfer of the CIT Access Rights, would have become payable by the Access Holder in relation to Train Services operated for the Access Holder utilising the CIT Access Rights prior to the commencement of the Customer's new Access Agreement; and

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

(d) If a Customer Initiated Transfer complies with **clause 7.4.7(b)** and **clause 7.4.7(c)**, Aurizon Network must promptly provide the Customer and Access Holder written notice approving the Customer Initiated Transfer and then on and from the Transfer Date (or such later date as agreed by the Customer and Aurizon Network):

(i) the CIT Access Rights are removed from the Access Holder's Access Agreement; and

(ii) those CIT Access Rights are granted to the Customer under a new Access Agreement on the same terms as the Access Holder's Access Agreement.

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

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

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

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

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

~~(w)~~

7.4.37.4.8 Relinquishments

(a) If an Access Holder wishes to relinquish any of its Access Rights it must give Aurizon Network reasonable notice of its intention (**Notice of Intention to Relinquish**).

- (b) A Notice of Intention to Relinquish must specify:
 - (i) the Access Rights, by reference to each Train Service Type, which the Access Holder intends to relinquish (**Nominated Access Rights**); and
 - (ii) the date (**Relinquishment Date**) on which the Nominated Access Rights are to be relinquished (provided that such Relinquishment Date must not be more than two (2) Years after the date on which the Access Holder gives the Notice of Intention to Relinquish to Aurizon Network).
- (c) Nominated Access Rights the subject of a Notice of Intention to Relinquish will not be relinquished until the later of:
 - (i) the date upon which the Access Holder pays the Relinquishment Fee to Aurizon Network; and
 - (ii) the Relinquishment Date.
- (d) Aurizon Network must:
 - (i) calculate the Relinquishment Fee; and
 - (ii) notify the Access Holder of the amount of the Relinquishment Fee and how the Relinquishment Fee was calculated, including details of any assumptions made when calculating the Relinquishment Fee and reasons for those assumptions,

at the following times:

 - (iii) if the Access Holder is considering relinquishing some or all of the Access Rights but has not given Aurizon Network a Notice of Intention to Relinquish in respect of those Access Rights, promptly following a request by the Access Holder; and
 - (iv) if the Access Holder has given Aurizon Network a Notice of Intention to Relinquish, not less than five (5) Business Days before the Relinquishment Date.
- (e) ~~The~~Subject to clause 7.4.3(k), the Relinquishment Fee is the amount calculated as follows:
 - (i) for coal carrying Train Services included in a Pre-Approval Date Coal Access Agreement, in accordance with that Pre-Approval Date Coal Access Agreement; or
 - (ii) in all other cases, the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the aggregate TOP Charges for the relevant Train Service Types that would have been payable for the

remainder of the term of the relevant Access Agreement assuming:

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

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

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

(f) [QRC Note: refer to separate mark-up of the payload/relinquishment provisions in the Standard Access Agreement and Standard Train Operations Deed. The following provisions will need to be updated to be consistent with that mark-up and as set out in the QRC's covering submission on this topic.] Aurizon Network may, in accordance, and subject to compliance, with clause 10 of the Standard Access Agreement, reduce the number of Nominated Monthly Train Services of an Access Holder for a Train Service Type if, at a point in time, the Average Annual Payload for that Train Service Type operated by the Train Operator exceeds the Maximum Payload for that Train Service Type.

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

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

- (i) the Access Holder may request the relinquishment of those Surplus Access Rights in accordance with the terms of clause 11 of the Standard Access Agreement;
- (ii) subject to compliance by each of the Access Holder and Aurizon Network with the terms of clause 11 of the Standard Access Agreement, some or all of those Surplus Access Rights may be relinquished; and
- (iii) Aurizon Network will notify the Train Operator of any changes to:

(A) the Nominated Monthly Operational Rights;

(B) the Maximum Payload for the relevant Train Service Type; and

(C) the Nominal Payload for the relevant Train Service Type.

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

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

(j) Where the Nominated Monthly Train Services of an Access Holder are reduced by Aurizon Network as contemplated by **clause 7.3.4(i)**, Aurizon Network will notify the Train Operator(s) in accordance with clause 12.3(c) of the Standard Train Operations Deed(s) of any changes to the:

(i) Nominal Payload for the Train Service Type;

(ii) Maximum Payload for the Train Service Type; and

(iii) Nominated Monthly Train Services for the Train Service Type.

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

(k) Where the Nominated Monthly Train Services of an Access Holder are reduced by Aurizon Network as contemplated by **clause 7.3.4(f)** or **clause 7.3.4(i)** no Relinquishment Fee will be payable by the relevant Access Holder to Aurizon Network.

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

7.4.47.4.9 General provisions

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

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

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

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

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

then:

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

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

an amount calculated as follows:

TOPB / TOPA

where:

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

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

(D) if **clause 7.4.4(d)(i)(C)** does not apply, an amount calculated as follows:

A / B

where:

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

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

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

(ii) if **clause 7.4.4(d)(i)** does not apply, zero (0).

- (e) If the Reduction Factor is calculated in accordance with **clause 7.4.4(d)** and the Reference Tariff in relation to the Nominated Access Rights includes a System Discount or System Premium, then the Transfer Fee or Relinquishment Fee, as applicable, must be further adjusted by Aurizon Network to account for any consequential decrease or increase (as applicable) in the System Discount or System Premium (as applicable) that would otherwise result in Aurizon Network under-recovering or over-recovering (as applicable) amounts from the Access Holder due to the application of the System Discount or System Premium (as applicable).
- (f) Aurizon Network must maintain, on its Website, worked examples of the calculation of a Relinquishment Fee.
- (g) The Access Holder may dispute, in accordance with the dispute provisions under the Access Agreement, the calculation of the Transfer Fee or Relinquishment Fee notified by Aurizon Network to the Transferor or the Access Holder (as applicable) under **clause 7.4.6(b)(ii)** or **7.4.3(d)(ii)** (including any assumptions made by Aurizon Network).

7.5 Mutually Exclusive Access Applications

7.5.1 *Notification and assistance*

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

7.5.2 *Queuing mechanism*

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

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

(D) a Customer Initiated Transfer.

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

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

(ii) in respect of Conditional Access Rights where:

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

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

(C) either:

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

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

then:

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

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

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

7.5.3 Mutually Exclusive Access Application

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

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

7.6 Capacity resumption

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

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

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

For clarity:

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

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

- (ii) specify:
 - (A) full details of the Access Rights for the Train Service Type to be resumed (**Resumed Access Rights**); and
 - (B) the date on which the resumption will take effect (which must be at least ten (10) Business Days after the Resumption Notice is given to the Access Holder) (**Resumption Date**).
- (f) If a valid Resumption Notice is given under this **clause 7.6**, the underutilised Access Rights for the Train Service Type will cease to form part of the Access Rights for the Train Service Type on and from the Resumption Date (other than for the purpose of calculating any TOP Charges that are payable as a result of the non-utilisation of any of the Resumed Access Rights prior to the Resumption Date).
- (g) Aurizon Network may withdraw a Resumption Notice prior to the later of the Resumption Date and fourteen (14) days after the determination of any dispute in relation to the Resumption Notice.
- (h) If Aurizon Network resumes an Access Holder's Access Rights in accordance with this **clause 7.6**, then the Access Charge payable by the Access Holder will be varied in accordance with the terms of the relevant Access Agreement and the Access Agreement will be varied accordingly.
- (i) If there is a dispute in connection with a decision by Aurizon Network to:
 - (i) issue an Information Request Notice and the Access Holder considers that Aurizon Network had insufficient grounds to do so under **clause 7.6(a)**; and
 - (ii) resume an Access Holder's Access Rights in accordance with this **clause 7.6**,

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

Part 7A: ~~Baseline~~-Capacity

7A.1 Intent

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

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

7A.2 Network Management Principles

7A.2.1 *Compliance with Network Management Principles*

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

7A.2.2 *Nature of the System Rules*

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

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

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

7A.2.4 Reviewing and amending the System Rules

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

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

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

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

(collectively, the **Affected Persons**) of the following matters:

 - (E) the outcome of the review and the necessity (or otherwise) to amend the System Rules;
 - (F) if the System Rules are to be amended, the proposed amendments (**Proposed Amendments**);
 - (G) reasons for the Proposed Amendments or the decision to not amend the relevant System Rules; and

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

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

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

7A.2.5 Approval of System Rules

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

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

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

additional information, to address the matters in the QCA's reasons within twenty (20) Business Days after the giving of that notice (or such other period as the QCA may in its absolute discretion determine).

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

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

7A.2.6 General provisions

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

7A.3 Supply Chain coordination

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

Management Principles, System Operating Parameters or System Rules for the relevant Coal System; and

- (iii) if requested by the Supply Chain Group, investigate operational changes that could increase Capacity in the relevant Coal System, including by conducting a review of the relevant System Operating Parameters under **clause 7A.5**.

- (c) Subject to the terms of this Undertaking, Aurizon Network must, in respect of each Supply Chain, ~~act in a way that:~~

- (i) ~~facilitates~~ reasonably facilitate an appropriate balance between cooperation between all elements of Supply Chains (in respect of which Access forms a part) to seek to maximise the performance of those Supply Chains and the other matters set out in **clause 2.2** of this Undertaking; and

~~(ii) ensures each Supply Chain is provided with a consistent level of service; and~~

~~(iii) does not unfairly differentiate in a material way between Access Seekers, Access Holders or Customers within a Supply Chain.~~

(ii) act in a way that is not inconsistent with Part 2.

- (d) Subject to **clause 7A.3(e)(ii)**, Aurizon Network must adopt any operational changes determined by each Supply Chain Group that could increase Capacity in the relevant Coal System, but only to the extent that the operational change does not:

- (i) adversely affect any existing Network Management Principles, System Rules or System Operating Parameters; or
- (ii) result in the Rail Infrastructure being operated in a manner inconsistent with the Safeworking Procedures and the Safety Standards.

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

- (e) Aurizon Network will not be obliged to:

- (i) undertake any activity referred to in **clause 7A.3(a)** or **clause 7A.3(b)** unless the reasonable cost of undertaking that activity is recoverable by Aurizon Network on the terms of this Undertaking;

- (ii) undertake any activity referred to in **clause 7A.3(d)**:

(A) where any upfront costs are associated with that activity, unless and until the reasonable costs of

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

7A.4 Capacity assessments

7A.4.1 ~~Baseline [not used]~~

~~7A.4.1~~ **Capacity Assessment**

~~(a)~~ Aurizon Network must:

- ~~(i)~~ undertake a Capacity Analysis and determine the Baseline Capacity (including the STP) for each Coal System; and

~~(ii)~~ 7A.4.2 ***make the outcomes of the Baseline Capacity Assessment conducted in accordance with clause 7A.4.1(b)(iv), including Aurizon Network's assumptions affecting Capacity and relied upon for the Baseline Capacity Assessment, (Baseline Capacity Assessment Report) available to the QCA,***

~~within six (6) Months (or such other period agreed during the consultation in **clauses 7A.4.1(b)(i)** and **(b)(ii)**) after the Approval Date.~~

~~(b)~~ The Baseline Capacity Assessment must include:

- ~~(i)~~ consultation by Aurizon Network with Access Holders and Access Seekers (and their Customer and Train Operator, as applicable) for Train Services operating in each Coal System in relation to each Coal System;
- ~~(ii)~~ consultation with each Supply Chain Group for each Coal System;
- ~~(iii)~~ consideration of the following factors:
 - ~~(A)~~ the terms of Access Agreements relating to Train Services operating in each Coal System; and
 - ~~(B)~~ the interfaces between the Rail Infrastructure and other facilities forming part of, or affecting, the relevant Supply Chain; and
- ~~(iv)~~ subject to the outcome of the consultation in **clauses 7A.4.1(b)(i)** and **(ii)** and any alternative matters agreed

during that process as being matters to be addressed by the report, a Baseline Capacity Assessment Report that:

- (A) sets out Aurizon Network's assumptions affecting Capacity and relied upon for the Baseline Capacity Assessment, including:
- (1) operational, maintenance, construction and planning assumptions in each Coal System;
 - (2) Possession Protocols;
 - (3) Aurizon Network's methodology for calculating Train Service Entitlements in each Coal System;
 - (4) Network Management Principles, System Operating Parameters and System Rules, if applicable, for each Coal System; and
 - (5) all capacity, operational and planning definitions relied on for the development of the Baseline Capacity Assessment; and
- (B) provides the following:

(a) Aurizon Network must undertake:

- (1) a static or dynamic (as appropriate) waterfall analysis of (as appropriate) Train Paths or Train Service Entitlements in relation to Capacity, analysing the Absolute Capacity, Existing Capacity, Planned Capacity, Committed Capacity and Available Capacity in each Coal System;
- (2) the STP for each Coal System;
- (3) the information provided under **paragraph (1)** converted (where possible) to monthly and annual:
 - number of Train Paths on each Coal System's branch lines and mainlines; and
 - tonnages on each Coal System's branch lines and mainlines, assuming the relevant Nominal Train Payload outlined in **Schedule F**; and
- (4) specified confidence intervals for the estimates provided in **paragraph (2)**;

reflecting the degree of reliability Aurizon Network ascribes to its capacity modelling outputs; and

~~(C) if Aurizon Network agrees with Access Holders and Access Seekers (and their Customer and Train Operator, as applicable) during the consultation in **clauses 7A.4.1(b)(i) and (ii)** that the Baseline Capacity Assessment Report will provide different measures of Capacity, Absolute Capacity, Existing Capacity, Planned Capacity, Committed Capacity and Available Capacity to that set out above, provides for such measures in addition to the measures outlined in **clause 7A.4.1(b)(iv)(B)(1)**.~~

~~(c) If Aurizon Network has submitted the Baseline Capacity Assessment Report to the QCA, the QCA:~~

~~(i) must publish the Baseline Capacity Assessment Report on its website (except that Aurizon Network may, in addition to an unredacted version, provide the QCA with a non-confidential version for publication that aggregates information regarding individual Access Seekers, Access Holders, Customers or Train Operators, if any, to avoid disclosing information that is commercially sensitive to an Access Seeker, Access Holder, Customer or Train Operator), together with a notice clarifying that the report is subject to QCA consideration and further amendment by Aurizon Network;~~

~~(ii) must assess the outcomes of the Baseline Capacity Assessment, including Aurizon Network's assumptions affecting Capacity and relied upon for the Baseline Capacity Assessment;~~

~~(iii) must seek submissions in respect of the Baseline Capacity Assessment; and~~

~~if deemed appropriate by the QCA, may engage an appropriately qualified and experienced expert to review the Baseline Capacity Assessment, in which case **clause 7A.4.4** applies;~~

~~(d) If the QCA agrees with Aurizon Network's Baseline Capacity Assessment Report having regard to this Undertaking and the matters referred to in section 138(2) of the Act, the QCA must publish a notice indicating the QCA's agreement to the Baseline Capacity Assessment Report on its website.~~

~~(e) If the QCA disagrees with Aurizon Network's Baseline Capacity Assessment Report having regard to this Undertaking and the matters referred to in section 138(2) of the Act:~~

- ~~(i) the QCA may request Aurizon Network to make amendments to the Baseline Capacity Assessment Report (including the STP for any Coal System); and~~
- ~~(ii) Aurizon Network must either:
 - ~~(A) make all of the requested amendments to the Baseline Capacity Assessment Report and resubmit the amended Baseline Capacity Assessment Report to the QCA; or~~
 - ~~(B) refuse to make some or all of the amendments requested to the Baseline Capacity Assessment Report, in which case it must:
 - ~~(1) if applicable, resubmit the amended Baseline Capacity Assessment Report to the QCA; and~~
 - ~~(2) provide to the QCA a statement of reasons as to the extent to which and why it has refused to accept some or all of the requested amendments;~~~~~~
- ~~(i) within thirty (30) days of the QCA's request under **clause 7A.4.1(e)(i)** (or such other period as the QCA may in its absolute discretion Capacity Analysis to determine) the Capacity; and~~
- ~~(f) If Aurizon Network has complied with **clause 7A.4.1(e)(ii)**, the QCA must publish on its website:
 - ~~(i) where **clause 7A.4.1(e)(ii)(A)** applies:
 - ~~(A) Aurizon Network's amended Baseline Capacity Assessment Report; and~~
 - ~~(B) a notice confirming the QCA's agreement to the amended Baseline Capacity Assessment Report; or~~~~
 - ~~(ii) where **clause 7A.4.1(e)(ii)(B)** applies, Aurizon Network's statement of reasons provided to the QCA in accordance with **clause 7A.4.1(e)(ii)(B)(2)**, and, as applicable:
 - ~~(A) Aurizon Network's amended Baseline Capacity Assessment Report;~~
 - ~~(B) if the QCA agrees with the amended Baseline Capacity Assessment, a notice confirming that agreement; and~~
 - ~~(C) if the QCA disagrees with the amended Baseline Capacity Assessment Report, a notice of that disagreement together with:
 - ~~(1) a statement of reasons; and~~~~~~~~

~~(2) an alternative Baseline Capacity Assessment Report (which includes the STP for each Coal System) prepared by the QCA, which must be:~~

- ~~• based on assumptions that have regard to existing Access Agreements, all relevant Laws, this Undertaking (including the Network Management Principles), any relevant System Rules and the System Operating Parameters; and~~
- ~~• consistent with this Undertaking and appropriate having regard to the matters listed in section 138(2) of the Act,~~

~~(Alternative Baseline Capacity Assessment Report).~~

~~(g) In undertaking an Alternative Baseline Capacity Assessment to prepare an Alternative Baseline Capacity Assessment Report under **clause 7A.4.1(f)**, the QCA:~~

~~(i) may engage an appropriately qualified and experienced expert to undertake the Alternative Baseline Capacity Assessment and prepare the Alternative Baseline Capacity Assessment Report, in which case **clause 7A.4.4** applies; and~~

~~(ii) must:~~

~~(A) invite persons to make submissions on the Alternative Baseline Capacity Assessment Report to the QCA within a reasonable time specified by the QCA; and~~

~~(B) consider any submissions it receives within the time specified.~~

~~(h) When:~~

~~(i) Aurizon Network's Baseline Capacity Assessment Report has been agreed to by the QCA under **clause 7A.4.1(d)**, **7A.4.1(f)(i)(B)** or **clause 7A.4.1(f)(ii)(B)**; or~~

~~(ii) the QCA publishes the Alternative Baseline Capacity Assessment Report under **clause 7A.4.1(f)**,~~

~~subject to **clause 7A.4.1(i)**, Aurizon Network must, for each Coal System, publish on the Website in a prominent place readily accessible by the QCA and Access Seekers and Access Holders (and their Customer and Train Operator, as applicable):~~

- ~~(iii) — the Baseline Capacity Assessment Report;~~
- ~~(iv) — the Alternative Baseline Capacity Assessment Report (if any);~~
- ~~(v) — any notice of agreement or notice of disagreement (as applicable) or statement of reasons published on the QCA's website in accordance with **clauses 7A.4.1(d) and 7A.4.1(f)**; and~~
- ~~(vi) — any final reports provided by an expert engaged by Aurizon Network or the QCA under this **clause 7A.4.1**.~~
- ~~(i) — Aurizon Network must provide any document it is required to provide or publish under this **clause 7A.4.1**, as a complete and transparent document to:~~
 - ~~(i) — the QCA on an unredacted basis; and~~
 - ~~(ii)(i) — stakeholders and when published on its Website:~~
 - ~~(A) — in respect of agreements entered into after the Approval Date and to the extent permitted by any confidentiality obligations it may have in relation to the information contained in that document (and if those obligations permit disclosure if required by this Undertaking then Aurizon Network is required to disclose the information contained in that document), on an unredacted basis; and~~
 - ~~(B) — in respect of agreements entered into prior to the Approval Date or if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:~~
 - ~~(1) — Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in that document on an unredacted basis;~~
 - ~~(2) — in respect of the information referred to in paragraph (i) or for which consent is obtained under paragraph (ii)(A), on an unredacted basis; and~~
 - ~~(3) — in respect of the information that does not satisfy paragraph (i) or for which consent is not obtained under paragraph (ii)(A):~~
 - ~~● — to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and~~

~~to the extent not possible, on a redacted basis.~~

- ~~(j) Aurizon Network must use reasonable endeavours to agree to confidentiality obligations that:~~
- ~~(i) do not prevent the disclosure of the information contained in the Baseline Capacity Assessment Report; and~~
 - ~~(ii) permit disclosure of information required by this Undertaking;~~
- ~~But:~~
- ~~(ii) in any event, must not agree to any confidentiality obligations that prevent disclosure of the information contained in the Baseline Capacity Assessment Report to the QCA;~~

~~provided that Aurizon Network will be deemed to have complied with its obligations under this **clause 7A.4.1(j)** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with **clauses 7A.4.1(j)(i) and 7A.4.1(j)(ii)**, whether or not the Access Seeker actually agrees to the inclusion of such obligations in the Access Agreement.~~

7A.4.2 — Capacity Assessment

- ~~(a)(ii) Aurizon Network must undertake~~ a static or dynamic (as appropriate) System Capacity Analysis ~~and to~~ determine the System Capacity:-

for each Coal System and if that Coal System has one or more existing Expansion Tariffs, separately for each relevant Expansion:

- ~~(i)(iii)~~ on each anniversary of the date the QCA ~~publishes~~published Aurizon Network's Baseline Capacity Assessment Report under ~~clause 7A.4.1(d) or clause 7A.4.1(f) (as applicable); and the 2016 Undertaking; and [QRC Note: a baseline capacity assessment report may be required for any existing Expansions which are subject to an Expansion Tariff, where this has not already been undertaken (eg WIRP).]~~

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

- (b) A Capacity Assessment must:
- (i) include consideration of outcomes of any consultation by Aurizon Network with Access Holders and Access Seekers (and their Customer and Train Operator, as applicable) for Train Services operating in that Coal System or Expansion in relation to that assessment;
 - (ii) include the STP for each Coal System or Expansion;

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

(c) A System Capacity Assessment must:

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

(d) Aurizon Network will promptly make [available to the QCA, Access Holders, Access Seekers and, if applicable, Customers](#), the outcomes of:-

(i) a Capacity Assessment, ~~(Preliminary Capacity Assessment Report)~~; and

(ii) a System Capacity Assessment (Preliminary System Capacity Assessment Report).

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

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

(i) the QCA; or

(ii) the Access Holders (or Customers):

(A) for at least 60% of the Train Paths in relation to a Coal System [or Expansion](#) (as determined in accordance with **clause 7A.4.2(f)**); or

(B) representing in number 60% of the Access Holders (or Customers) with Access to the Coal System [or Expansion](#) (as determined in accordance with **clause 7A.4.2(g)**),

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

(iii) Aurizon Network must engage an appropriately qualified and experienced expert acceptable to the QCA to review the Capacity Assessment [or System Capacity Assessment](#) (including the STP) ~~and any assumptions including the assumptions listed in clause 7A.4.1(b)(iv)(A), as applicable to the Capacity Assessment;~~

(iv) **clause 7A.4.4** applies; and

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

- to the extent not possible, on a redacted basis.

~~(v)~~(f) Within 20 Business Days of the provision of the expert's report under **clause 7.6(e)(v)**, Aurizon Network will make available to the QCA, Access Holders, Access Seekers and, if applicable, Customers ~~after receiving the expert's report—its response to that report, which shall, in respect of each recommendation in that report, provide:~~

- (i) Aurizon ~~Network must use reasonable endeavours~~ Network's view as to ~~adopt the~~ whether it is a reasonable ~~recommendations made in an independent expert report undertaken in accordance with **clause 7A.4.2(d)** and~~ recommendation;
- (ii) if Aurizon Network considers that it is not a reasonable recommendation, Aurizon Network's reasons for that view; and
- (iii) if Aurizon Network considers that it is a reasonable recommendation, how Aurizon Network intends to modify its Capacity Assessment or System Capacity Assessment to take account of that recommendation.

(g) Aurizon Network will amend the Preliminary Capacity Assessment Report or Preliminary System Capacity Assessment Report to the extent required to take ~~into~~ account of any ~~reasonable recommendations~~ modifications that may be made by Aurizon Network in accordance with **clause 7.6(f)(iii)**.

(h) If an expert's report under **clause 7.6(e)(v)** determines that there is no Available Capacity or there is no System Available Capacity (as applicable) and Aurizon Network subsequently seeks to contract any Capacity in respect of that Coal System or Expansion, Aurizon Network must provide prior written notice to each Access Holder in respect of the relevant Coal System or Expansion, as well as the QCA.

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

- (i) the Train Paths for an Access Holder only include those Train Paths for the Access Holder relating solely to the relevant Coal System or Expansion;
- (ii) the Train Paths must be calculated as at the date on which Aurizon Network receives a notice under **clause 7A.4.2(d) (Notice Date)**;
- (iii) subject to ~~**clause 7A.4.2(f)(iv)**~~ **7.6(i)(iv)**, the Train Paths must be determined (based on the Access

Rights specified in that Access Agreement) for a 12 Month period starting on the Notice Date; and

- (iv) where:
 - (A) the Access Agreement is due to expire less than twelve (12) Months after the Notice Date; and
 - (B) there has been a Renewal in relation to the relevant Access Rights under that Access Agreement,

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

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

- (i) an Access Holder who holds Access to the Coal System or Expansion on behalf of more than one Customer it will have the number of votes equal to the number of Customers in that Coal System or Expansion for which it holds the Access Rights under the relevant Access Agreements;
- (ii) if an Access Holder or Customer is a Related Party of another Access Holder or Customer in that Coal System or in respect of that Expansion, it will be counted once only;
- (iii) the number of Access Holders or Customers must be calculated as at the date on which Aurizon Network receives a notice under **clause 7A.4.2(d) (Notice Date)**;
- (iv) subject to ~~clause 7A.4.2(g)(v)~~, **7.6(j)(v)**, the number of Access Holders or Customers must be determined for a twelve (12) Month period starting on the Notice Date; and
- (v) where:
 - (A) the Access Agreement is due to expire less than twelve (12) Months after the Notice Date; and
 - (B) there has been a Renewal in relation to the relevant Access

Rights under that Access Agreement,

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

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

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

(ii) the System Capacity Assessment Report;

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

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

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

(i) the QCA on an unredacted basis; and

(ii) stakeholders and when published on its Website;

~~(ii) — stakeholders and when published on its Website:~~

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

(B) in respect of agreements entered into prior to the Approval Date of the 2016 Undertaking or if complete disclosure is not

permitted by Aurizon Network's confidentiality obligations:

- (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the Capacity Assessment Report on an unredacted basis;
- (2) in respect of the information referred to in **paragraph (i)** or for which consent is obtained under **paragraph (ii)(A)**, on an unredacted basis; and
- (3) in respect of the information that does not satisfy **paragraph (i)** or for which consent is not obtained under **paragraph (ii)(A)**:
 - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
 - to the extent not possible, on a redacted basis.

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

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

provided that Aurizon Network will be deemed to have complied with its obligations under this ~~clause 7A.4.2(i)~~**7.6(m)** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with ~~clause 7A.4.2(i)~~**(7.6(m)(i))** and ~~clause 7A.4.2(i)~~**(7.6(m)(ii))**, whether or not the Access Seeker actually agrees to the inclusion of such obligations in the Access Agreement.

7A.4.3 Capacity Deficit or System Capacity Deficit

~~(a)~~ — If:

(a) If a System Capacity Assessment reveals there is a System Capacity Deficit, Aurizon Network must not execute an Access Agreement that would increase the size of that System Capacity Deficit prior to constructing any relevant new Expansion for that Coal System or existing Expansion.

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

(i) if there is no Alternative Baseline Capacity Assessment Report for the relevant Coal System or Expansion, the Baseline Capacity Assessment Report ~~agreed to by the QCA under clause 7A.4.1~~; or

~~(ii)~~ ~~theif there is an~~ Alternative Baseline Capacity Assessment Report ~~(if any), or~~

~~(iii)~~(ii) for the relevant Coal System or Expansion, the Alternative Baseline Capacity Assessment Report,

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

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

~~(v)~~ within twenty (20) Business Days after the date:

~~(A)~~ Approval Date (**Publication Date**), and only in circumstances where a notice is published under clause 7A.4.1(d) or an amended Baseline Capacity Assessment Report or Alternative preliminary report in respect of the Capacity Deficit under a Baseline Capacity Assessment Report ishas not been published under clause 7A.4.1(f) (whichever is later); or

~~(B)~~ of the Capacity Assessment Report,

(ii) ~~as applicable (**Publication Date**), 2016 Undertaking,~~ submit a preliminary report to the QCA (and publish such preliminary report in a prominent place on its Website) setting out:

~~(C)~~(A) the relevant Coal System or Expansion and the location in that Coal System or Expansion where the Capacity Deficit arises;

~~(D)~~(B) the cause and quantum of the Capacity Deficit;

~~(E)~~(C) the Access Holders and, if any, Access Seekers affected by the Capacity Deficit;

~~(F)~~(D) Aurizon Network's consultation plan (which, when followed, must satisfy the requirements of **clauses 7A.4.3(b)(ii) and 7A.4.3(b)(iii); 7.6(c)(i)(B), 7.6(c)(i)(C) and 7.6(c)(ii)**; and

~~(G)~~(E) Aurizon Network's preliminary views on solutions which could most efficiently address the Capacity Deficit; and

(iii) within six (6) Months after-;

(A) the Publication Date; or

(B) where the relevant preliminary report in respect of the Capacity Deficit under a Baseline Capacity Assessment Report has been published under the 2016 Undertaking, the date of publication of that report under the 2016 Undertaking.

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

~~(A)~~(C) the preferred changes to the operation and management of the Rail Infrastructure that can address the Capacity Deficit (including estimates of costs (if any) to implement those changes);

~~(B)~~(D) if relevant, evidence of Aurizon Network's consultation under **clauses 7A.4.3(e)(ii) 7.6(c)(i)(B) and 7A.4.3(b)(iii) 7.6(c)(i)(C)** that explains why changes to the operation and management of

the Rail Infrastructure cannot address the Capacity Deficit;

~~(E)~~(E) a shortlist of Expansions considered by Aurizon Network and through the consultation under **clause 7A.4.3(b)(iii)7.6(c)(i)(C)** (including estimates of costs to undertake each Expansion); and

~~(F)~~(F) any Expansion which Aurizon Network and the affected Access Holders or Access Seekers have agreed will address the Capacity Deficit.

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

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

(ii) within twenty (20) Business Days after the date of the Capacity Assessment Report (also a **Publication Date**),

submit a preliminary report to the QCA (and publish such preliminary report in a prominent place on its Website) which sets out the matters listed in clauses 7A.1.1(a)(i)(A)(A) to (E); and

(iii) within six (6) Months after the Publication Date, submit a detailed report to the QCA showing the outcome of Aurizon Network's analysis of the Capacity Deficit and solutions which could address the Capacity Deficit and which includes the matters listed in **clauses 7.6(m)(iii)(C) to (F)**.

(c) In preparing the report specified in **clause 7.6(m)(iii) or clause 7.6(b)(iii)** (as applicable), Aurizon Network must:

~~(b)~~(i) undertake at least the following:

~~(i)~~(A) a review of ~~the assumptions which it utilises in the~~ operation and management practices, as set out in the assumptions used in the applicable Capacity assessment, in respect of the

Rail Infrastructure to ~~identify if~~ ascertain whether amendments to those ~~assumptions~~ practices would address the Capacity Deficit;

(B) consultation with Access Holders and Customers, if applicable, Train Operators, to identify if there are alternative supply chain capacity options which could address the Capacity Deficit; and

(C) consultation with Access Holders and Customers, ~~if applicable, Train Operators, to identify and consider options for Expansions which could address the Capacity Deficit, and~~

(ii) use reasonable endeavours to consult with Supply Chain Groups and terminal operators to identify if there are alternative supply chain capacity options which could address the Capacity Deficit; ~~and~~

~~(iii) — consultation with Access Holders and Customers to identify and consider options for Expansions which could address the Capacity Deficit.~~

~~(e)~~ (d) The QCA may publish any report provided by Aurizon Network under ~~clause 7A.4.3(a)~~ clauses 7A.1.1(a) and 7.6(b).

~~(d)~~ (e) If Aurizon Network, and affected Access Holders ~~or affected Access Seekers agree consider that~~ an Expansion ~~will~~ is the best option to address the Capacity Deficit, then:

- (i) **Part 8** will apply to that Expansion;
- (ii) Aurizon Network must negotiate in good faith with the affected Access Holders and the affected Access Seekers, individually and as required, the terms of a funding arrangement for the Expansion (but any Dispute regarding who will fund or the proportion will be determined in accordance with **Part 11** only if all parties agree to the Dispute being resolved in accordance with **Part 11**); ~~...~~

~~(e)~~ (f) Aurizon Network must provide, or make available in accordance with this **clause 7A.4.3**, any information or report in respect of the Capacity Deficit as a complete and transparent document to:

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

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

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

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

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

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

- to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and

- to the extent not possible, on a redacted basis.

~~(f)~~[\(g\)](#) Aurizon Network must use reasonable endeavours to agree to confidentiality obligations that:

(i) do not prevent the disclosure of the information in respect of the Capacity Deficit; and

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

but

- (iii) in any event, ~~it~~ must not agree to any confidentiality obligations that prevent disclosure to the QCA,

provided that Aurizon Network will be deemed to have complied with its obligations under this ~~clause 7A.4.3(f)~~ **7.6(g)** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with ~~clause 7A.4.3(f)(i)~~ **7.6(g)(i)** and ~~clause 7A.4.3(f)(ii)~~ **7.6(g)(ii)**, whether or not the ~~access seeker~~ Access Seeker actually agrees to the inclusion of such obligations in the Access Agreement.

~~(g)~~ (h) Nothing in this ~~clause 7A.4.3~~ **7A.4.3** affects or limits Aurizon Network's obligations or liabilities in respect of an Access Agreement or any other agreement entered into in accordance with this Undertaking.

7A.4.4 Expert engagement

Where this ~~clause 7A.4 allows~~ requires Aurizon Network ~~or the QCA~~ **(Appointing Party)** to engage an appropriately qualified and experienced expert, the following provisions apply:

- (a) the expert must:
 - (i) act independently; ~~and~~
 - (ii) give an undertaking to ~~the Appointing Party~~ Aurizon Network to act independently of all relevant persons (including Aurizon Network and any individual Access Seeker, Access Holder, Customer or Train Operator);
 - (iii) have no interest or duty which conflicts or may conflict with its function;
 - (iv) not be an employee of Aurizon Network or a Related Party of Aurizon Network;
 - (v) have regard to the provisions of this Undertaking and consider all submissions made to it by Aurizon Network or any Access Seeker, Access Holder, Customer or Train Operator on a timely basis;
 - (vi) give an undertaking to Aurizon Network and the QCA to keep confidential and not use for another purpose all information and other matters coming to its knowledge by reason of its appointment and performance of its review;
 - (vii) review the Capacity Assessment and the Preliminary Capacity Assessment Report or the System Capacity

Assessment and the Preliminary System Capacity Assessment Report (as applicable);

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

~~(viii)~~(ix) provide a final report to Aurizon Network and the QCA ~~in respect of the expert's assessment~~ within a timeframe agreed between ~~the Appointing Party~~Aurizon Network and the expert;

(b) the expert may:

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

(ii) develop assumptions that it considers are appropriate;

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

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

(c) Aurizon Network must:

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

(ii) run all scenarios requested by the expert and provide the expert with transparency as to Aurizon Network's capacity model, the associated modelling methodology and the outcomes of those requested scenarios.

7A.5 System Operating Parameters

- (a) Aurizon Network must ensure that System Operating Parameters are in place for each Coal System at all times.
- (b) In reviewing the System Operating Parameters for a Coal System, Aurizon Network will:
 - (i) notify the QCA (who may, if determined necessary by the QCA, publish the information provided on its Website) and each of the following:
 - (A) Access Holders and Access Seekers (and Customers but only to the extent that the Access Holder or Access Seeker has given Aurizon Network those Customer contact details) whose Train Services will be affected by any amendments necessary as a result of such review;
 - (B) the applicable Supply Chain Group (if any);
 - (C) affected infrastructure providers for infrastructure forming part of the relevant Supply Chain (including, for example, the unloading facility operator that is the destination of Train Services operating in the relevant Coal System);
 - (D) affected Infrastructure Service Providers; and
 - (E) affected Railway Operators,of the relevant System Operating Parameters and the time in which to make submissions;
 - (ii) consider any submissions received in respect of the proposed System Operating Parameters or whether any variation of the System Operating Parameters is required (as applicable);
 - (iii) seek to be consistent with Aurizon Network's assumptions affecting Capacity and relied upon for the most recent Capacity Assessment (or Baseline Capacity Assessment, as applicable);
 - (iv) ensure that any amendments to the System Operating Parameters:
 - (A) do not conflict with any provision of this Undertaking; and
 - (B) are appropriate having regard to the matters listed in section 138(2) of the Act; and
 - (v) respond (with reasons) to any such submissions within fifteen (15) Business Days of receipt of the submission (or such longer period approved by the QCA) including whether

and, if so, how Aurizon Network has varied the proposed or existing System Operating Parameters (as applicable) in response to those submissions.

- (c) Without limitation to **clause 7A.5(b)**, Aurizon Network will review the System Operating Parameters for a Coal System as soon as practicable after:
- (i) Aurizon Network becomes aware that any sustained change has occurred, or will occur, to that Coal System that materially affects the System Operating Parameters;
 - (ii) a new coal basin or port terminal is connected to the Rail Infrastructure;
 - (iii) the completion of a major Expansion; or
 - (iv) being requested by the QCA or by 60% of Access Holders (or its Customers) on the relevant Coal System.

~~(d) If the QCA prepares an Alternative Baseline Capacity Assessment Report under **clause 7A.4.1(f)** and determines that the System Operating Parameters for a Coal System require amendment, the QCA may include:~~

- ~~(i) the review and amendment of the System Operating Parameters in the Alternative Baseline Capacity Assessment; and~~
- ~~(ii) any amended System Operating Parameters in the Alternative Baseline Capacity Assessment Report.~~

~~For clarity, the System Operating Parameters included in the Alternative Baseline Capacity Assessment Report will not be taken to be, or influence, the System Operating Parameters published by Aurizon Network.~~

~~(e)~~(d) Nothing in this **clause 7A.5** obliges Aurizon Network to vary the System Operating Parameters.

~~(f)~~(e) Aurizon Network must keep its most current System Operating Parameters available on the Website.

~~(g)~~(f) Aurizon Network must provide the current System Operating Parameters as a complete and transparent document to:

- (i) the QCA on an unredacted basis;
- (ii) stakeholders and when published on its Website:
 - (A) in respect of agreements entered into after the Approval Date [of the 2016 Undertaking](#) and to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the System Operating Parameters (and if those obligations permit disclosure if required by this

Undertaking then Aurizon Network is required to disclose the information contained in the System Operating Parameters), on an unredacted basis; and

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

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

(2) in respect of the information ~~referred to in paragraph (i) or~~ for which consent is obtained under **paragraph (ii)(AB)(1)**, on an unredacted basis; and

(3) in respect of the information ~~that does not satisfy paragraph (i) or~~ for which consent is not obtained under **paragraph (ii)(AB)(1)**:

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

~~(h)~~[\(g\)](#) Aurizon Network must use reasonable endeavours to agree to confidentiality obligations which:

- (i) do not prevent the disclosure of the information contained in the System Operating Parameters; and
- (ii) permit disclosure of information required by this Undertaking, but

(iii) in any event, must not agree to any confidentiality obligations that prevent disclosure to the QCA,

provided that Aurizon Network will be deemed to have complied with its obligations under this **clause ~~7A.5(h)~~7A.5(g)** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with **clause ~~7A.5(h)(i)~~7A.5(g)(i)** and **clause ~~7A.5(h)(ii)~~7A.5(g)(ii)**, whether or not

the access seeker actually agrees to the inclusion of such obligations in the Access Agreement.

(h) Aurizon Network must ensure that the System Operating Parameters are consistent with Good Engineering Practices.

(i) On, or as soon as reasonably practicable after, the Approval Date, Aurizon Network will make available to the QCA and to each Access Holder (and its Customer and Train Operator, if any) the System Operating Parameters (as at the Approval Date) relevant to that Access Holder or Train Operator in a form that does not disclose any confidential information regarding individual Access Holders, Customers or Train Operators, to avoid disclosing any information that is commercially sensitive to an Access Holder, Customer or Train Operator.

7A.6 Network Development Plan

(a) Aurizon Network must develop a Network Development Plan and keep its most current Network Development Plan available on the Website.

(b) The Network Development Plan must contain the following information:

(i) a Capacity Analysis (which must include the constrained Track sections) of each Coal System broken down by Existing Capacity and Committed Capacity (in each case on the assumption of no Operational Constraints), utilising the most recent Capacity Assessment or the Baseline Capacity Assessment, (as applicable), including:

(A) a progressive five-year plan of Capacity prepared using a dynamic simulation modelling assessment taking into account:

- (1) existing Train Service Entitlements;
- (2) any Train Paths relating to an Access Seeker (or a Renewing Access Seeker (if any)) that:

- has submitted a properly completed Access Application under **Part 4**; and
- has provided all of the information set out in **clause 4 of Schedule B**; and
- is the subject of a Pre-feasibility Study which has commenced in respect of an Expansion; and

- (B) a static simulation modelling assessment (if Aurizon Network considers it appropriate, acting reasonably) of the Rail Infrastructure and all planned and anticipated Expansions (whether or not it is to occur in the next five (5) years),

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

~~(C)~~(A) growth scenarios within each Coal System associated with an optimisation project at a terminal in each port precinct connected to the Rail Infrastructure; and

~~(D)~~(B) assumed Expansions which would be required to support expansions at each port connected to the Rail Infrastructure, on the assumption that each port expansion would be sufficient to support an additional berth at the relevant port;

- (ii) the impact of Operational Constraints on Existing Capacity, Committed Capacity and Available Capacity;
- (iii) in respect of each Expansion being studied or investigated by Aurizon Network as a Concept Study, Pre-feasibility Study or Feasibility Study, the proposed scope, standard and preliminary determination of the cost of the proposed Expansion;
- (iv) if Aurizon Network considers it appropriate (acting reasonably), an overview of opportunities for increasing Existing Capacity to support expansions in each port precinct connected to the Rail Infrastructure, on the assumption that each port expansion would be sufficient to support an additional shiploading berth;
- (v) a comparison of opportunities for increasing Existing Capacity within each Coal System; and
- (vi) the studies and investigations that Aurizon Network is undertaking or expects to undertake to inform the next review and update of the Network Development Plan.

- (c) Aurizon Network will review and update the Network Development Plan annually or more frequently as it considers necessary, including:
 - (i) if circumstances change in a way that Aurizon Network expects will materially affect the Network Development Plan;
 - (ii) if a new coal basin or port terminal is connected to the Rail Infrastructure;

- (iii) at the completion of a major Expansion; or
 - (iv) where requested by the QCA or by 60% of Access Holders (or its Customers) on the relevant Coal System.
- (d) In developing or reviewing the Network Development Plan, Aurizon Network must:
- (i) ensure the Network Development Plan has regard to:
 - (A) the Network Management Principles;
 - (B) any:
 - (1) System Operating Parameters;
 - (2) Supply Chain Master Plan; and
 - (ii) notify the QCA (who may, if determined necessary by the QCA, publish the information provided on its Website) and each of the following:
 - (A) Access Holders and Access Seekers and its Customers (but only to the extent that the Access Holder or Access Seeker has given Aurizon Network those Customer contact details);
 - (B) affected infrastructure providers for infrastructure forming part of the relevant Supply Chain (including, for example, the unloading facility operator that is the destination of Train Services operating in the relevant Coal System);
 - (C) affected Infrastructure Service Providers;
 - (D) affected Railway Operators; and
 - (E) other interested parties identified by Aurizon Network in relation to the proposed Network Development Plan;
 - (iii) consider submissions received from any interested parties;
 - (iv) have regard to:
 - (A) forecast changes in demand for Queensland coal exports;
 - (B) any relevant Access Applications;
 - (C) any relevant port terminal developments or development of other out-loading facilities;
 - (D) any relevant previous or current studies undertaken by Aurizon Network; and
 - (E) other developments or circumstances which in Aurizon Network's opinion are relevant to the Network Development Plan;

- (v) make a draft Network Development Plan available to the QCA and each person identified in **clause 7A.6(d)(ii)** and provide twenty (20) Business Days for comments or submissions to be made by those persons before finalising the Network Development Plan for publication on the Website.
- (e) If Access Holders, Access Seekers or its Customers (if relevant) notify Aurizon Network that they require a peer review to be conducted of the Network Development Plan, then Aurizon Network must cooperate with a consultant appointed to conduct that peer review by and at the cost of the Access Holders, Access Seekers and its Customers (if relevant), except that Aurizon Network is not obliged to cooperate with more than one consultant for a review contemplated under this clause.
- (f) Any Dispute regarding the contents of the Network Development Plan must be determined in accordance with **Part 11**.
- (g) Neither anything in this **clause 7A.6**, nor the development, review or notification of a Network Development Plan, gives rise to any commitment by, representation by or obligation on Aurizon Network in relation to funding, constructing, permitting or otherwise implementing any aspect of the Network Development Plan.

Part 8: Network development and Expansions

8.1 Overview

This **Part 8** sets out various provisions relating to the creation of new Rail Infrastructure, in particular:

- (a) **clause 8.2** sets out general principles regarding limitations on Aurizon Network's rights and obligations to fund, construct or permit the creation of new Rail Infrastructure;
- (b) **clause 8.3** sets out principles in relation to Aurizon Network's undertaking of Concept Studies, Pre-feasibility Studies and Feasibility Studies;
- (c) **clause 8.4** sets out principles in relation to the way in which Concept Studies, Pre-feasibility Studies and Feasibility Studies are to be funded;
- (d) **clause 8.5** sets out how Capacity is provisionally allocated if a Study Funding Agreement for a Feasibility Study becomes unconditional;
- (e) **clause 8.6** sets out the ability for third parties to step into a Concept Study, Pre-feasibility Study or Feasibility Study in certain circumstances;
- (f) **clause 8.7** sets out general principles in relation to the funding of Expansions;
- (g) **clause 8.8** describes how Users may fund all or part of an Expansion; and
- (h) **clause 8.9** sets out provisions in relation to Capacity Shortfalls and Access Agreements which are conditional on Expansions and Aurizon Network's obligation to deliver a minimum level of Capacity out of an Expansion.

8.2 General principles

8.2.1 *Rights and obligations to fund, construct or permit the creation of new Rail Infrastructure*

- (a) Subject to **clauses 8.2.1(b), 8.2.1(c), 8.2.1(d)** and **Part 9**, nothing in this Undertaking:
 - (i) obliges Aurizon Network to fund, construct or permit an Expansion, or to agree to do so; or
 - (ii) prevents Aurizon Network from agreeing (in its absolute discretion), or deciding itself, to fund, construct or permit an Expansion, or any part thereof.
- (b) Aurizon Network may, at its discretion, fund all or part of the construction of any Expansion and must provide notice of that

decision (including details of the amount of funding) to the parties requesting the Expansion. The delivery of that notice by Aurizon Network will create a funding obligation on Aurizon Network to provide the relevant funding for the purposes of this Undertaking.

- (c) Notwithstanding any other provision of this **Part 8**, Aurizon Network is obliged to construct or permit an Expansion only to the extent that:
- (i) Aurizon Network is satisfied (acting reasonably) that the Expansion is technically and economically feasible and consistent with the safe and reliable operation of the Rail Infrastructure.

The proposed Expansion is deemed to be technically and economically feasible and consistent with the safe and reliable operation of the Rail Infrastructure unless:

- (A) within ten (10) Business Days after entry into a relevant Study Funding Agreement for a Feasibility Study for that Expansion, Aurizon Network has notified the Access Seekers selected to utilise an Expansion in accordance with this **Part 8** that the Expansion does not satisfy those requirements; or
 - (B) despite Aurizon Network not having notified the relevant Access Seekers, there has been a material change so that the proposed Expansion no longer satisfies those requirements (in which case Aurizon Network will notify the relevant Access Seekers of the material change and the basis of its decision not to construct or permit the Expansion);
- (ii) the Expansion is fully funded through one of the following means:
- (A) Aurizon Network is obliged by this Undertaking to fund the Expansion or, where Aurizon Network is not obliged by this Undertaking, it agrees (at its discretion) to fund the Expansion;

- (B) Expansion Funders agree to fund the Expansion in accordance with a User Funding Agreement for the Expansion; or
 - (C) Expansion Funders partially fund the Expansion under a User Funding Agreement and the remainder of the funding is provided by Aurizon Network;
- (iii) Aurizon Network and all other relevant parties have entered into User Funding Agreements, Access Conditions and/or an Access Agreement (as the case may be) and such agreements are, or have become, unconditional in accordance with their terms (except for the delivery of the Capacity being generated by the Expansion); and
 - (iv) unless otherwise agreed by Aurizon Network, the Expansion (whether or not funded in whole or part by a person other than Aurizon Network) is or will be leased from the State, an Authority or a trustee as contemplated by SUFA or owned, and in either case operated, by Aurizon Network.
- (d) The pricing principles to apply to an Expansion are set out in **Part 6** and nothing in this **Part 8** limits the application of **Part 6**.
 - (e) Notwithstanding any other provision of this **Part 8** and **Part 6**, to the extent that Aurizon Network is obliged to undertake asset replacement works in order to meet its obligations under an Access Agreement, Aurizon Network will be responsible for the funding of Asset Replacement and Renewal Expenditure as well as undertaking or procuring the undertaking of the asset replacement covered by that funding. (Aurizon Network's obligations to provide that funding and to undertake or procure the asset replacement will be governed by the terms of the relevant Access Agreement).
 - (f) Aurizon Network is not obliged to fund or construct a Customer Specific Branch Line (subject to its obligations in relation to Connecting Infrastructure). However, nothing in this Undertaking prevents Aurizon Network and the Customer seeking to construct the Customer Specific Branch Line from agreeing that Aurizon Network may do so.
 - (g) Aurizon Network's obligations in respect of Connecting Infrastructure are set out in **Part 9** and nothing in this **Part 8** limits Aurizon Network's obligations under **Part 9**.

- (h) Aurizon Network will not unnecessarily or unreasonably delay any Expansion that it is obliged to construct in accordance with this Undertaking provided that after any relevant agreement with any Access Seeker, Access Holder, Customer or Expansion Funder (as applicable), including any relevant User Funding Agreement, is executed for that Expansion then Aurizon Network's obligations in relation to any delay are solely governed by that agreement.
- (i) Aurizon Network must, in accordance with **Part 4**, enter into Access Agreements with relevant Access Seekers for Capacity to be created by an Expansion.
- (j) It is acknowledged that:
 - (i) Aurizon Network and an Access Seeker (or, as applicable, Customer) may agree (in each party's absolute discretion) to enter into arrangements relating to, or in connection with, funding, constructing or permitting an Expansion or Customer Specific Branch Line necessary to provide additional Capacity required to grant Access Rights requested by that Access Seeker (or, as applicable, Customer);
 - (ii) Aurizon Network and an Access Seeker (or, as applicable, Customer) may agree that Aurizon Network will fund and construct a Customer Specific Branch Line; and
 - (iii) Aurizon Network may elect to otherwise invest in the Rail Infrastructure on its own account,provided that any such agreement or election must not:
 - (iv) in any way unfairly prejudice or unfairly disadvantage another Access Seeker (or, as applicable, Customer) who is seeking Capacity to be created by an Expansion or Customer Specific Branch Line under this **Part 8**; or
 - (v) affect the priority of allocation of Capacity between Access Seekers that would otherwise apply under **Part 7 or clause 8.5**.
- (k) To the extent that this Undertaking is inconsistent with a User Funding Agreement or a Studies Funding Agreement for a Pre-feasibility Study or a Feasibility Study:
 - (i) subject to **clause 8.2.1(k)(ii)**, the User Funding Agreement or Studies Funding Agreement (as applicable) will prevail to the extent of that inconsistency (but only as between Aurizon Network and the other parties to those agreements, any relevant Access Seeker (if its Customer is one of those

- parties) and any relevant Customer (if its Access Seeker is one of those parties)); and
- (ii) if the inconsistency relates to the right or ability of a party to make submissions, provide information or refer disputes to the QCA, this Undertaking will prevail.
- (l) Except where set out to the contrary in this **Part 8**, the person responsible for:
- (i) the investigation and design of any Expansion that is necessary in order to provide any Access Rights requested by an Access Seeker:
 - (A) must be Aurizon Network if Aurizon Network agrees to seek reimbursement of only its efficient costs relating to the investigation and design, but to the extent only that such costs have not, or will not be, included in the Regulatory Asset Base or recovered by Aurizon Network through other means under this Undertaking; or
 - (B) may be any party nominated by an Access Seeker (or its Customer) if:
 - (1) Aurizon Network does not comply with **clause 8.2.1(l)(i)(A)**; and
 - (2) only one party is nominated if there is more than one Access Seeker (or Customer) for a Concept Study, Pre-feasibility Study or Feasibility Study,
- in which case:
- (3) Aurizon Network must cooperate with the third party and provide all reasonable assistance to that party, including information; and
 - (4) that party must give Aurizon Network an undertaking to keep confidential and not use for another purpose all information and other matters coming to their knowledge by reason of their appointment which if disclosed or used for another purpose could constitute a breach of Aurizon Network's obligations under **Part 3**; and

- (ii) construction of any Expansion must be Aurizon Network.
- (m) In this **Part 8**, where an Access Seeker has submitted two or more Access Applications which differ in respect of origins/destinations, quantum of capacity, commencement dates or other capacity requirements in relation to a particular Expansion, Aurizon Network must:
 - (i) treat each Access Application as a separate Access Application and as if each were lodged by a separate Access Seeker; and
 - (ii) ensure that the Access Applications do not distort any analysis of capacity requirements for the purposes of any Capacity Analysis, Demand Assessment, Concept Study, Pre-feasibility Study or Feasibility Study as a result of being treated as separate Access Applications.
- (n) This **Part 8** applies to Expansions for the purpose of providing additional Access to both coal carrying Train Services and non-coal carrying Train Services.
- (o) Except where set out to the contrary in this **Part 8**, Aurizon Network will not discriminate in the performance of its obligations and the exercise of its rights in this **Part 8** as between Access Seekers (or, as applicable, Customers) on the basis of the identity of the funder of a Pre-feasibility Study, a Feasibility Study or an Expansion. For example, Aurizon Network will not provide an Access Seeker (or, as applicable, Customer) with priority in the allocation of Capacity in respect of an Expansion on the basis that Aurizon Network is providing funding for the Expansion over another Access Seeker (or as applicable, Customer) with a different source of funding.
- (p) In this **Part 8**, if the Access Seeker is intending to use Access Rights that may be developed as a result of an Expansion for another person (in that Access Seeker's capacity as a Railway Operator):
 - (i) the Access Seeker must be acting on behalf of a Customer or Customers identified to Aurizon Network for all of the Access Rights sought by the Access Seeker and Aurizon Network must make reasonable inquiries as to the identity of the Customer(s) in accordance with the requirements of this **Part 8**;
 - (ii) a reference to the Access Seeker also includes a reference to its Customer; and

- (iii) Aurizon Network and the Access Seeker must copy the Customer on any correspondence or notices between them.

8.2.2 *Disputes under Part 8*

- (a) For clarity, an Access Seeker, proposed Pre-feasibility Funder, proposed Feasibility Funder or proposed Expansion Funder (as applicable) may dispute any matter that may arise under this **Part 8**, other than a decision by Aurizon Network in accordance with this Undertaking that it will not fund an Expansion, including:
 - (i) any decision made by Aurizon Network under **Part 8**;
 - (ii) the completion of schedules in a Studies Funding Agreement where the relevant Studies Funding Agreement is in the form of the Standard Studies Funding Agreement;
 - (iii) the completion of schedules in a User Funding Agreement, where the relevant User Funding Agreement is in the form of a SUFA;
 - (iv) the adequacy or otherwise of any report prepared by Aurizon Network under **Part 8**;
 - (v) whether Aurizon Network has acted reasonably or in good faith in applying **Part 8**; and
 - (vi) whether Aurizon Network has complied with its obligations,

by referring the matter to the QCA.

- (b) Any dispute referred to in **clause 8.2.2(a)** must be:
 - (i) referred to the QCA to be determined in accordance with **clause 11.1.5**; and
 - (ii) notified to Aurizon Network;
 - (A) within ten (10) Business Days of the notification of any decision by Aurizon Network;
 - (B) within twenty (20) Business Days of the date of receipt of any report from Aurizon Network;
 - (C) within twenty (20) Business Days of the date of receipt of a Capacity Assessment Notice; or
 - (D) at any time in respect of completion of schedules in a Studies Funding Agreement or a SUFA.

- (c) A dispute notified under **clause 8.2.2(a)** is a Dispute for the purpose of **clause 11.1**.
- (d) On receipt of a notice under **clause 8.2.2(b)**, Aurizon Network must:
 - (i) promptly notify (with an outline of the matters in dispute and the identity of the initial parties to the Dispute) each Access Seeker (or where applicable, Customer) that is either affected by the decision made by Aurizon Network or has indicated an interest in the Expansion the subject of the Dispute that a Dispute has been referred to the QCA;
 - (ii) use its best endeavours to promptly identify all other parties that should be bound by the outcome of the Dispute and provide those parties with notice of the existence of the Dispute including an outline of the matters in dispute and the identity of the initial parties to the Dispute; and
 - (iii) provide the QCA with a list of the parties to whom notice of the Dispute has been given under this **clause 8.2.2(d)**.
- (e) Any party receiving notice of the Dispute under **clause 8.2.2(d)** may contact the QCA to seek to be heard on the Dispute.
- (f) Any party that did not receive a notice of the Dispute under **clause 8.2.2(d)** but believes it should have received that notice may also contact the QCA to seek to be heard on the Dispute.
- (g) The QCA's determination may include alternative conclusions (where the adequacy of a report is in dispute) and will be binding on all of the Access Seekers the subject of the relevant Demand Assessment, Concept Study, Pre-feasibility Study or Feasibility Study (as applicable) and on Aurizon Network.
- (h) Aurizon Network must not effect any decision made under this **Part 8** until:
 - (i) the relevant period for disputing that decision has expired and the decision has not been referred to the QCA; or
 - (ii) if the decision is the subject of a dispute, the QCA has determined that Aurizon Network may proceed with the relevant decision.

8.2.3 *Interdependent and sequential nature of Expansions*

- (a) The following principles relate to the interdependent and sequential nature of Expansions:

- (i) for any Coal System there may be multiple Expansions that incrementally build on each other in sequence to increase the Capacity of that Coal System;
- (ii) as the Expansions are sequential, Expansions later in the sequence will assume the satisfactory completion of, and delivery of outcomes for, Expansions earlier in the sequence;
- (iii) to the extent that events or circumstances affect an Expansion in the sequence (for example, by it being delayed, not progressing or not delivering the expected outcomes), then Expansions later in the sequence may also be affected and will need to be reviewed to take into account the effect of those events or circumstances;
- (iv) similarly, to the extent that any Coal Systems overlap, Expansions on one Coal System may affect Expansions on another Coal System; and
- (v) subject to **clause 8.2.3(b)**, until:
 - (A) the Access Seekers (or, as applicable, their Customers) for any earlier Expansion in a sequence of Expansions have entered into Access Agreements or User Funding Agreements, as applicable, (**Earlier Expansion Agreements**) in respect of that earlier Expansion; and
 - (B) such agreements are or have become unconditional,

Aurizon Network and Access Seekers (or, as applicable, their Customers) for any later Expansion in a sequence of Expansions must not enter into Access Agreements or User Funding Agreements, as applicable, (**Later Expansion Agreements**) in respect of that later Expansion except where the Later Expansion Agreement is conditional on the requirements in **clauses 8.2.3(a)(v)(A)** and **8.2.3(a)(v)(B)** being satisfied for the Later Expansion Agreement to come into full effect.

- (b) Where different Access Seekers have been identified to be provided with Access through sequential proposed Expansions and either:
 - (i) an Access Seeker allocated to a later Expansion in the sequence of Expansions has advised Aurizon Network that it will have an unconditional Access Agreement or

a User Funding Agreement on a date Aurizon Network (acting reasonably) determines is at least six (6) Months earlier than the date on which an Access Seeker allocated to an earlier Expansion in the sequence of Expansions is likely to have an unconditional Access Agreement or User Funding Agreement, as applicable; or

- (ii) there has been a delay of at least six (6) Months in the expected date on which an Access Seeker allocated to an earlier Expansion in the sequence of Expansions can fully utilise the relevant Access Rights under that proposed Expansion (taking into account the matters in **clause 8.4.3(a)(ii)** and ramp up profiles notified by the Access Seeker to Aurizon Network) and another Access Seeker allocated to a later Expansion in the sequence of Expansions is expected to be able to fully utilise the Access Rights created by the earlier Expansion at least ninety (90) days earlier than the delayed Access Seeker,

Aurizon Network may, acting reasonably and in good faith, reallocate Capacity proposed to be created by the sequential Expansions between those Access Seekers but only to the extent that the reallocation does not prevent:

- (iii) the relevant Expansions from achieving the dates for practical completion or dates for commissioning agreed for each Expansion; and
 - (iv) the Access Seeker allocated to the earlier Expansion in the sequence of Expansions obtaining its Access Rights at the time agreed by Aurizon Network and that Access Seeker.
- (c) If Aurizon Network intends to reallocate Capacity to Access Seekers under **clause 8.2.3(b)**, it must give reasonable prior notice to each Access Seeker affected by the reallocation, including sufficient grounds for the reallocation to permit the Access Seeker to understand Aurizon Network's decision but without disclosing information that is sensitive to the other Access Seekers (or Customer, if any) and all details of the intended reallocation.
 - (d) If the majority of Access Seekers in a later Expansion in a sequence (by reference to the number of Train Paths sought by those Access Seekers), consider that the circumstances described in **clause 8.2.3(b)(i)** or **clause 8.2.3(b)(ii)** exist, those Access Seekers may notify Aurizon Network of that belief and the grounds for that belief. On receipt of a notice under this

clause 8.2.3(d), Aurizon Network must reasonably consider whether a reallocation should be made under **clause 8.2.3(b)**.

8.2.4 Determination of sufficient demand for an Expansion

- (a) Without limiting Aurizon Network's ability to conduct a Demand Assessment for an Expansion of its own volition, Aurizon Network must:
 - (i) promptly (and in any case within ten (10) Business Days of the relevant event referred to below) commence a Demand Assessment for an Expansion where:
 - (A) the operator of an existing or proposed coal terminal formally advises Aurizon Network that it has commenced a process to expand an existing coal terminal or to build a new coal terminal which is likely to create demand for additional below rail capacity; or
 - (B) an Access Seeker submits an Access Application for Access that Aurizon Network concludes cannot be satisfied without Aurizon Network undertaking an Expansion and that Access Seeker requests in writing that Aurizon Network carry out a Concept Study for that Expansion; and
 - (ii) provide the QCA, each relevant Access Seeker and, if relevant, the proponent of the coal terminal with a copy of a detailed report of the results of its Demand Assessment within twenty (20) Business Days after the commencement of the study (except where a Dispute arises in respect of the information being sought by Aurizon Network for the purposes of Demand Assessment, in which case the period is extended by the number of Business Days between (and including) the day on which the Dispute is referred to the QCA and the day on which the QCA's determination is published).
- (b) Where Aurizon Network undertakes a Demand Assessment for an Expansion it must do so using the most appropriate means and any information it considers relevant (in each case acting reasonably) in the circumstances including as follows:

- (i) the Access Applications it has received;
- (ii) liaison and consultation with participants in Supply Chains and Supply Chain Groups relating to each affected Coal System;
- (iii) analysis or advice on demand or capacity submitted by participants in relevant Supply Chain Groups; and
- (iv) analysis or advice from relevantly experienced expert advisors, if necessary.

Aurizon Network agrees not to seek information from Access Seekers or Prospective Access Seekers under this **clause 8.2.4(b)** which is not reasonably required for a prudent and sound Demand Assessment.

- (c) The Demand Assessment report:
 - (i) must not exceed the quantum of out-loading capacity being sought at the coal terminal (if the Demand Assessment is triggered by the operator of an existing or proposed coal terminal);
 - (ii) may investigate different capacity permutations in branch lines to reflect anticipated origin points for the port infrastructure (if relevant);
 - (iii) must not identify individual Access Seekers or Prospective Access Seekers by name or, to the extent practicable, precise origins or destinations for trains utilising the potential Expansion; and
 - (iv) must aggregate capacity information so that capacity use or requirements cannot be associated with a particular Access Seeker, Prospective Access Seeker or Access Holder.

8.2.5 Participation of Customers

- (a) If Aurizon Network proposes to conduct a Pre-feasibility Study, Feasibility Study or Expansion, it must notify any Customer or Access Seeker who could reasonably be expected to be interested in funding the cost of that Pre-feasibility Study, Feasibility Study or Expansion and provide a reasonable period of time by when that party may indicate to Aurizon Network its desire to fund the cost of that Pre-feasibility Study, Feasibility Study or Expansion.
- (b) If a Customer or Access Seeker wishes to fund the cost of:
 - (i) a Pre-feasibility Study, as a Pre-feasibility Funder under **clause 8.4.2**;
 - (ii) a Feasibility Study, as a Feasibility Funder under **clause 8.4.3**; or

(iii) an Expansion, as a User under **clause 8.8**,

as applicable, then within the time set out in Aurizon Network's notice, it must give a notice to Aurizon Network that it wishes to do so and agrees to be bound by the provisions of this Undertaking in relation to such matters. Nothing in this **clause 8.2.5(b)** obliges a Customer to give a funding notice earlier than the time required under the relevant part of this **Part 8**.

- (c) Where Aurizon Network does not receive a notice under **clause 8.2.5(b)** in respect of a proposed Pre-feasibility Study, Feasibility Study or Expansion (as applicable), then Aurizon Network may refuse to negotiate agreements in relation to such matters with that Customer or Access Seeker or to otherwise treat it as a proposed Pre-feasibility Funder or Feasibility Funder.
- (d) Where Aurizon Network considers, acting reasonably, that a Customer or Access Seeker has materially failed to comply with any provision of this Undertaking relating to the funding of the cost of a Pre-feasibility Study, Feasibility Study or an Expansion (as applicable), then Aurizon Network may, without prejudice to any other rights it may have, do either or both of the following:
- (i) give a written Negotiation Cessation Notice to the Customer or Access Seeker under **clause 4.13(a)**; and
 - (ii) cease any other relevant negotiations with that Customer or Access Seeker in relation to the funding of the cost of the Pre-feasibility Study, Feasibility Study or an Expansion (as applicable) by giving notice to that Customer,

except that if the Negotiation Cessation Notice is disputed by the Customer or Access Seeker, the notice is not effective, and the parties must continue as if the notice had not been given, until the Dispute is resolved.

8.2.6 Compliance with obligations

Aurizon Network must meet its obligations under this **Part 8** in respect of Concept Studies, Pre-feasibility Studies, Feasibility Studies and Expansions, despite any resource constraints on Aurizon Network.

8.3 Undertaking Concept Studies, Pre-feasibility Studies and Feasibility Studies

8.3.1 Concept Studies

- (a) Aurizon Network must promptly undertake a Concept Study:
- (i) for capacity that is consistent with the capacity identified in the relevant Demand Assessment report finalised under **clause 8.2.4**; or

- (ii) if requested by any person (in which case, Aurizon Network may require that person to fund the Concept Study),

unless a sufficient Concept Study for the relevant Expansion is already underway or completed.

- (b) Any person may request Aurizon Network to undertake a Concept Study on its behalf (except to the extent that **clause 8.3.1(a)** permits Aurizon Network to not undertake that study) in which case:
 - (i) the costs incurred by Aurizon Network in undertaking that study must not be included as part of the Regulatory Asset Base except to the extent that that Expansion is developed and the costs associated with the Expansion is included as part of the Regulatory Asset Base; and
 - (ii) Aurizon Network must cooperate with that person and provide all reasonable assistance to that party.
- (c) Aurizon Network will include in its Network Development Plan general details of:
 - (i) each Concept Study it is undertaking promptly after commencement of work on the Concept Study; and
 - (ii) the project configuration alternatives appropriate for Pre-feasibility Study consideration,

regardless of whether or not the Concept Study is funded by Aurizon Network or another person.

8.3.2 Pre-feasibility Study

Following a Concept Study, Aurizon Network must immediately commence a Pre-feasibility Study for that Expansion, if:

- (a) one (1) or more Potential Pre-feasibility Funders give notice to Aurizon Network that they will:
 - (i) fund the Pre-feasibility Study; and
 - (ii) enter into a Studies Funding Agreement for the Expansion and for an amount equal to or greater than the estimate of the cost of that Pre-feasibility Study determined in the Concept Study for that Expansion,

and that the conditions precedent set out in the Studies Funding Agreement referred to in **clause 8.3.2(a)(ii)** are satisfied or waived in accordance with the terms of that agreement;

- (b) subject to **clause 8.4.2(b)**, the Potential Pre-feasibility Funders and Aurizon Network agree that Aurizon Network should fund the Pre-feasibility Study; or

- (c) subject to **clause 8.4.2(b)**, Aurizon Network chooses, at its discretion, to fund the Pre-feasibility Study itself in circumstances where no unconditional Studies Funding Agreement comes into effect as contemplated by **clause 8.3.2(a)**:
 - (i) within forty (40) Business Days after the date of a communication referred to in **clause 8.4.2(d)(ii)**; or
 - (ii) within fifteen (15) Business Days after ~~an expert~~[QCA](#) determination of a Dispute in respect of Aurizon Network's decision under **clause 8.4.2(c)**.

8.3.3 *Feasibility Studies*

- (a) Following a Pre-feasibility Study, Aurizon Network must immediately commence a Feasibility Study for that Expansion if one or more of the Potential Feasibility Funders give notice to Aurizon Network that they will:
 - (i) fund the Feasibility Study; and
 - (ii) enter into a Studies Funding Agreement for that Expansion,

and all of the conditions precedent set out in the Studies Funding Agreement referred to in **clause 8.3.3(a)(ii)** are satisfied or waived in accordance with the terms of that agreement.

- (b) Aurizon Network must (acting reasonably and in good faith) determine the target amount of Capacity for the potential Expansion to be investigated in the proposed Feasibility Study (**Target Capacity**) having regard to:
 - (i) the outcomes of the Pre-feasibility Study, including the scope determined for the Feasibility Study;
 - (ii) the total indicative demand for Capacity from all the relevant Access Seekers that satisfy the requirements under **clause 8.4.3(a)(ii)**;
 - (iii) the potential scope of the proposed Expansion;
 - (iv) the capacity of the port or other unloading facility relevant to the use of the proposed Expansion; and
 - (v) any potential staging of Expansions.
- (c) Aurizon Network will notify all the relevant Access Seekers of:
 - (i) the Target Capacity for the potential Expansion to be investigated in the Feasibility Study, as determined under **clause 8.3.3(b)**;
 - (ii) the total indicative demand for Capacity from all the relevant Access Seekers that satisfy the requirements under **clause 8.4.3(a)(ii)**; and

- (iii) if the total demand under **clause 8.3.3(c)(ii)** is more than the Target Capacity under **clause 8.3.3(c)(i)**, the reasons why a higher Target Capacity has not been proposed.

8.3.4 General provisions

- (a) Aurizon Network must not make any amendments to the scope (as the scope is defined in the relevant definition in **Part 12**) of:
 - (i) the Concept Study;
 - (ii) the Pre-feasibility Study; or
 - (iii) the Feasibility Study,

that are not agreed by all funders of the Concept Study, Pre-feasibility Funders or Feasibility Funders, as applicable.

- (b) Unless otherwise agreed by Aurizon Network and a proposed Pre-feasibility Funder or Feasibility Funder, a Studies Funding Agreement for a Pre-feasibility Study or Feasibility Study (as applicable) must be in the form of the Standard Studies Funding Agreement.
- (c) Aurizon Network and the proposed Pre-feasibility Funders or Feasibility Funders, as applicable, must agree on the completion of schedules in a Studies Funding Agreement in the form of the Standard Studies Funding Agreement within:
 - (i) twenty (20) Business Days of a communication referred to in **clause 8.4.2(d)(ii)** or **8.4.3(e)(ii)**, as applicable; or
 - (ii) if a decision communicated in accordance with **clause 8.4.2(d)** or **8.4.3(e)**, as applicable, is referred for dispute resolution, within five (5) Business Days following the QCA's decision.
- (d) The capital expenditure for an Expansion includes the cost of a Pre-feasibility Study or Feasibility Study relating to that Expansion except that any amounts that are not repaid or reimbursed (as applicable):
 - (i) for a Pre-feasibility Study, under **clause 8.4.4(b)(iii)(A)**; and
 - (ii) for a Feasibility Study, under **clause 8.4.4(b)(iii)(B)**,will not be treated as capital expenditure and will not be included in the Regulatory Asset Base.
- (e) Without limiting any provision of this Undertaking, Aurizon Network is not obliged to construct, fund or permit an Expansion or to undertake a Feasibility Study, merely because Aurizon

Network undertakes or funds any Pre-feasibility Study or Feasibility Study relating to that Expansion.

- (f) Aurizon Network must publish to relevant Access Seekers (and, where applicable, their Customers) general details of each multi-user Pre-feasibility Study and Feasibility Study it is undertaking promptly after commencement of work on the Pre-feasibility Study or Feasibility Study. The publication must not identify individual Access Seekers by name, precise details of origins and destinations (to the extent possible) or any other confidential information.
- (g) The Concept Study, Pre-feasibility Study or Feasibility Study must be provided as a complete and transparent document:
 - (i) to the QCA on an unredacted basis; and
 - (ii) to a party other than the QCA or relevant Access Seeker (or, where applicable its Customer) or in the Network Development Plan (if a Concept Study):
 - (A) to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the Concept Study, Pre-feasibility Study or Feasibility Study (and if those obligations permit disclosure if required by this Undertaking, then Aurizon Network is required to disclose the information contained in the Concept Study, Pre-feasibility Study or Feasibility Study), on an unredacted basis; and
 - (B) if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
 - (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the Concept Study, Pre-feasibility Study or Feasibility Study on an unredacted basis;
 - (2) in respect of the information referred to in **paragraph (i)** or for which consent is obtained under **paragraph (ii)(A)**, on an unredacted basis; and

- (3) in respect of the information that does not satisfy **paragraph (i)** or for which consent is not obtained under **paragraph (ii)(A)**:
 - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
 - to the extent not possible, on a redacted basis.
- (h) Aurizon Network must use reasonable endeavours to agree to confidentiality obligations that:
 - (i) do not prevent the disclosure of the information contained in a Concept Study, Pre-feasibility Study or Feasibility Study; and
 - (ii) permit disclosure of information required by this Undertaking,

but in any event, must not agree to any confidentiality obligations that prevent disclosure to the QCA.

8.4 Funding Concept Studies, Pre-feasibility Studies and Feasibility Studies

8.4.1 *Concept Studies*

- (a) Aurizon Network must fund all Concept Studies except:
 - (i) if an Access Seeker (or, as applicable, Customer), at its absolute discretion, agrees to fund the Concept Study; or
 - (ii) **clause 8.3.1(a)(ii)** applies.
- (b) If Aurizon Network does not fund a Concept Study, the funding party must not be provided with any rights that person would not otherwise be entitled to had they not funded the Concept Study. For clarity, this includes providing the funding Access Seeker (or, as applicable, Customer) with priority for the Expansion relevant to that Access Seeker (or, as applicable, Customer).

8.4.2 *Pre-feasibility Studies*

- (a) Subject to **clause 8.4.2(b)**, if all of the relevant Studies Funding Agreements for a Pre-feasibility Study terminate prior to completion of a Pre-feasibility Study, then Aurizon Network may (in its discretion) elect to continue to undertake and complete the Pre-feasibility Study at its own cost (in which case Aurizon Network releases the relevant Pre-feasibility Funders from any further liability with respect to that Pre-feasibility Study).

- (b) If Aurizon Network elects to fund the Pre-feasibility Study in accordance with **clause 8.3.2(b)** or **8.3.2(c)**, or elects to continue to undertake and complete a Pre-feasibility Study under **clause 8.4.2(a)**:
- (i) Aurizon Network must not afford an Access Seeker (or, as applicable, Customer) any rights that Access Seeker (or, as applicable, Customer) would not otherwise be entitled had Aurizon Network not funded the Pre-feasibility Study; and
 - (ii) the costs incurred by Aurizon Network must not be included as part of the Regulatory Asset Base except to the extent that that Expansion is developed and the costs associated with the Expansion is included as part of the Regulatory Asset Base.
- (c) The Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Pre-feasibility Study under **clause 8.3.2(a)** for an Expansion, as proposed Pre-feasibility Funders, will be:
- (i) where Aurizon Network knows that a Capacity Shortfall exists and the proposed Expansion could create Capacity that would reduce or remove the Capacity Shortfall, Access Seekers with Capacity Shortfall Access Applications to which that Capacity Shortfall relates (or, as applicable, their Customers); and
 - (ii) each of the Access Seekers (or, as applicable, their Customers) who Aurizon Network considers, acting reasonably, satisfy the following requirements:
 - (A) is participating in a process for the acquisition or development of out-loading capacity (such as an expression of interest process or study funding process in relation to a coal export terminal or a domestic power station or similar out-loading facility) or otherwise has a reasonable likelihood of obtaining out-loading capacity, in either case, in a timeframe and having an out-loading capacity entitlement that are consistent with the Access Seeker's Access Application;
 - (B) where the relevant Access Seeker (or, as applicable, their Customer) is a producer of coal:

- (1) has at least an Exploration Permit for Coal under the *Mineral Resources Act 1989* (Qld);
 - (2) has a credible program for the development of its mine or mine expansion on a basis that is consistent with its Access Application; and
 - (3) is diligently developing its mine or mine expansion in accordance with the development program referred to in **paragraph 8.4.2(c)(ii)(B)(2)**;
- (C) where the relevant Access Seeker (or, as applicable, their Customer) is a consumer of coal:
- (1) has or is reasonably likely to obtain the licences, approvals, consents, permits and other permissions (if any) necessary to evaluate the feasibility of the business or activity for which Access Rights are required;
 - (2) has a credible program for the development of any infrastructure or other facilities and has or is likely to secure coal necessary for that business or activity; and
 - (3) is diligently developing any infrastructure or other facilities in accordance with the development program referred to in **clause 8.4.2(c)(ii)(C)(2)**; and
- (D) where applicable, has either provided a bank guarantee in accordance with the relevant Study Funding Agreement or otherwise has the ability to meet the funding obligation under the terms of the relevant Studies Funding Agreement.
- (d) Following a decision under **clause 8.4.2(c)**, Aurizon Network will advise each Access Seeker (or, as applicable, Customer) who was:
- (i) not selected to fund the Pre-feasibility Study, of that fact; and
 - (ii) selected to fund the Pre-feasibility Study, of that fact and of the Access Rights for which it has been selected to participate in the funding of the Pre-feasibility Study.

8.4.3 Feasibility Studies

- (a) Subject to **clauses 8.4.3(b)** and **8.4.3(d)**, the Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Feasibility Study under **clause 8.3.3(a)** for an Expansion, as proposed Feasibility Funders, will be:
- (i) firstly, Access Seekers that satisfy the requirements of **clause 8.4.2(c)(i)** other than any of them who (or whose Customer) were offered an opportunity to fund the Pre-feasibility Study for the Expansion but did not become a Pre-feasibility Funder for that Pre-feasibility Study; and
 - (ii) secondly, subject to **clause 8.3.3(b)**, those Access Seekers (or, as applicable, their Customers) whom Aurizon Network decides (acting reasonably) satisfy all of the requirements of **clause 8.4.2(c)(ii)** and, in addition, either:
 - (A) where the relevant Access Seeker (or, as applicable, their Customer) is a producer of coal:
 - (1) has at least a Mineral Development Licence under the *Mineral Resources Act 1989* (Qld); and
 - (2) has Marketable Coal Reserves (as defined by the JORC Code) equal to at least ten (10) times the annual capacity for which Access is required (as determined by reference to the Access Seeker's Access Application), following ramp up; or
 - (B) where the relevant Access Seeker (or, as applicable, their Customer) is a consumer of coal:
 - (1) has or will obtain all licences, approvals, consents, permits and other permissions necessary for the business or activity for which Access Rights are required; and
 - (2) has or is reasonably likely to obtain a supplier or suppliers of coal in connection with the business or activity for amounts of coal consistent with the Access Rights requested.
- (b) For the purposes of **clause 8.4.3(a)**:
- (i) where the Access Seeker has a Customer (the identity and details of which has been notified to Aurizon Network by the Access Seeker):

- (A) Aurizon Network will notify the Customer that it is identifying Potential Feasibility Funders for the relevant Feasibility Study; and
- (B) the Customer must notify Aurizon Network within ten (10) Business Days after receiving that notice:
 - (1) that the Customer should be considered for an opportunity to fund the Feasibility Study (rather than the Access Seeker) (**Customer Nomination**); or
 - (2) that the Access Seeker (and, where there are two (2) or more Access Seekers seeking the same Access Rights, which of the Access Seekers) should be considered for an opportunity to fund the Feasibility Study (rather than the Customer or any other of those Access Seekers) (**Access Seeker Nomination**);
- (ii) where Aurizon Network is given:
 - (A) a Customer Nomination under **clause 8.4.3(b)(i)(B)(1)**, only the Customer can be eligible for an opportunity to fund the relevant Feasibility Study (and not the Access Seeker(s) for the Customer); or
 - (B) an Access Seeker Nomination under **clause 8.4.3(b)(i)(B)(2)**, only the nominated Access Seeker can be eligible for an opportunity to fund the relevant Feasibility Study (and not the Customer or any other relevant Access Seeker for the Customer); and
- (iii) where the Customer does not give Aurizon Network a Customer Nomination or an Access Seeker Nomination under **clause 8.4.3(b)(i)(B)**, neither that Customer nor that Customer's Access Seeker(s) can be eligible for an opportunity to fund the relevant Feasibility Study.
- (c) Aurizon Network must not make a decision under **clause 8.4.3(d)** until:
 - (i) if Aurizon Network's decision has not been referred to the QCA for resolution as a Dispute, twenty (20) Business Days after receipt by the Access Seekers of the notice under **clause 8.3.3(c)**; or

- (ii) if Aurizon Network’s decision has been referred to the QCA for resolution of a Dispute, the QCA has made its determination.
- (d) Subject to **clause 8.4.3(c)**, if the Target Capacity to be created by the proposed Expansion as determined under **clause 8.3.3(b)** by Aurizon Network, or (if applicable) as determined by the QCA, is expected to be insufficient Capacity for all the relevant Access Seekers that satisfy the requirements under **clause 8.4.3(a)(ii)**, then priority will be given to Access Seekers or Customers having regard to the following criteria (in order of priority):
 - (i) those Access Seekers who meet the requirements set out in **clause 8.4.3(a)(ii)** to a greater extent than other Access Seekers; and
 - (ii) the Access Seekers who funded the Pre-feasibility Study.

For clarity, the assessment under this **clause 8.4.3(d)** will be undertaken to ensure that the aggregate of requested capacity of the proposed Feasibility Funders is not more than (and wherever possible equals) the Target Capacity for which the Feasibility Study is being conducted.

- (e) Following a decision under **clause 8.4.3(a)**, Aurizon Network will notify:
 - (i) each Access Seeker (or, as applicable, Customer) who was not selected to fund the Feasibility Study, of that fact; and
 - (ii) each Access Seeker (or, as applicable, Customer) who was selected to fund the Feasibility Study of:
 - (A) that fact;
 - (B) the Access Rights for which the Access Seeker has been selected to participate in the funding of the Feasibility Study; and
 - (C) the date by which Aurizon Network anticipates that an Access Agreement or a User Funding Agreement, as applicable, in respect of the funding and construction of the Expansion the subject of the Feasibility Study would become unconditional.
- (f) Aurizon Network will provide details to each relevant Access Seeker (or, as applicable, Customer) of Aurizon Network’s assessment of that Access Seeker’s case against the requirements and criteria in **clause 8.4.3(a)(ii)**.
- (g) Feasibility Studies must be funded by Access Seekers and/or, as applicable, Customers and must not be funded by:

- (i) Aurizon Network, except where **clause 8.4.4(b)(i)** applies; or
 - (ii) a Railway Operator acting as an Access Seeker, other than where a specifically identified Customer has made an Access Seeker Nomination under **clause 8.4.3(b)(i)(B)(2)** in favour of that Railway Operator.
- (h) Where this **Part 8** provides that a Railway Operator (acting as an Access Seeker) cannot act other than on behalf of an identified Customer:
- (i) that Railway Operator must notify Aurizon Network of the identity and details of the Customer on whose behalf it is purporting to act; and
 - (ii) Aurizon Network must make reasonable inquiries to verify the identity of that Customer and confirm that the Customer agrees to the Railway Operator acting on its behalf.

8.4.4 *General provisions*

- (a) If a Pre-feasibility Study or Feasibility Study for an Expansion is funded by more than one Pre-feasibility Funder or Feasibility Funder under Studies Funding Agreements, then Aurizon Network must ensure that each Pre-feasibility Funder and Feasibility Funder either:
- (i) provides a bank guarantee for the amount required in the relevant Study Funding Agreement as a condition precedent to that relevant Study Funding Agreement becoming unconditional; or
 - (ii) has the ability to meet its financial obligations under the relevant Study Funding Agreement. For clarity, Aurizon Network may require a bank guarantee for the amount required in the relevant Study Funding Agreement as a condition precedent to that relevant Study Funding Agreement becoming unconditional, despite the Pre-feasibility Funder or Feasibility Funder having the ability to meet its financial obligations under the relevant Study Funding Agreement.
- (b) If a Pre-feasibility Study or Feasibility Study for an Expansion is funded under one or more Studies Funding Agreements, then:
- (i) as a result of the application of **clause 8.4.4(a)**, Aurizon Network must fund any shortfall in the Pre-feasibility Study or Feasibility Study arising as a result of the default of a Pre-feasibility Funder or Feasibility Funder under its Study Funding Agreement

if there is more than one Study Funding Agreement for the Pre-feasibility Study or Feasibility Study;

(ii) the relevant Feasibility Funders and Expansion Funders (if any) must include in the funding amounts under their Study Funding Agreement or User Funding Agreement, as applicable, amounts that in aggregate equal the amount to be repaid or reimbursed by Aurizon Network:

(A) under a Study Funding Agreement for a Feasibility Study, the funding provided by:

- (1) Aurizon Network in accordance with **clause 8.4.4(b)(i)**; and
- (2) the Pre-feasibility Funder under each Study Funding Agreement,

for the relevant Pre-feasibility Study; and

(B) under a User Funding Agreement or Access Conditions, the funding provided by:

- (1) Aurizon Network in accordance with **clause 8.4.4(b)(i)**; and
- (2) the Feasibility Funder under each Study Funding Agreement,

for the relevant Feasibility Study; and

(iii) Aurizon Network must repay or reimburse itself the funding it provided under **clause 8.4.4(b)(i)** or the Pre-feasibility Funder or Feasibility Funder, as applicable, the funding provided under its Study Funding Agreement when:

(A) in respect of funding for a Pre-feasibility Study, the Study Funding Agreement for the Feasibility Study become unconditional; and

(B) in respect of funding for a Feasibility Study:

- (1) the agreements with Access Seekers (or their Customers) for the funding and construction of that Expansion or the Access Agreement for utilisation of that Expansion have been executed and have become unconditional (save for any condition regarding construction of the Expansion); and
- (2) a Feasibility Funder is a party to those agreements and will use Access Rights

granted as a result of the Capacity to be created by that Expansion.

- (c) If a Pre-feasibility Study or Feasibility Study is funded under one or more Studies Funding Agreements, then Aurizon Network must perform a reconciliation of funding amounts against amounts that Aurizon Network has incurred in performing the Pre-feasibility Study or Feasibility Study, when:
 - (i) a Study Funding Agreement for a Pre-feasibility Study or Feasibility Study is terminated; or
 - (ii) when the report in respect of the Pre-feasibility study or Feasibility Study is completed.
- (d) If the reconciliation under **clause 8.4.4(c)**:
 - (i) shows Aurizon Network has incurred amounts greater than amounts funded, then Aurizon Network must be reimbursed by the Pre-feasibility Funders or Feasibility Funders, as applicable, for that amount; or
 - (ii) shows the Pre-feasibility Funders or Feasibility Funders, as applicable, have funded amounts greater than Aurizon Network has incurred, then Aurizon Network must reimburse that amount to the Pre-feasibility Funders or Feasibility Funders, as applicable.

8.5 Provisional Capacity Allocation

- (a) Where the scope of a Feasibility Study and the schedules of the Studies Funding Agreement for that study have been:
 - (i) agreed by Aurizon Network with all of the proposed Feasibility Funders of the study; or
 - (ii) the subject of a QCA determination,

Aurizon Network will, within five (5) Business Days of that agreement being reached or publication to Aurizon Network of the determination, as applicable, send to each of the Feasibility Funders an executable copy of the Studies Funding Agreement with completed Schedules reflecting the agreement reached or the QCA's determination, as applicable.

- (b) Within twenty (20) Business Days after a Studies Funding Agreement for a Feasibility Study becoming unconditional, Aurizon Network will:
 - (i) issue an IAP (or if one has previously been provided, a revised IAP) to the relevant Access Seeker who is, or whose Customer is, funding the Feasibility Study; and
 - (ii) subject to **clauses 8.5(c)** and **8.5(d)**, grant that Access Seeker a provisional allocation of the capacity detailed

in the Train Service description included in the Studies Funding Agreement (**Provisional Capacity Allocation**).

- (c) If an Access Seeker intends to progress its Access Application under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in an IAP or revised IAP issued under **clause 8.5(b)(i)**, that Access Seeker must notify Aurizon Network of that intention within twenty (20) Business Days after Aurizon Network gives a relevant notice under **clause 8.7.1(c)(ii)**.
- (d) Subject to **clause 8.5(e)**, all or part of a Provisional Capacity Allocation may be withdrawn by Aurizon Network acting reasonably and in good faith, where:
 - (i) the relevant Access Seeker's circumstances change in a substantial way so that the Access Seeker ceases to satisfy all of the requirements in **clause 8.4.3(a)(ii)**;
 - (ii) (other than due to any default or negligent act or omission of Aurizon Network) the relevant mine or out-loading facility (including an expansion of a mine or out-loading facility) will be delayed by twelve (12) Months or more as compared to the timeframe that was proposed when Aurizon Network made the original assessment;
 - (iii) Aurizon Network exercises a right to lawfully terminate the Feasibility Funder's Studies Funding Agreement; or
 - (iv) Aurizon Network and the relevant Access Seeker (or, as applicable, its Customer) do not execute an Access Agreement or an agreement in relation to the funding and/or construction of the Expansion within one hundred and twenty (120) Business Days (or such longer period as agreed by Aurizon Network acting reasonably and in good faith) after the Feasibility Study is completed (provided that to the extent that the Access Seeker, or its Customer, is a party to a dispute concerning the negotiation of an Access Agreement or User Funding Agreement, then the time from when that dispute is notified to the determination of that dispute, is excluded from that period).

For clarity, where a Provisional Capacity Allocation is withdrawn under this **clause 8.5(d)**, Aurizon Network must seek to reallocate that Provisional Capacity Allocation in accordance with **clause 8.5(g)**.

- (e) If Aurizon Network intends exercising its rights under **clause 8.5(d)** to withdraw all or a part of a Provisional Capacity Allocation, it must:
- (i) give the relevant Feasibility Funder notice and a reasonable opportunity (for a period of at least twenty (20) Business Days) to explain why Aurizon Network should not exercise its rights in the way proposed; and
 - (ii) permit the Feasibility Funder to assign its Study Funding Agreement to a replacement Access Seeker in accordance with the terms of the Study Funding Agreement.
- (f) If having considered any explanation provided by the Access Seeker Aurizon Network (acting reasonably) withdraws all or part of the Provisional Capacity Allocation, it must give the relevant Access Seeker notice, including reasons for its decision. That decision takes effect on the later of:
- (i) ten (10) Business Days after the date the Access Seeker receives that notice; and
 - (ii) the date of determination of a dispute if the Access Seeker disputes Aurizon Network's decision.
- (g) Subject to the terms of the relevant Studies Funding Agreements, where a Provisional Capacity Allocation is withdrawn under **clause 8.5(d)**, Aurizon Network must to the extent feasible (and provided that other Access Seekers will not be materially delayed) seek a replacement Access Seeker (or, as applicable, Customer) (**Replacement**) for all or some of that Capacity who:
- (i) will be selected using the criteria set out in **clause 8.4.3(a)**; and
 - (ii) is willing to enter into a Studies Funding Agreement as a Feasibility Funder for the relevant Feasibility Study on the same terms and conditions as the Studies Funding Agreement between Aurizon Network and the Feasibility Funder being replaced,
- subject to that Replacement and the other relevant Feasibility Funders agreeing with Aurizon Network any relevant amendments relating to scope, timing and cost of the Feasibility Study in respect of the Studies Funding Agreement for that Feasibility Study.
- (h) For clarity, if a proposed replacement Feasibility Funder enters into a Studies Funding Agreement in respect of the relevant Feasibility Study, then **clauses 8.5(b) to 8.5(d)** apply to that replacement Feasibility Funder.
- (i) It will be a term of the Studies Funding Agreement entered into by a replacement Feasibility Funder that it must pay all costs

incurred by the exiting Access Seeker to the date of the withdrawal of the Provisional Capacity Allocation under **clause 8.5(d)** to Aurizon Network who must refund those costs to the exiting Access Seeker.

- (j) A Provisional Capacity Allocation will automatically cease to apply upon the Access Seeker to which that Provisional Access Allocation applies signing an Access Agreement, Access Conditions or User Funding Agreement relating to corresponding Access Rights.

8.6 Step-in where Aurizon Network fails to enter into Studies Funding Agreement or delay doing so

- (a) If:
 - (i) either:
 - (A) Aurizon Network fails to enter into a Studies Funding Agreement in accordance with this Undertaking or unreasonably delays doing so;
 - (B) Aurizon Network fails to commence a Concept Study, Pre-feasibility Study or Feasibility Study within twenty (20) Business Days after the Studies Funding Agreement for the relevant study becoming unconditional; or
 - (C) there is a reasonable expectation that the relevant Pre-feasibility Study or Feasibility Study (as applicable) cannot be completed by Aurizon Network prior to the date (**Completion Date**) that is sixty (60) Business Days after the target date specified (including as amended, extended or otherwise varied from time to time) in accordance with the Studies Funding Agreement (**Performance Delay**);
 - (ii) a relevant affected Access Seeker (or, as applicable, Customer) who is a proposed party or party to the relevant Studies Funding Agreement has given notice to Aurizon Network's Executive Officer:

- (A) identifying the alleged failure, unreasonable delay or Performance Delay; and
 - (B) in the case of the circumstance referred to in **clause 8.6(a)(i)(A)**, (under the hand of a person with authority to bind the Access Seeker and who warrants that he or she has that authority when giving the notice), confirming that the Access Seeker is ready, willing and able to execute a Studies Funding Agreement as previously agreed or as determined by a final, binding determination in accordance with the provisions of this Undertaking;
- (iii) where the failure or unreasonable delay is that referred to in **clause 8.6(a)(i)(A)**, Aurizon Network fails to enter into the Studies Funding Agreement within ten (10) Business Days after receiving the relevant notice under **clause 8.6(a)(ii)**; and
- (iv) where there is a failure referred to in **clause 8.6(a)(i)(B)** or an alleged Performance Delay referred to in **clause 8.6(a)(i)(C)**, Aurizon Network:
- (A) fails to prepare and provide to the relevant affected Access Seeker (or, as applicable, Customer), within ten (10) Business Days after receiving the relevant notice under **clause 8.6(a)(ii)**, a response confirming that Aurizon Network will commence the study or complete the study by the Completion Date (and supported by reasonable particulars demonstrating how completion will be achieved); or
 - (B) after preparing and providing such a response to the relevant affected Access Seeker (or, as applicable, Customer), materially fails, due to its own acts or omissions, to comply with any aspect of that response,

then a relevant affected Access Seeker (or, as applicable, Customer) may refer the matter to the QCA for resolution as a Dispute under **Part 11**.

- (b) If the QCA determines that Aurizon Network:
- (i) is obliged to enter into a Studies Funding Agreement and, subject to **clause 8.6(a)(iii)**, has failed unreasonably to do so or unreasonably delayed doing so; or
 - (ii) has failed to commence a study under **clause 8.6(a)(i)(B)** and either:
 - (A) failed to provide a response within the time specified in **clause 8.6(a)(iv)(A)**; or
 - (B) has failed to comply with the steps detailed in the response provided under **clause 8.6(a)(iv)(A)**; or
 - (iii) has been the cause of a Performance Delay (as described in **clause 8.6(a)(i)(C)**) and either:
 - (A) failed to provide a response within the time specified in **clause 8.6(a)(iv)(A)**; or
 - (B) has failed to comply with the steps detailed in the response provided under **clause 8.6(a)(iv)(A)**,

the QCA may (with the approval of all relevant Access Seekers and Customers) determine that the relevant study be undertaken by an appropriately qualified and experienced nominee of all relevant Customers.

- (c) If the QCA determines that the relevant study is to be undertaken by the nominee of all relevant Customers:
- (i) Aurizon Network must comply with that determination;
 - (ii) the nominee must:
 - (A) comply with all confidentiality obligations that Aurizon Network is required to comply with in respect of the information coming to their knowledge by reason of their appointment and performance of the study; and
 - (B) give Aurizon Network an undertaking to keep confidential and not use for another purpose all information and other matters coming to their knowledge by reason of their appointment and performance of the study which if disclosed or used for another purpose could constitute a breach of Aurizon Network's obligations under **Part 3**;
 - (iii) if the nominee provides Aurizon Network the undertaking referred to in **clause 8.6(c)(ii)**, then

despite Aurizon Network's obligations under **Part 3** Aurizon Network must provide the nominee with all reasonable assistance, including information, which is reasonably required by the nominee to undertake the applicable study; and

- (iv) Aurizon Network must use the relevant study output for the purposes for which it was provided.
- (d) If a study is undertaken by a nominee of all relevant Customers as contemplated by **clause 8.6(c)** Aurizon Network must implement the output of the study for completion of the applicable Feasibility Study, User Funding Agreement or Access Agreement, except to the extent that Aurizon Network successfully seeks a review of the scope (which may include the standard of work) of the Expansion referred to in the study by means of a QCA determination.
- (e) Aurizon Network:
 - (i) may refer the matter to the QCA under **Part 11** within twenty (20) Business Days following publication to Aurizon Network of the study by the nominee;
 - (ii) must provide notice of its dispute to the relevant Access Seekers, each of whom may make submissions to the QCA in respect of the dispute; and
 - (iii) must provide written submissions to the QCA, with copies to each of the relevant Access Seekers, detailing why, in Aurizon Network's view, the scope (which may include the standard of work) decided by the nominee is not appropriate and how it should be amended.

8.7 Funding an Expansion

8.7.1 General

- (a) Subject to this **clause 8.7 and clause 8.8**, an Access Seeker may fund its relevant portion of the cost of an Expansion that is necessary to create additional Capacity so that Access Rights may be granted to Access Seekers and Aurizon Network must agree to the Access Seeker funding its portion of the cost even if Aurizon Network is willing to fund the Expansion, with or without Access Conditions.
- (b) For clarity, any obligation on Aurizon Network to construct or permit an Expansion is subject to **clause 8.2.1(c)**.
- (c) Aurizon Network will:
 - (i) provide an indication by notice to the Pre-feasibility Funders within ten (10) Business Days after the

relevant Studies Funding Agreements become unconditional of whether:

- (A) Aurizon Network is likely to be willing to fund the Expansion without Access Conditions;
 - (B) Aurizon Network is likely to not be willing to fund the Expansion; or
 - (C) the Access Conditions (if any) on which Aurizon Network is likely to be willing to fund the Expansion; and
- (ii) confirm by notice to the Feasibility Funders within twenty-(20) Business Days after the relevant Studies Funding Agreements become unconditional, whether:
- (A) Aurizon Network has changed its position as set out in its notice under **clause 8.7.1(c)(i)**; and
 - (B) if Aurizon Network is willing to fund the Expansion, the Access Conditions (if any) on which Aurizon Network is willing to fund the Expansion.
- (d) If Aurizon Network has not given a notice under **clause 8.7.1(c)(ii)(B) or clause 8.2.1(b)**, then (for the purpose purposes of the Access Seekers commencing the processes under **clause 8.8.1(a)**) Aurizon Network is deemed not to be willing to fund the Expansion. ~~expansion.~~
- (e) If Aurizon Network has given a notice under either **clause 8.7.1(c)(i)(C) or 8.7.1(c)(ii)(B)** and the relevant Access Seeker is willing to negotiate, then **clause 6.13** will apply to the terms on which Aurizon Network will fund the Expansion.
- (f) Where Aurizon Network has given a notice under **clause 8.7.1(c)(ii)(B)**, an Access Seeker may require Aurizon Network to negotiate a User Funding Agreement for the Expansion in parallel to any other negotiations.
- (g) **Clause 8.7.1(c)** does not prevent Aurizon Network from subsequently notifying relevant parties of whether Aurizon Network is willing to fund the Expansion. Any notice under this **clause 8.7.1(g)** does not prevent Access Seekers from pursuing User Funding in preference to the proposal from Aurizon Network for it to fund the Expansion.

- (h) Where Aurizon Network is obliged under this Undertaking to fund an Expansion, Aurizon Network must negotiate an Access Agreement in accordance with this Undertaking with those Access Seekers that will utilise the Expansion.
- (i) It is acknowledged that if an Expansion is funded partly by Expansion Funders and partly by Aurizon Network, the terms of the SUFA to be entered into by the Expansion Funders may require amendment to ensure Aurizon Network is in no worse taxation or accounting position than if the Expansion Funders funded the entire Expansion.
- (j) Where Aurizon Network is:
 - (i) granting a Provisional Capacity Allocation under **clause 8.5(b)**; or
 - (ii) negotiating or entering into an Access Agreement,
 Aurizon Network must not have regard to whether any relevant Expansion is or may be a User Funded Expansion or is or may be funded by Aurizon Network.

8.7.2 Inclusion of Expansion cost in Regulatory Asset Base

- (a) The Regulatory Asset Base may include User Funded Expansions (subject to the QCA's approval), notwithstanding that the cost of such Expansions are not paid for by Aurizon Network.
- (b) If the scope of works (including the standard of work) and an estimated cost of an Expansion is:
 - (i) agreed through a Feasibility Study;
 - (ii) determined by the QCA as contemplated by this **Part 8**; or
 - (iii) determined by a nominee under **clause 8.6**,
 Aurizon Network must promptly apply to the QCA following agreement or determination of scope for pre-approval in accordance with the process in **clause 2 of Schedule E**.
- (c) Capital expenditure for the Expansion must only be included in the Regulatory Asset Base in accordance with **Schedule E**.
- (d) If the capital expenditure for the Expansion is not approved for inclusion into the Regulatory Asset Base by the QCA, as contemplated by **Schedule E**, Aurizon Network is not obliged to:
 - (i) fund the cost of that Expansion; nor
 - (ii) construct that Expansion without User Funding.
- (e) If the Expansion is a User Funded Expansion:
 - (i) as soon as is reasonably practicable on completion of the Expansion, Aurizon Network must apply to the

QCA to have all of the costs of a User Funded Expansion included in the Regulatory Asset Base. The application must identify that it is made at the request of the Expansion; and

- (ii) the Expansion Funders may each choose to make their own independent submissions to the QCA in relation to any application made under **Schedule E** or **clause 8.7.2(e)(i)**.

8.8 User Funded Expansions

8.8.1 *Process where Users intend to fund an Expansion*

- (a) If an Access Seeker intends to fund its relevant portion of the cost of an Expansion under clause **8.7.1**:
 - (i) each proposed Expansion Funder must give notice to Aurizon Network of its bona fide intention to negotiate a User Funding Agreement for its relevant portion of the cost of the Expansion;
 - (ii) after receiving such notice, Aurizon Network and the proposed Expansion Funders will negotiate in good faith a User Funding Agreement;
 - (iii) if required by the proposed Expansion Funder, an entity other than an Access Seeker or Access Holder (or its Customer) may be the Preference Unit Holder under the User Funding Agreement in respect of that Access Seeker or Access Holder's portion of the cost of the Expansion;
 - (iv) the User Funding Agreement must be in the form of the Standard User Funding Agreement unless otherwise agreed by Aurizon Network and the proposed Expansion Funders (in which case, any amendments proposed to those terms must be negotiated by both Aurizon Network and the Expansion Funder acting reasonably and in good faith);
 - (v) Aurizon Network must provide the proposed Expansion Funders with relevant scope and cost information (clarity, nothing in this **clause 8.8.1(a)(v)** requires Aurizon Network to disclose any information that is commercially sensitive to the Aurizon Group); and
 - (vi) upon the User Funding Agreement being agreed by Aurizon Network and the Expansion Funders, or its terms being determined through dispute resolution, in accordance with this Undertaking:

- (A) Aurizon Network will issue the proposed User Funding Agreement to the proposed Expansion Funders and other relevant parties (for example, the State, if applicable), as applicable; and
 - (B) Aurizon Network will execute the User Funding Agreement in accordance with its requirements.
- (b) Aurizon Network will use reasonable endeavours to procure the State to enter into a User Funding Agreement.

8.8.2 Inconsistency with a User Funding Agreement

To the extent of any inconsistency, but except for **clauses 8.9.3 and 8.9.4**, the terms of an executed User Funding Agreement prevail over the terms of this Undertaking as between Aurizon Network and the Expansion Funders (and their Customers, if relevant).

8.8.3 Development and review of the SUFA

- (a) Within three (3) Months after the Approval Date, Aurizon Network must submit to the QCA:
- (i) _____ a proposed Standard User Funding Agreement ~~(based on~~:
 - (A) _____ the standard user funding agreement developed and submitted to the QCA for approval under the ~~2010~~2016 Undertaking and approved by the QCA (UT4 SUFA); or
 - ~~(B)~~ (B) If there is no UT4 SUFA, then the most recent standard user funding agreement developed and submitted to the QCA for approval under the 2016 Undertaking, taking into account the QCA's any decision made by the QCA in respect of that document); and
 - (ii) a draft amending access undertaking incorporating amendments to this Undertaking it considers reasonably necessary.
- (b) The QCA must assess the proposed Standard User Funding Agreement and draft amending access undertaking and, if deemed appropriate, seek submissions from stakeholders on that proposal.

- (c) If the QCA agrees with Aurizon Network's proposal submitted under **clause 8.8.3(a)**, it must give a notice to Aurizon Network and relevant stakeholder of its approval, specifying a date upon which the proposed amendments will take effect.
- (d) If:
- ~~(i)~~ (i). Aurizon Network does not make any submission under **clause 8.8.3(a)** within the applicable timeframe; or
 - ~~(ii)~~ (ii). the QCA does not agree with the proposal submitted by Aurizon Network under **clause 8.8.3(a)**,
- then:
- ~~(iii)~~ (iii). the QCA must notify Aurizon Network and relevant stakeholder of the reasons for its disagreement; and
 - ~~(iv)~~ (iv). the QCA may commence the ~~process~~progress under Division 7 of Part 5 of the Act, including section 139 and 141 of the Act, to seek and subsequently impose amendments to the proposed Standard User Funding Agreement in the way the QCA considers appropriate to enhance the workability of the document.
- (e) Promptly after any of the following:
- (i) executing the first User Funding Agreement in the form of the SUFA (or in the event that Aurizon Network and the Expansion Funders are unable to agree on any User Funding Agreement for execution after at least forty (40)-Business Days of good faith negotiations); or
 - (ii) within sixty (60) Business Days of the date of a written request from the QCA,
Aurizon Network will:
 - (iii) undertake a review of the SUFA including having regard to the principles developed for such reviews by Aurizon Network in consultation with industry participants; and
 - (iv) consult with the Expansion Funders and Access Seekers about the workability of the SUFA for User Funding,
- and, after doing so:
- (v) submit to the QCA any amendments that Aurizon Network (acting reasonably) considers will improve the workability of the SUFA in the form of a draft amending access undertaking under the Act; or

(vi) if Aurizon Network (acting reasonably) considers no amendments are required, Aurizon Network must make a submission to the QCA giving detailed written reasons for that belief.

~~(v)~~(f)

~~(f)~~(g) If:

- (i) Aurizon Network does not make any submission under **clause 8.8.3(e)** within the timeframe specified; or
- (ii) the QCA refuses to approve the proposed amendments submitted by Aurizon Network or disagrees with Aurizon Network's reasons provided for not amending the SUFA,

then:

- (iii) the QCA must notify Aurizon Network of the reasons for its refusal or disagreement (as applicable); and
- (iv) where the review has been initiated by the QCA under **clause 8.8.3(e)**, the QCA may commence the process under Division 7 of Part 5 of the Act, including section 139 and 141 of the Act, to seek and subsequently impose amendments to the proposed Standard User Funding Agreement in the way the QCA considers appropriate to enhance the workability of the document.

~~(g)~~(h) Nothing in this **clause 8.8.3** prevents Aurizon Network from submitting to the QCA for approval proposed amendments to the SUFA it considers necessary to improve its workability, even if the QCA has previously refused to accept proposed amendments in relation to the SUFA.

8.9 Contracting for Capacity

8.9.1 Access Agreements conditional on an Expansion

If Access Rights sought by an Access Seeker require an Expansion, then Aurizon Network must only enter into an Access Agreement with that Access Seeker if:

- (a) that Access Agreement is subject to a condition precedent that requires the relevant Expansion to have been completed and commissioned;
- (b) that Access Agreement includes terms and conditions so that the Access Rights relevant to the Expansion are limited to the available Capacity created by the Expansion; and

- (c) either:
 - (i) the Access Seeker and Aurizon Network have agreed the scope of work for the Expansion; or
 - (ii) the scope of work for the Expansion has been determined through resolution of a dispute in accordance with **clause 11.1**.

[8.9.2 Notice of completion and commissioning of Expansion](#)

[Aurizon Network must provide written notice to each Conditional Access Holder in respect of an Expansion of the date of completion and commissioning of that Expansion.](#)

[8.9.2-8.9.3 Capacity analysis](#)

If Aurizon Network grants Access Rights (**Conditional Access Rights**) to Access Seekers (**Conditional Access Holders**) that are conditional on an Expansion being completed and commissioned, then Aurizon Network will, no more than six (6) Months following commissioning of the Expansion, undertake an assessment of the change in Capacity arising as a result of that Expansion (**Capacity Change**) after the Expansion is commissioned by calculating the Capacity Change as:

- (a) the Existing Capacity [of the System](#) at the time; less
- (b) the Existing Capacity of the system in the absence of the Expansion,

using consistent System Operating Parameters. Aurizon Network must notify all of the relevant Conditional Access Holders and the QCA of the conclusions of that assessment and the basis for those conclusions: [including if a reduction of Conditional Access Rights is required under clause 8.9.4.](#)

[8.9.3-8.9.4 Capacity shortfall](#)

- (a) If Aurizon Network's assessment under **clause 8.9.2** indicates that there is a Capacity Shortfall in relation to Conditional Access Holders, then:
 - (i) the Conditional Access Rights of each Conditional Access Holder are proportionally reduced in accordance with this Undertaking or as agreed by all affected Conditional Access Holders; and
 - (ii) subject to **clause 8.9.3(b)**, where those Conditional Access Rights are reduced, each Conditional Access Holder will be deemed to have lodged an Access Application with Aurizon Network for Access Rights equivalent to that reduction if they notify Aurizon Network within twenty (20) Business Days after ~~the reduction occurs~~ [receiving notice under clause 8.9.3](#) that they wish to seek Access Rights equal to [\(or less than\)](#) that reduction.

- (b) For the purpose of a Conditional Access Holder's Access Application under **clause 8.9.3(a)**:
- (i) the Access Application is taken to be on the same terms as the previous Access Application made by that Conditional Access Holder for those Conditional Access Rights but only to the extent that its Conditional Access Rights have been reduced in accordance with its Access Agreement as a result of the Capacity Shortfall;
 - (ii) Aurizon Network and the Conditional Access Holder are taken to have complied with **clauses 4.2 to 4.4(b) and 4.8(a) to 4.8(c)**; and
 - (iii) **clause 4.8** applies to the Access Application.
- (c) If the scope of works (including the standard of work) for an Expansion is altered or determined by unanimous agreement of Conditional Access Holders or through resolution of the dispute in accordance with clause ~~11.1~~ 11.1 and:
- (i) the Expansion is constructed in accordance with that altered or determined scope and standard; and
 - ~~(ii)~~ the Expansion results in a Capacity Shortfall (determined in accordance with the process in clause ~~8.9.2~~);
 - (ii) 8.9.3, then Aurizon Network (acting reasonably) must calculate the Capacity Shortfall, if any, that would have existed if the same process as outlined in clause 8.9.3 is applied but it is assumed the scope of work (including standard of work) previously proposed by Aurizon Network had been constructed (AN Shortfall).
- (d) Aurizon Network must comply with clause ~~8.9.4(a)(ii)~~ 8.9.6(a)(ii) in respect of any AN Shortfall and give the ~~Affected~~ affected Access Holders a priority allocation of Capacity arising out of the resulting Shortfall Expansion.
- (e) ~~In~~ addition to clause ~~8.9.3(d)~~ 8.9.4(d), if the AN Shortfall is less than the Capacity Shortfall, then the ~~Affected~~ affected Access Holders may:
- (i) make an irrevocable election (subject to their right to seek an Expansion at a later date) to have their rights of Access remain compressed (in accordance with the process for compression in this Undertaking) in relation to that Expansion as a result of any remaining Capacity Shortfall after the AN Shortfall is addressed, in which case their Access Rights in their Access

Agreements will be amended to reflect the compression; or

~~(ii)~~ elect to seek to fund an Expansion to address the difference in Capacity between the AN Shortfall and the Capacity Shortfall in which case

~~(ii)~~ Aurizon Network must give the ~~Affected~~affected Access Holders a priority allocation of Capacity in an existing or future process for the scoping and funding of a related Expansion that can be utilised to address the Capacity Shortfall; ~~and~~

~~(f)(iii)~~ Aurizon Network will not breach this **Part 8** by giving the ~~Affected~~affected Access Holders priority allocation of Capacity in accordance with this **clause 8.9.3**.

8.9.48.9.5 Funding a Shortfall Expansion

(a) Subject to an election by the ~~Affected~~affected Access Holders to fund an Expansion to address the difference in Capacity between the AN Shortfall and a Capacity Shortfall as set out in **clause 8.9.3**, where an Expansion (**Shortfall Expansion**) is required as a result of a Capacity Shortfall arising in respect of an earlier Expansion commenced after the Approval Date of the 2016 Undertaking (**Earlier Expansion**) and that Shortfall Expansion is technically and economically feasible:

(i) subject to **clause 8.9.4(a)(ii)**:

(A) if Aurizon Network funded the Earlier Expansion, then Aurizon Network must rectify the Shortfall Expansion;

(B) if Aurizon Network funded part of the Earlier Expansion, then:

(1) Aurizon Network must rectify the proportion of the Shortfall Expansion that represents the proportion of the Earlier Expansion that was funded by Aurizon Network; and

(2) the Conditional Access Holder(s) who (or whose Customers) provided funding in respect of the Earlier Expansion must rectify the remainder of the Shortfall Expansion if they require it (in which case Aurizon Network and the Conditional Access Holder(s) (or their Customers) will promptly enter into User Funding Agreements on the same terms); ~~or~~ as the

[Earlier Expansion's User Funding Agreements\); or](#)

(C) if Aurizon Network did not fund (in whole or part) the Earlier Expansion, a Conditional Access Holder must rectify the Shortfall Expansion if they require it, failing which its Access Rights will be reduced in accordance with **clause 8.9.5**; and

(ii) if the Capacity Shortfall was caused (partly or wholly) by a default by, or the negligent acts or omissions of, Aurizon Network (and for the purposes of this clause an AN Shortfall is deemed to have been caused by a default by, or the negligent act or omission of, Aurizon Network), Aurizon Network must rectify the implications of:

(A) the Shortfall Expansion if the Capacity Shortfall was caused wholly by a default by or the negligent act or omission of Aurizon Network; or

(B) the part of the Shortfall Expansion relating to the AN Shortfall, if the Capacity Shortfall included an AN Shortfall and the Capacity Shortfall (other than the AN Shortfall) was not otherwise caused by a default by, or the negligent act or omission of, Aurizon Network.

8.9.58.9.6 Reduction of Conditional Access Rights due to Capacity Shortfall

(a) If an Access Agreement nominates a Train Service Type as being conditional on completion and commissioning of an Expansion, then:

(i) the Access Rights for that Train Service Type under the Access Agreement are Conditional Access Rights for that Train Service Type; and

(ii) despite the Train Service Commitment Date specified in the Train Description for the Conditional Access Rights, the Train Service Commitment Date for the Conditional Access Rights will be taken to be the later of:

(A) the Train Service Commitment Date for the Conditional Access Rights specified in the Train Description for the Conditional Access Rights; and

(B) the date upon which all Segments are completed and commissioned.

- (b) Where **clause 8.9.3(a)(i)** applies, the Reduced Conditional Access Rights for a Segment which has a Capacity Shortfall will be calculated in accordance with the following formula:

$$\text{RCAR} = \text{EAR} \times \frac{\text{CAR}_{(\text{Original})}}{\sum \text{CAR}_{(\text{Original})}}$$

where:

- RCAR = the Reduced Conditional Access Rights for the relevant Segment of the Expansion (expressed as a number of Train Services and rounded down to the nearest even number of whole Train Services)
- EAR = the lesser of:
- (a) the sum of CC and IAC; and
 - (b) $\sum \text{CAR}_{(\text{Original})}$,
(expressed as a number of Train Services)
- CC = the Capacity Change for the relevant Segment of the Expansion (expressed as a number of Train Services)
- IAC = the amount (expressed as a number of Train Services) specified as the “Initial Available Capacity” for the Segment in the Train Description for the Conditional Access Rights in the relevant Access Agreement
- $\text{CAR}_{(\text{Original})}$ = the Conditional Access Rights (expressed as a number of Train Services) in the relevant Access Agreement
- $\sum \text{CAR}_{(\text{Original})}$ = the sum of:
- (i) the Conditional Access Rights (expressed as a number of Train Services) in the relevant Access Agreements; and
 - (ii) for each other Conditional Access Holder for the Segment of the Expansion, the other Conditional Access Holder’s other Conditional Access Rights for the Expansion (expressed as a number of Train Services) in each of their Access Agreements.
- (i) within thirty (30) days after the completion of Aurizon Network’s assessment under **clause 8.9.2**, Aurizon Network must give each Affected Access Holder a notice (**Capacity Assessment Notice**) which specifies:
- (A) the Conditional Access Rights;
 - (B) the amount of the Capacity Change for each Segment of the Expansion;

- (C) whether or not there is a Capacity Shortfall in respect of any Segment of the Expansion; and
 - (D) if there is a Capacity Shortfall in respect of any Segment of the Expansion, the Reduced Conditional Access Rights for each such Segment of the Expansion (calculated in accordance with the formula in **clause 8.9.5(b)**), including reasonable details of the calculation of the Reduced Conditional Access Rights for each Segment.
- (c) The Conditional Access Rights in the relevant Access Agreement will be taken to be varied to the lowest of the Reduced Conditional Access Rights for a Segment of the Expansion as:
 - (i) specified in the Capacity Assessment Notice; or
 - (ii) as agreed or determined through the dispute resolution process,with effect on the later of:
 - (iii) twenty (20) Business Days from receipt by the Access Holders of the Capacity Assessment Notice; and
 - (iv) if the Capacity Assessment Notice has been referred to the QCA for resolution of a Dispute, ten (10) Business Days after the Dispute is agreed or determined.

Part 9: Connecting Private Infrastructure

9.1 Connecting Infrastructure

- (a) The Private Infrastructure Owner must give Aurizon Network a written proposal for the proposed connection to the Rail Infrastructure. The written proposal must provide reasonably sufficient details about the proposed connection to allow it to be properly assessed by Aurizon Network against the criteria in **clause 9.1(b)** and for development of a Rail Connection Agreement.
- (b) Within two (2) Months (or such longer period as may be agreed between Aurizon Network and the Private Infrastructure Owner) of receiving the written proposal, Aurizon Network must assess the proposal, acting reasonably and in good faith, and decide whether or not it meets the following criteria:
 - (i) the proposed Connecting Infrastructure is for the purpose of connecting to the Rail Infrastructure in order to allow Trains operating on that Private Infrastructure to enter or exit from the Rail Infrastructure for the purpose of Access;
 - (ii) the proposed Connecting Infrastructure will meet the technical specifications required by Aurizon Network (acting reasonably) for connection to the Rail Infrastructure;
 - (iii) the proposed Connecting Infrastructure is to be constructed to a standard appropriate to the nature of the traffic and the current service standards of the adjoining Rail Infrastructure (including any planned or anticipated Expansion);
 - (iv) the proposed Connecting Infrastructure will not adversely impact on safety; and
 - (v) the proposed Connecting Infrastructure will not, after completion and commissioning of the proposed connection and any related Expansion, reduce Capacity or Supply Chain Capacity.
- (c) Connecting Infrastructure must be owned by Aurizon Network or, where Aurizon Network holds the Rail Infrastructure of which that Connecting Infrastructure will form a part under a lease, must be included under that lease as part of the leased infrastructure.
- (d) Within five (5) Business Days of making its decision under **clause 9.1(b)**, Aurizon Network must notify the Private Infrastructure Owner and the QCA of that decision.

- (e) If Aurizon Network decides the proposal meets the criteria under **clause 9.1(b)**, then within two (2) Months of notifying the Private Infrastructure Owner under **clause 9.1(d)**, Aurizon Network must agree with the Private Infrastructure Owner the timeframes within which Aurizon Network (acting reasonably) will:
- (i) enter into a Rail Connection Agreement with the Private Infrastructure Owner;
 - (ii) design and construct any Connecting Infrastructure;
 - (iii) commission any Connecting Infrastructure; and
 - (iv) complete any other matters Aurizon Network and the Private Infrastructure Owner consider necessary,

(each a **Connection Milestone**) which must be supported by reasons explaining the length of the timeframe selected by Aurizon Network.

- (f) Aurizon Network and the Private Infrastructure Owner may agree to delay setting the Connection Milestones under **clause 9.1(e)** until an Access Agreement which requires the proposed connection to the Rail Infrastructure to be completed has been entered into between the parties.
- (g) Within five (5) Business Days of reaching agreement under **clause 9.1(e)** or agreeing under **clause 9.1(f)** to delay setting the Connection Milestones, Aurizon Network must notify the QCA of either each Connection Milestone (and the reasons supporting each Connection Milestone) or the decision to delay.
- (h) Where Aurizon Network decides that the criteria set out in **clause 9.1(b)** are, or will be, satisfied and that **clause 9.1(c)** will be complied with, it must permit the connection of the Private Infrastructure to the Rail Infrastructure subject to:
- (i) Aurizon Network and the Private Infrastructure Owner entering into a Standard Rail Connection Agreement (unless the Private Infrastructure Owner agrees with Aurizon Network to vary the terms of the Standard Rail Connection Agreement, in which case any amendments proposed to those terms must be negotiated by both Aurizon Network and the Private Infrastructure Owner acting reasonably and in good faith);
 - (ii) Aurizon Network gaining access, on terms acceptable to Aurizon Network (acting reasonably and in good faith), to the land necessary to construct, operate, use and maintain the Connecting Infrastructure; and
 - (iii) Aurizon Network and the Private Infrastructure Owner or any other relevant person entering into any other agreements in relation to:

- (A) the design, construction, project management or commissioning of the Connecting Infrastructure; or
- (B) other works relating to the proposed connection,

required under the Rail Connection Agreement or any Law.

- (i) If Aurizon Network decides, acting reasonably and in good faith:
 - (i) in accordance with **clause 9.1(b)**, that the criteria set out in **clause 9.1(b)** have not been satisfied; and
 - (ii) to refuse to enter into a Rail Connection Agreement as a result,

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

- (iii) notify the Private Infrastructure Owner and the QCA of its decision if it has not already done so under **clause 9.1(d)**;
 - (iv) provide reasons for its decision to the Private Infrastructure Owner and the QCA; and
 - (v) specify the amendments it requires to be made to the Private Infrastructure Owner's proposal in order to satisfy the criteria in **clause 9.1(b)** and to enable Aurizon Network to enter into a Rail Connection Agreement.
- (j) If a Private Infrastructure Owner is notified by Aurizon Network under **clause 9.1(i)(iii)**, the Private Infrastructure Owner may re-submit its proposal to Aurizon Network under **clause 9.1(a)**, in which case Aurizon Network must recommence the assessment and decision-making process under **clause 9.1(a)**.
- (k) If connection of the Private Infrastructure to the Rail Infrastructure is permitted under this **clause 9.1**, then unless otherwise agreed with the Private Infrastructure Owner, Aurizon Network:
 - (i) must be responsible for designing, constructing, project managing and commissioning the Connecting Infrastructure;
 - (ii) must do so in accordance with the relevant Rail Connection Agreement, Construction Agreement and any other relevant agreement without unreasonable delay;
 - (iii) is entitled to payment for that design, construction, project management and commissioning consisting only of reimbursement of its efficient costs which

directly relate to the Connecting Infrastructure, but to the extent only that such costs have not, or will not be, included in the Regulatory Asset Base or recovered by Aurizon Network through other means under this Undertaking; and

- (iv) must not in the technical specifications required by Aurizon Network for connection to the Rail Infrastructure, require higher standards for the design or construction than those required under the relevant legislation and Safety Standards.
- (l) Aurizon Network must pay all reasonable costs (excluding Consequential Loss) incurred by the Private Infrastructure Owner arising directly out of Aurizon Network's unreasonable delay in:
- (i) entering into:
 - (A) a Rail Connection Agreement;
 - (B) an agreement relating to the design and construction, project management and/or commissioning of any Connecting Infrastructure required under the Rail Connection Agreement or any Law; and
 - (C) an agreement relating to any other works required for the connection or proposed connection under the Rail Connection Agreement or any Law;
 - (ii) designing and constructing any Connecting Infrastructure;
 - (iii) commissioning any Connecting Infrastructure; and
 - (iv) completing any other matters that Aurizon Network and the Private Infrastructure Owner consider necessary.

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

- (v) loss of revenue, loss of profits, or loss of production;
- (vi) loss of whatever nature concerning supply of product from a mine to any third party or to make product available to transport;
- (vii) loss of business opportunities;
- (viii) loss of or damage to reputation or good will;

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

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

Nothing in this **Part 9** requires or obliges either Aurizon Network or the Private Infrastructure Owner to agree that the technical specifications or the completed construction of either the Private Infrastructure or any Connecting Infrastructure is required to the standards or condition for the design or construction of any relevant Rail Infrastructure (including any planned or anticipated Expansion).

Part 10: Reporting, compliance and audits

10.1 Overview

This **Part 10** sets out various provisions relating to the reporting requirements for Aurizon Network, in particular:

- (a) **clause 10.3** sets out the reports that Aurizon Network must provide in respect of network performance, including maintenance cost reports and network performance reports;
- (b) **clause 10.4** sets out the reports that Aurizon Network must provide in respect of other matters, particularly the annual financial statements, the Regulatory Asset Base roll-forward report and the findings on the conditions based assessment;
- (c) **clause 10.5** sets out the actions that Aurizon Network must take and the reports that Aurizon Network must provide to assist with showing its compliance with this Undertaking;
- (d) **clause 10.6** sets out the audits that Aurizon Network must undertake and the rules that relate to any audits required by this Undertaking; and
- (e) **clause 10.7** sets out general matters relating to provision of information, errors in reports and certification by Aurizon Network's Executive Officer.

10.2 General Principles

Unless otherwise required by this Undertaking or agreed between Aurizon Network and the QCA, any report required under this **Part 10** must report separately:

- (a) in respect of each Coal System;
- (b) to the extent applicable, in respect of each Reference Tariff; and
- (c) in respect of the conditions based assessment under **clause 10.4.3**, for each User Funded Expansion.

10.3 Network performance

10.3.1 *Annual maintenance plan*

Aurizon Network must provide Access Holders, and their Customers, if applicable, with a briefing in the form of a report and presentation on details of the planned scope of maintenance and renewals for the forthcoming Year and the contents of the maintenance cost reports for the previous Year, three (3) Months before the commencement of each Year.

10.3.2 *Quarterly maintenance cost report*

- (a) Within six (6) Months after the Approval Date or such longer time as agreed by the QCA, Aurizon Network must, [provided it has not already done so under the 2016 Undertaking](#), submit to the QCA

a draft format (including the content) of a quarterly maintenance cost report. In considering whether to approve the draft format, the QCA must take into account the extent:

- (i) to which Aurizon Network consulted stakeholders in developing the draft format; and
 - (ii) of any stakeholder support for the draft format.
- (b) If the QCA considers that the draft format (and content) is not sufficiently detailed or does not provide sufficient transparency, the QCA may determine, and Aurizon Network must vary accordingly, the format for the report to ensure it does satisfy the QCA's requirements. The format (including the content) of the report may be varied from time to time by agreement between Aurizon Network and the QCA, or failing agreement, as required by the QCA.
- (c) Following the QCA's approval of the format, within one (1) Month after the end of each Quarter in the Term, Aurizon Network must publish on the Website a maintenance cost report for the relevant Quarter utilising the format (and including the content) approved or determined by the QCA under **clause 10.3.2(a)** or **10.3.2(b)**.

10.3.3 Annual maintenance cost report

- (a) Within four (4) Months after the end of each Year in the Term, or such longer time as agreed by the QCA, Aurizon Network must publish on the Website a maintenance cost report for the relevant Year which includes the content required by **clause 10.3.3(c)**. The format and the manner in which the report is to be published or provided may be varied from time to time by agreement between Aurizon Network and the QCA or, failing agreement, as required by the QCA.
- (b) The maintenance cost report will be certified as accurate by Aurizon Network's Executive Officer.
- (c) The maintenance cost report required by **clause 10.3.3(a)** must:
- (i) provide a detailed report of Aurizon Network's actual maintenance costs in the relevant Year compared to the forecast maintenance costs accepted by the QCA for the purpose of determining Reference Tariffs for the relevant Year:
 - (A) for:
 - (1) General Track Maintenance;
 - (2) structures and facilities maintenance;
 - (3) trackside systems maintenance;
 - (4) electrical overhead maintenance; and

- (5) telecommunications maintenance;
- (B) for mechanised maintenance:
 - (1) separately for each type of maintenance (including ballast cleaning, rail grinding, and rail resurfacing);
 - (2) in addition to a report for each Coal System, in aggregate for all Coal Systems; and
 - (3) unless otherwise agreed between the QCA and Aurizon Network, for any section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted an estimate of Aurizon Network's forecast maintenance costs for the purposes of assessing the relevant Reference Tariff(s);
- (ii) provide a detailed report of Aurizon Network's actual scope of maintenance compared to the forecast scope of maintenance accepted by the QCA for the purpose of determining Reference Tariffs for the relevant Year:
 - (A) for the maintenance activities set out in **clause 10.3.3(c)(i)(A)** in aggregate for all Coal Systems:
 - (1) for mechanised maintenance, separately for each Coal System and in aggregate for all Coal Systems; and
 - (2) unless otherwise agreed between the QCA and Aurizon Network, for any section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted an estimate of Aurizon Network's forecast scope of maintenance for the purposes of assessing the relevant Reference Tariff(s);
- (iii) provide an explanation of significant variations between:
 - (A) the actual and forecast maintenance costs; and
 - (B) the actual and forecast scope of maintenance;
- (iv) report the actual MCI and the forecast MCI accepted by the QCA for the purposes of determining Reference Tariffs for the relevant Year (including the indices, if any, comprised in the MCI) and provide an explanation

of how any significant differences have or will impact on Aurizon Network's maintenance costs;

- (v) report for:
 - (A) annual Below Rail Transit Times;
 - (B) OTCI results; and
 - (C) the number of major reportable safety incidents reported to the Safety Regulator, excluding those reported under **clause 10.3.3(c)(vi)**;
- (vi) report on the number of derailments where the cost to Aurizon Network of recovery from the derailment exceeded AUD\$100,000, including the effect of action taken to restore Aurizon Network's rail network after such derailments on the completion of planned maintenance work; and
- (vii) report details of all capital expenditure related to asset renewal incurred in place of planned maintenance work during the relevant Year.

10.3.4 Quarterly network performance report

- (a) Unless otherwise agreed between Aurizon Network and the QCA, Aurizon Network must, within twenty (20) Business Days after the end of each Quarter in the Term, publish on the Website a report (which Aurizon Network must ensure is accurate and not misleading) in relation to each Month in the relevant Quarter containing the information set out in **clauses 10.3.4(b) to 10.3.4(i)**, inclusive.
- (b) Information on the number and reliability of Train Services that operated each Month in the relevant Quarter, as follows:
 - (i) the number and percentage of Train Services that reached their destination within the Allotted Time Threshold;
 - (ii) the number and percentage of Train Services that did not reach their destination within the Allotted Time Threshold:
 - (A) due primarily to the acts or omissions of Aurizon Network;
 - (B) due primarily to delays attributed to a Railway Operator;
 - (C) due primarily to other matters not identified in either **paragraph (A) or (B)**; and
 - (iii) the total number of Train Services.

- (c) Information on the average transit times of Train Services that operated each Month in the relevant Quarter, as follows:
 - (i) the average Above Rail Delay;
 - (ii) the average Below Rail Delay; and
 - (iii) the average Unallocated Delay,in minutes per 100 train kilometres, for all Train Services.
- (d) Information on the availability of the network for Train Services in each Month in the relevant Quarter, as follows:
 - (i) number and percentage of Train Services cancelled due to a reason that can be attributed directly to Aurizon Network as Railway Manager;
 - (ii) number and percentage of Train Services cancelled due to a reason that can be attributed directly to a Railway Operator; and
 - (iii) number and percentage of Train Services cancelled due to a reason that cannot be clearly assigned as directly attributable to a Railway Operator or to Aurizon Network as Railway Manager.
- (e) Information on the safety of Train Services that have operated in each Month in the relevant Quarter, being the number of major reportable incidents, as reported to the Safety Regulator.
- (f) Information on network service quality, as follows:
 - (i) speed restrictions in each Month in the relevant Quarter, being the average percentage and the average number of kilometres of Track under temporary speed restriction; and
 - (ii) the most recent measure of Track quality for the network measured by a quality index with component measures including gauge, top, twist and versine.
- (g) Information on coal carrying Train Services that have operated in each Month in the relevant Quarter, being:
 - (i) the aggregate gtk;
 - (ii) the aggregate nt;
 - (iii) the aggregate ntk;
 - (iv) the aggregate egtk;
 - (v) the average actual Below Rail Transit Time Percentage (including the methodology for calculating that percentage);

- (vi) the aggregate Train Paths used by the relevant Train Services;
 - (vii) the aggregate Train Paths contracted for relevant Train Services in accordance with the relevant Train Service Entitlements; and
 - (viii) the aggregate number of Train Paths available for coal carrying Train Services.
- (h) Subject to **clause 10.3.4(k)**, information for each Month in the relevant Quarter in respect of:
- (i) the aggregate number of Train Paths scheduled;
 - (ii) the aggregate number of Train Paths used for planned maintenance;
 - (iii) the aggregate number of Train Paths used for unplanned maintenance; and
 - (iv) the percentage of Train Paths available but not used.
- (i) Information on the outcome of the Contested Train Path decision making process contained in **clause 8 of Schedule G** in respect of:
- (i) the number of contests run each Month; and
 - (ii) the number and percentage of Train Paths allocated under each of the Contested Train Path principles set out in **clause 8.3 of Schedule G**.
- (j) Subject to **clause 10.3.4(k)** and **(l)**, for the purposes of **clauses 10.3.4(b) to 10.3.4(d)**, the Train Services will be aggregated as follows, Train Services operated for the purpose of:
- (i) transporting coal;
 - (ii) transporting freight products, and bulk minerals (other than coal); and
 - (iii) providing long distance passenger transport.
- (k) In addition to the report published under **clause 10.3.4(a)**, unless otherwise agreed between Aurizon Network and the QCA, Aurizon Network must, within twenty (20) Business Days after the end of each Quarter in the Term, publish on the Website a report (which Aurizon Network must ensure is accurate and not misleading) containing:
- (i) the information set out in **clauses 10.3.4(b) to 10.3.4(i)** inclusive for the previous Quarter; and

- (ii) a comparative presentation against the aggregate, published information for the corresponding Quarter of the preceding Year,

provided that for the reports in respect of the Quarters in the first Year during the Term, the information for the preceding Year is that published for the Quarters in that preceding Year under the ~~2010~~[2016](#) Undertaking.

- (l) Aurizon Network will, in conjunction with its public release of a report under this **clause 10.3.4**, provide to the QCA a supplementary report that presents the information included in the published report for each Railway Operator. If a supplementary report relates to a Railway Operator, Aurizon Network will provide to that Railway Operator those parts of the supplementary report that relate to that Railway Operator.

10.4 Reports

10.4.1 Annual financial report

- (a) The financial statements referred to in **clause 3.7.1(a)** must be certified as being in accordance with this Undertaking by Aurizon Network's Executive Officer.
- (b) Within six (6) Months after the end of each Year in the Term, or such longer time as agreed by the QCA, Aurizon Network must publish on the Website the financial statements relating to the relevant Year which have been prepared and certified under **clause 10.4.1(a)**.
- (c) Within six (6) Months after the later of the Approval Date and the QCA approving the Costing Manual, Aurizon Network must publish on the Website the financial statements for any Year prior to the Approval Date that have not been published, but is not required to publish for any Year commencing prior to 1 July 2010. Aurizon Network must ensure the financial statements are prepared, audited and certified in accordance with this Undertaking.

10.4.2 Public annual Regulatory Asset Base roll-forward report

- (a) To the extent that the QCA has accepted Aurizon Network's proposed roll-forward of the Regulatory Asset Base under **clause 1.3 of Schedule E**, Aurizon Network must, within four (4) weeks after the QCA's acceptance, publish on the Website a report of changes to the Regulatory Asset Base for the relevant Year containing the information set out in **clause 10.4.2(b)**.
- (b) Aurizon Network will, in the Regulatory Asset Base roll-forward report, include details of:
 - (i) the opening value of the Regulatory Asset Base for the relevant Year;

- (ii) indexation of the Regulatory Asset Base;
- (iii) depreciation of the Regulatory Asset Base;
- (iv) capital expenditure that is included in the Regulatory Asset Base, separately identifying individual projects with a value in excess of \$10 million;
- (v) disposals and transfers from the Regulatory Asset Base;
- (vi) the closing value of the Regulatory Asset Base for the relevant Year; and
- (vii) for comparative purposes, the value of the Capital Indicator for the subject Year.

10.4.3 **Conditions Based Assessment**

~~(a)~~ Aurizon Network must procure a condition based assessment of the Rail Infrastructure:

- ~~(i)~~ no later than ~~31 March 2017~~; and
- ~~(ii)~~ if three (3) Months prior to the Term Terminating Date, or such other date as is extended beyond four (4) Years, at agreed with the QCA's request,

(a) QCA in accordance with this **clause 10.4.3 (Condition Based Assessment)**.

- (b) Aurizon Network will appoint an independent qualified consultant, who has been accepted by the QCA, to conduct the Condition Based Assessment (**Assessor**).
- (c) The Assessor will have a duty of care to the QCA in the conduct of the Condition Based Assessment and, in the event of a conflict between the Assessor's obligations to Aurizon Network and its duty of care to the QCA, the Assessor's duty of care to the QCA will take precedence.
- (d) Prior to commencing the Condition Based Assessment, the Assessor must agree an assessment plan with Aurizon Network, document that assessment plan and obtain the QCA's approval of that assessment plan.
- (e) The assessment plan will:
 - (i) consist of a proposed work program for conducting the Condition Based Assessment;
 - (ii) provide for the establishment of an assessment liaison group, comprising the Assessor, Aurizon Network and the QCA, during the course of the Condition Based Assessment to provide a forum for the resolution of any issues that arise; and

- (iii) propose a methodology for assessing Track condition to be agreed between Aurizon Network and the QCA and in the absence of agreement determined by the QCA, but which in any case must be such as to allow for a comparison of results to relevant prior condition based assessments.
- (f) Aurizon Network must provide the Assessor with any relevant information and access to land or sites as reasonably required by the Assessor for the purposes of conducting the Condition Based Assessment.
- (g) To the extent Aurizon Network is requested to provide confidential information to the Assessor, the Assessor will be required to enter into an agreement with Aurizon Network in relation to any information provided by Aurizon Network to the effect that it must keep the information confidential and only use that information for the purpose of conducting the Condition Based Assessment and completing the assessment report.
- (h) The Assessor must provide to Aurizon Network and the QCA a report on the findings of the Condition Based Assessment, including (as far as reasonably practicable) identifying the extent to which the Rail Infrastructure has deteriorated by more than would have been the case had good operating practice and prudent and effective maintenance and asset replacement policies and practices been pursued.
- (i) Aurizon Network must publish the report on the findings of the Condition Based Assessment on the Website.
- (j) Aurizon Network must provide, or make available in accordance with this **clause 10.4.3(j)**, the report on the findings of the Condition Based Assessment as a complete and transparent document:
 - (i) to the QCA on an unredacted basis; and
 - (ii) to stakeholders and when published on its Website:
 - (A) in respect of agreements entered into after the Approval Date [of the 2016 Undertaking](#) and to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the report (and if those obligations permit disclosure if required by this Undertaking then Aurizon Network is required to disclose the information contained in the report), on an unredacted basis; and
 - (B) in respect of agreements entered into prior to the Approval Date [of the 2016 Undertaking](#) or if

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

- (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the report on an unredacted basis;
- (2) in respect of the information ~~referred to in paragraph (i) or~~ for which consent is obtained under **paragraph (ii)(AB)(1)**, on an unredacted basis; and
- (3) in respect of the information ~~that does not satisfy paragraph (i) or~~ for which consent is not obtained under **paragraph (ii)(AB)(1)**:
 - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
 - to the extent not possible, on a redacted basis.

- (k) Aurizon Network must use reasonable endeavours to agree to confidentiality obligations that:
- (i) do not prevent the disclosure of the information contained in the report on the findings of the Condition Based Assessment; and
 - (ii) permit disclosure of information required by this Undertaking,

but

- (iii) in any event, must not agree to any confidentiality obligations that prevent disclosure to the QCA,

provided that Aurizon Network will be deemed to have complied with its obligations under this **clause 10.4(k)** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with **clause 10.4(k)(i)** and **clause 10.4(k)(ii)**, whether or not the access seeker actually agrees to the inclusion of such obligations in the Access Agreement.

- (l) For clarity, the costs and expenses incurred by Aurizon Network in relation to the Condition Based Assessment will be included in the calculation of the AT2-4 components of Reference Tariffs.

10.5 Compliance with this Undertaking

10.5.1 Compliance Officer

- (a) Aurizon Network must appoint a Compliance Officer and advise the QCA as to the identity of the Compliance Officer and of any changes to the identity of the Compliance Officer during the Term.
- (b) The Compliance Officer will be appropriately resourced by Aurizon Network to perform their role, which will include responsibility for:
 - (i) management of the governance framework through systems and practices reasonably required to ensure Aurizon Network complies with its obligations in this Undertaking; and
 - (ii) notifying Aurizon Network's Executive Officer as soon as possible of any material breach of this Undertaking by Aurizon Network and advising of any remedial action proposed or taken by Aurizon Network in respect of the breach.

10.5.2 Annual compliance report

- (a) Within four (4) Months of the end of each Year in the Term, or such longer time as agreed by the QCA, Aurizon Network must publish on the Website an annual compliance report in relation to the subject Year containing the information set out in **clauses 10.5.2(c), (d) and (e)** and which will be accompanied by an audit report prepared in accordance with **clause 10.6.3** in respect of Aurizon Network's compliance with its obligations under this **clause 10.5.2**.
- (b) Aurizon Network must, in conjunction with the publication on the Website of an annual compliance report in accordance with **clause 10.5.2(a)**, provide to the QCA a supplementary report that presents the information included in the public annual compliance report for each of the following classes of Access Holders (on an aggregated basis):
 - (i) Third Party Access Holders; and
 - (ii) Aurizon Party Access Holders.
- (c) Information in relation to Aurizon Network's compliance with this Undertaking over the relevant Year as follows:
 - (i) the number and percentage of Access Applications acknowledged in accordance with this Undertaking and within the applicable timeframe nominated in **clauses 4.3(c) and 4.4(a)**;
 - (ii) for those Access Applications received in accordance with this Undertaking and that have not been

- acknowledged within the applicable timeframe nominated in **clauses 4.3(c)** and **4.4(a)** the average delay (in days) taken to acknowledge the Access Applications;
- (iii) the number of requests for Capacity Information and percentage acknowledged in accordance with the applicable timeframe nominated in **clause 4.2(c)**;
 - (iv) the number and percentage of Indicative Access Proposals provided in accordance with this Undertaking within the applicable timeframe nominated in **clause 4.6(e)**;
 - (v) the number and percentage of Access Applications received in accordance with this Undertaking for which the time for the provision of an Indicative Access Proposal was extended in accordance with either **clause 4.6(e)** (or **4.6(i)**);
 - (vi) for those Indicative Access Proposals provided in accordance with this Undertaking but that have not been provided within the applicable timeframe nominated in **clause 4.6**, the average delay (in days) taken to provide the Indicative Access Proposals;
 - (vii) the number of instances where a Dispute arose and was referred for resolution under **Part 11**;
 - (viii) the number of instances where a Dispute arose and was referred for resolution under **Part 11** and Aurizon Network was found to have committed a breach of this Undertaking;
 - (ix) the number of instances where Aurizon Network has received a written complaint from a Third Party that it has allegedly breached one or more of its obligations in **Part 3**;
 - (x) the number of instances where Aurizon Network has received a written complaint from a Third Party that it has allegedly breached one or more of its obligations in **Part 3** and Aurizon Network was found to have committed a breach of those ringfencing obligations;
 - (xi) the percentage of Aurizon Network Personnel receiving, in the course of performing their duties, Confidential Information who have completed training in accordance with **clause 3.15(a)**;
 - (xii) the number of instances where an Access Holder has made a written complaint to Aurizon Network about an incorrectly calculated invoice, and where Aurizon

- Network's investigation into the complaint identifies that the invoice was materially incorrectly calculated;
- (xiii) in respect of written complaints that Aurizon Network has made a decision in breach of Aurizon Network's traffic management decision making matrix contained in **clause 9 of Schedule G** (for each of the Railway Operators collectively and Related Operators as Access Holders collectively):
 - (A) the number of complaints received by Aurizon Network;
 - (B) of the complaints received by Aurizon Network, the number which are currently being assessed by Aurizon Network; and
 - (C) of the complaints received by Aurizon Network, the number which, after being assessed by Aurizon Network, were verified as breaches; and
 - (xiv) in respect of written complaints that Aurizon Network has made a decision in breach of Aurizon Network's Contested Train Path decision making process contained in **clause 8 of Schedule G** (for each of the Railway Operators collectively and Related Operators as Access Holders collectively):
 - (A) the number of complaints received by Aurizon Network;
 - (B) of the complaints received by Aurizon Network, the number which are currently being assessed by Aurizon Network; and
 - (C) of the complaints received by Aurizon Network, the number which, after being assessed by Aurizon Network, were verified as breaches.
- (d) Information in relation to the outcome of Aurizon Network's negotiations with Access Seekers over the relevant Year as follows:
- (i) the average length of the Negotiation Period (in days), where the Negotiation Period has ceased as the result of the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker;
 - (ii) the average length of the Negotiation Period (in days), where the Negotiation Period ceased as the result of any reason other than the execution of an Access Agreement, or variation to an existing Access

Agreement, in respect of the Access sought by the Access Seeker; and

- (iii) the number of instances where a Negotiation Period ceased as the result of the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker,

with such information to be reported separately for Access Agreements and Train Operations Deed.

- (e) Information in relation to Transfers under **clause 7.4.2** and Part 4 as follows:
 - (i) the number of Notices of Intention to Transfer received in accordance with **clause 7.4.2(b)**, including identifying:
 - (A) whether the process in **clause 7.4.2(f)**, **clause 7.4.2(g)** or **Part 4** applied to the Transfer (disregarding whether the Transfer was effected in accordance with that clause or Part); and
 - (B) the Transfer Period;
 - (ii) the number of Transfers effected in accordance with each of **clauses 7.4.2(f)** and **7.4.2(g)** and **Part 4**;
 - (iii) the number of consecutive Transfers for the same Nominated Access Rights that have been effected, including details of whether the Transfer was effected under **clause 7.4.2(f)**, **7.4.2(g)** or **Part 4**;
 - (iv) the average length of time (in days) from the date of receipt of a Notice of Intention to Transfer for a Transfer (completed and submitted in accordance with the requirements of the relevant Access Agreement), to the commencement of the Transferee's new or varied Access Agreement giving effect to the Transfer; and
 - (v) whether the Transferred Access Rights are being granted under:
 - (A) an Access Agreement executed prior to the Approval Date; or
 - (B) an Access Agreement executed on or after the Approval Date that has been negotiated and agreed in accordance with this Undertaking.

10.5.3 Breach reports to the QCA

- (a) Aurizon Network must report to the QCA any breaches of this Undertaking of which Aurizon Network is aware, including advising the QCA of the nature of the breach and the remedial action proposed or taken by Aurizon Network in respect of the breach, at the following times:
 - (i) within ten (10) Business Days after the end of each calendar Month, in relation to any breaches of obligations with respect to timeframes that occurred within that calendar Month; and
 - (ii) in relation to other breaches, as soon as Aurizon Network becomes aware of the breach.
- (b) If Aurizon Network is obliged to report a breach to the QCA in accordance with this **clause 10.5.3** and that breach directly and adversely affects the interests of an Access Seeker, Access Holder or, if applicable, a Train Operator, then Aurizon Network must also provide the information reported to the QCA in respect of that breach to the relevant Access Seeker, Access Holder or Train Operator.
- (c) Aurizon Network must maintain an Issues Register that includes all information in its possession or knowledge in relation to:
 - (i) any breaches of this Undertaking, of which Aurizon Network is aware, that have occurred on or after the Approval Date;
 - (ii) any alleged breaches of this Undertaking, of which Aurizon Network is aware, that are alleged to have occurred on or after the Approval Date;
 - (iii) any written complaints by an Access Seeker, Access Holder or Train Operator in relation to Aurizon Network's performance of its obligations under this Undertaking on or after the Approval Date of which Aurizon Network is aware; and
 - (iv) the steps taken by Aurizon Network to remediate or otherwise address, and the current status of, all matters recorded on the Issues Register under **clauses 10.5.3(c)(i) to 10.5.3(c)(iv)**.
- (d) The QCA and any Auditor appointed under this **Part 10**, may, at any time, make a written request to Aurizon Network to:
 - (i) inspect the Issues Register; and/or
 - (ii) be provided with an electronic copy of any information recorded on the Issues Register and any documents stored on, or referred to in, the Issues Register,

and Aurizon Network must facilitate such an inspection, and/or provide the relevant information and documents (as applicable), within five (5) Business Days of its receipt of the written request.

10.6 Audit

10.6.1 Report auditing

- (a) An audit of Aurizon Network's compliance with all or a part of its reporting obligations under this **Part 10** must be conducted:
 - (i) annually and as otherwise required in writing by the QCA; and
 - (ii) subject to this **clause 10.6.1**, in accordance with **clause 10.6.4**.
- (b) The Auditor will compile an audit report identifying:
 - (i) whether Aurizon Network has complied in all material respects with its reporting obligations under this **Part 10** and, if not, details as to the relevant non-compliance; and
 - (ii) the process adopted for the conduct of the audit.
- (c) If the QCA requires an audit of Aurizon Network's compliance with all or a part of its obligations under this **Part 10** in relation to a relevant report, then the date by which that report must be provided to the QCA or published will be extended by twenty (20) Business Days.

10.6.2 Ringfencing audit

- (a) An audit of:
 - (i) Aurizon Network's compliance with its obligations under **Part 3**; and
 - (ii) other issues (to the extent that the QCA specifically requests that the Auditor consider such matters) for which the QCA reasonably believes that an audit is necessary,must be conducted annually and as otherwise requested by the QCA (under **clause 10.6.3**) in accordance with **clause 10.6.4**.
- (b) In considering Aurizon Network's compliance with its obligations under **Part 3**, the Auditor may take into account Aurizon Network's compliance with any relevant internal procedures.
- (c) The Auditor will compile an audit report identifying whether Aurizon Network has complied in all material respects with its obligations under **Part 3** and, if not, details as to the relevant non-compliance.

10.6.3 Compliance audit requested by the QCA

- (a) Despite any other provisions of this Undertaking that require the conduct of an audit, the QCA may request Aurizon Network in writing to, and on receipt of that request Aurizon Network must, engage an Auditor to undertake an audit, in accordance with **clause 10.6.4**, in relation to whether any specific conduct or decisions of Aurizon Network comply with this Undertaking.
- (b) The audit will be conducted in accordance with **clause 10.6.4**.
- (c) The Auditor will compile an audit report identifying:
 - (i) whether Aurizon Network has complied in all material respects with its obligations which were the subject of the requested audit and if not, details as to the relevant non-compliance; and
 - (ii) the process adopted for the conduct of the audit.
- (d) To the extent approved by the QCA, costs incurred by Aurizon Network in complying with this **clause 10.6.3** will be incorporated in the Adjusted Allowable Revenue in accordance with **clause 3.3 of Schedule F**.

10.6.4 Audit process

An audit process under this Undertaking must be conducted in accordance with the following process:

- (a) Aurizon Network will appoint an Auditor (or Auditors) who will be available to conduct audits required in accordance with this Undertaking. The appointment will be made in the first year of the Term;
- (b) the Auditor must:
 - (i) be independent of Aurizon Network and all other Aurizon Parties;
 - (ii) be appropriately qualified and experienced;
 - (iii) be subject to professional standards of ethics and independence; and
 - (iv) be approved by the QCA. Once approved, the approval will be effective for the Term, subject to the QCA having a right to require the appointment of a replacement Auditor;
- (c) the Auditor will have a duty of care to the QCA in the provision of the audit and, in the event of a conflict between the Auditor's obligations to Aurizon Network and its duty of care to the QCA, the Auditor's duty of care to the QCA will take precedence;

- (d) the Auditor for a financial matter may be different from the Auditor for another matter;
- (e) prior to commencing an audit, the Auditor must agree on an audit plan with Aurizon Network, document that audit plan, and obtain the QCA's approval of the audit plan;
- (f) the audit plan will:
 - (i) consist of a proposed work program for the execution of and scope of the audit, including audit costs (which are payable by Aurizon Network);
 - (ii) where necessary, contain any procedural controls necessary to ensure the independence of the Auditor;
 - (iii) provide for the establishment of an audit liaison group, comprising the Auditor, Aurizon Network and the QCA, during the course of the audit, to provide a forum for the resolution of any audit issues that arise; and
 - (iv) include a process for consultation with the QCA during the audit to ensure that the audit addresses the matters and standards required by the QCA for the particular audit being conducted. The QCA may consult with Access Holders and Access Seekers over the matters and standards to be addressed in, and required of, the audit;
- (g) Aurizon Network must provide:
 - (i) any relevant information the Auditor reasonably requires for the purpose of conducting the audit, within a nominated timeframe that is determined by the Auditor to be reasonable after consultation with Aurizon Network; and
 - (ii) if an audit is required of the financial statements referred to in **clause 3.7**, access to Aurizon Network's financial records and information systems necessary for the purpose of conducting the audit;
- (h) the Auditor may be required to enter into a confidentiality deed with Aurizon Network in relation to any information provided by Aurizon Network, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the audit and completing the audit report, provided however that the Auditor will be entitled to provide all information obtained as a result of the audit to the QCA;

- (i) any drafts of an audit report that are provided to Aurizon Network by the Auditor must, at the same time, be provided to the QCA;
- (j) the Auditor will provide Aurizon Network and the QCA a copy of:
 - (i) the audit report; and
 - (ii) any letter or report from the Auditor accompanying the audit report which explains the audit findings in greater detail,

both of which the QCA may, if it considers it appropriate to do so, publish to parties thought appropriate by the QCA having regard to the scope of the audit and its findings;

- (k) Aurizon Network must:
 - (i) prepare and provide to the QCA an implementation plan; and
 - (ii) use reasonable endeavours, to implement the Auditor's recommendations in the audit report or any other letters or reports provided under **clause 10.6.4(j)**, including recommendations in relation to implementing new policies, practices or procedures directed to ensuring Aurizon Network satisfies the obligations set out in this Undertaking, as soon as reasonably practicable after receiving the Auditor's recommendations, except to the extent the non-implementation is approved by the QCA;
- (l) following the provision of an audit report under **clause 10.6.4(j)** and receipt of Aurizon Network's implementation plan under **clause 10.6.4(k)**:
 - (i) QCA may, at its discretion, request that Aurizon Network provide evidence that it has used reasonable endeavours to implement any or all of the recommendations made by the Auditor in the relevant audit report in accordance with the implementation plan prepared under **clause 10.6.4(k)**; and
 - (ii) if Aurizon Network cannot provide such evidence to the satisfaction of the QCA (in its discretion), the QCA may direct Aurizon Network use reasonable endeavours to take the necessary actions required to implement the relevant recommendations within a specified timeframe; and
- (m) if Aurizon Network fails to comply with a direction issued by the QCA under **clause 10.6.4(l)**, on request from the QCA, Aurizon Network must provide all the documents and information in its possession that relate to its failure to comply with the direction given under **clause 10.6.4(l)** to the QCA.

10.7 General

10.7.1 Information provision

- (a) ~~Upon request by the QCA,~~ Aurizon Network must provide to the QCA signed Access Agreements (including details of Access Charges) to allow the QCA to satisfy itself that the Below Rail aspects of the Access Agreement do not offend the provisions of this Undertaking or the Act.
- (b) In addition to **clause 10.7.1(a)**, the QCA may, by notice, request that Aurizon Network provide to the QCA information or a document that the QCA reasonably requires for the purpose of:
- (i) performing its obligations or functions under this Undertaking; or
 - (ii) determining whether it should exercise powers in this Undertaking.

The notice must include a description of the information or document required, the purpose for which it is required, and the day by which it is required, provided that the day stated in the notice must be reasonable.

- (c) Except as provided for in clause **10.7.1(d)**, Aurizon Network will permit the public disclosure of the Below Rail aspects of Access Agreements (including Access Charges) for all coal carrying Train Services for new or renewed Train Services except that the Below Rail aspects of Access Agreements will not include:
- (i) the insurance provisions;
 - (ii) the contact details included in the Interface Coordination Arrangement;
 - (iii) the Rollingstock and Rollingstock Configuration performance characteristics;
 - (iv) the IRMP; and
 - (v) the Environmental Management Plan.
- (d) If a party to an Access Agreement considers that specified parts of the Access Agreement should not be publicly disclosed, it may make a request to the QCA for non-disclosure of those specified parts. The QCA must agree to the request if it is satisfied that disclosure of the information would be likely to damage that party's commercial activities and that disclosure would not be in the public interest.
- (e) Aurizon Network must comply with a request by the QCA under **clause 10.7.1(a)** by the day stated in the notice, unless Aurizon Network has a reasonable excuse for noncompliance.

- (f) Except for documents that are to be made public in accordance with the terms of this Undertaking, nothing in this **clause 10.7** permits the QCA to disclose any information (including the contents of a document) provided to it under this **clause 10.7.1**.

10.7.2 Errors in reports

- (a) If a report has been published under **Part 10** and Aurizon Network has actual knowledge of a material error in that report, Aurizon Network must, as soon as practicable but no later than three (3) Months after acquiring knowledge of the material error, publish on the Website either, at Aurizon Network's discretion, an erratum or a corrected report identifying the material errors. An error will be a material error where:
 - (i) if the error is a numerical error, the number reported deviates from the correct number by an amount of more than 2%; or
 - (ii) otherwise, Aurizon Network or the QCA considers the error to be material.
- (b) Aurizon Network must notify the QCA of any errors that Aurizon Network has actual knowledge of any report published under **Part 10** unless the QCA has otherwise been notified or is aware of the error.

10.7.3 Certifications required from Aurizon Network's Executive Officer

- (a) All certifications provided by Aurizon Network's Executive Officer under this Undertaking, including certifications of accuracy required in respect of financial statements and cost reports under this **Part 10**, are provided subject to **clause 10.7.3(b)**.
- (b) If in providing a certification required by this Undertaking Aurizon Network's Executive Officer relies on information or professional or expert advice, given or prepared by:
 - (i) Aurizon Network Personnel whom Aurizon Network's Executive Officer believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
 - (ii) a professional adviser or expert in relation to matters that Aurizon Network's Executive Officer believes on reasonable grounds to be within the person's professional or expert competence;
 - (iii) another director or officer of Aurizon Network in relation to matters within the director's or officer's authority; or

- (iv) a committee of directors on which Aurizon Network's Executive Officer did not serve in relation to matters within the committee's authority and;
 - (A) the reliance was made:
 - (1) in good faith; and
 - (2) after making an independent assessment of the information or advice, having regard to Aurizon Network's Executive Officer's knowledge of Aurizon Network and the complexity of the structure and operations of Aurizon Network; and
 - (B) the reasonableness of Aurizon Network's Executive Officer's reliance on the information or advice arises in legal proceedings or an arbitration to determine whether Aurizon Network's Executive Officer has performed with due care and diligence in providing the certification,

Aurizon Network's Executive Officer's reliance on the information or advice is deemed to be reasonable unless the contrary is proved.

Part 11: Dispute Resolution and Decision Making

11.1 Dispute Resolution

11.1.1 Disputes

- (a) Any dispute (**Dispute**) arising:
- (i) as between Aurizon Network and a Prospective Access Seeker, Access Seeker or a Railway Operator in relation to:
 - (A) the negotiation or grant of Access; or
 - (B) the negotiation of a Train Operations Deed;
 - (ii) in relation to the operation of, or anything required to be done or not done by Aurizon Network under this Undertaking; or
 - (iii) in respect of any matters expressly required by this Undertaking to be resolved in accordance with this **Part 11**,

must be resolved in accordance with this **Part 11** and any party to the Dispute may give to the other party or parties a Dispute Notice.

- (b) For clarity, any Dispute in relation to the entry into and completion of schedules for any Standard Agreement, or agreement substantially in the form of a Standard Agreement, is a Dispute for the purpose of **clause 11.1.1(a)** and must be resolved in accordance with this **Part 11**, but a dispute regarding a party refusing to vary the terms of a Standard Agreement is not a Dispute for the purpose of **clause 11.1.1(a)**.
- (c) Unless otherwise agreed by the parties in writing, any disputes arising in respect of any right or obligation under (or the enforcement of) an Access Agreement, a Train Operations Deed, a Studies Funding Agreement, a User Funding Agreement or a Rail Connection Agreement must be dealt with in accordance with the provisions of that agreement (even if the Dispute relates to provisions included in that agreement that are similar to, required by, or inconsistent with this Undertaking) and are not to be dealt with under this Undertaking.
- (d) For the avoidance of doubt, disputes between parties to an Access Agreement, a Train Operations Deed, a Studies Funding Agreement, a User Funding Agreement or a Rail Connection Agreement may be dealt with under this Undertaking to the extent the dispute does not relate to any right or obligation under

(or the enforcement of) the Access Agreement, the Train Operations Deed, the Studies Funding Agreement, the User Funding Agreement or the Rail Connection Agreement.

- (e) For the purposes of this **clause 11.1**, where:
- (i) a Dispute involves a Prospective Access Seeker, Access Seeker, Access Holder or Customer who is not also a Railway Operator; or
 - (ii) a Dispute involves a Railway Operator,
- then:
- (iii) Aurizon Network must provide the relevant Railway Operator(s) (where **paragraph (i)** applies) or the relevant Prospective Access Seeker, Access Seeker, Access Holder or Customer (where **paragraph (ii)** applies) with a copy of the Dispute Notice and any subsequent notices or correspondence given by Aurizon Network to the Prospective Access Seeker, Access Seeker, Access Holder, Customer or Railway Operator, as applicable, in connection with the Dispute; and
 - (iv) any such Prospective Access Seeker, Access Seeker, Access Holder, Customer or Railway Operator, as applicable, may elect, by giving notice to Aurizon Network and the other parties to the Dispute within five (5) Business Days after receiving the Dispute Notice under **clause 11.1.1(e)(iii)**, to become a party to the Dispute for the purposes of **clauses 11.1.2 to 11.1.6**.
- (f) All parties to, and other persons involved in resolving, a Dispute must use reasonable endeavours to facilitate the resolution of the Dispute in a timely manner.
- (g) Aurizon Network must:
- (i) unless otherwise agreed with the QCA, promptly provide the QCA with a copy of any Dispute Notice and any subsequent notices or formal correspondence exchanged between the parties in connection with the Dispute;
 - (ii) promptly notify the QCA when the Dispute is referred to mediation under **clause 11.1.3** or an expert under **clause 11.1.4** for resolution or determination; and
 - (iii) otherwise keep the QCA regularly informed of the progress of the resolution of the Dispute, including its outcome.

11.1.2 *Chief executive resolution*

- (a) Unless otherwise agreed in writing by the parties to the relevant Dispute, any Dispute must, within five (5) Business Days of the receipt of a Dispute Notice, be referred in the first instance to each party's chief executive (or his or her nominee) for resolution.
- (b) Within ten (10) Business Days after a Dispute Notice is given (or as agreed in writing by the parties to the relevant Dispute), the chief executive (or his or her nominee) of each party referred to in **clause 11.1.2(a)** must meet to resolve the Dispute.
- (c) All communications between the parties to a Dispute, including by, to or through each party's chief executive (or his or her nominee), as part of an attempt to resolve the Dispute under this **clause 11.1.2** are made on a without prejudice and confidential basis.
- (d) Where the Dispute is resolved under this **clause 11.1.2**, Aurizon Network must promptly notify the QCA of the resolution and provide a copy of that notice to the other parties to the Dispute.
- (e) If the Dispute is not resolved within ten (10) Business Days after the chief executive (or his or her nominee) of each party first meet in accordance with **clause 11.1.2(b)**, the parties may agree to refer the Dispute to:
 - (i) mediation to be resolved in accordance with **clause 11.1.3**;
 - (ii) an expert to be resolved in accordance with **clause 11.1.4**; or
 - (iii) the QCA to be resolved in accordance with **clause 11.1.5**,

and, failing agreement under this **clause 11.1.2(e)** within fifteen (15) Business Days after the chief executive (or his or her nominee) of each party first meet in accordance with **clause 11.1.2(b)**, either any party may refer the Dispute to the QCA to be resolved in accordance with **clause 11.1.5**.

11.1.3 *Mediation*

- (a) If the parties agreed to refer the relevant Dispute to mediation, then the mediation must be administered by the Australian Commercial Disputes Centre (**ACDC**) in accordance with ACDC's guidelines for mediation. The costs charged by ACDC for the mediation must be borne equally by the parties and each party must bear its own costs of preparing for and attending the mediation.
- (b) All communications made between the parties to a Dispute, including to or through the mediator, as part of an attempt to

resolve the Dispute under this **clause 11.1.3** are made on a without prejudice and confidential basis.

- (c) Where mediation resolves the Dispute, the resolution must be documented in writing and signed by the parties to the Dispute. The mediator must provide a copy of the agreement by which the Dispute was resolved to the QCA. If the mediator fails to do so, Aurizon Network must provide a copy of the agreement to the QCA.
- (d) If the matter is referred to mediation under **clause 11.1.3(a)** and either:
 - (i) the mediator notifies the parties to the mediation that the mediator considers:
 - (A) the parties to the relevant mediation cannot achieve a mediated resolution of the Dispute; or
 - (B) a party to the relevant mediation has failed to participate in the mediation process in good faith; or
 - (ii) mediation fails to resolve the Dispute within four (4) Months after the matter is referred to mediation under **clause 11.1.3(a)**,

then the parties may agree to refer the Dispute to:

- (iii) an expert to be resolved in accordance with **clause 11.1.4**; or
- (iv) the QCA to be resolved in accordance with **clause 11.1.5**,

and, failing agreement under this **clause 11.1.3(d)** within five (5) Business Days after the notification under **clause 11.1.3(d)(i)** or after the expiry of the period under **clause 11.1.3(d)(ii)**, whichever is relevant, ~~either~~any party may refer the Dispute to the QCA to be resolved in accordance with **clause 11.1.5**.

11.1.4 Expert determination

- (a) Where:
 - (i) the parties to a Dispute agree to refer a matter to an expert for determination; and
 - (ii) the Dispute is referred to the chief executives (or their nominee) and has not been resolved under **clause 11.1.2**,

the Dispute must be referred to the expert for determination in accordance with this **clause 11.1.4**.

(b) Where a Dispute is referred to an expert:

(i) the expert must be:

(A) appointed by agreement between the parties to the Dispute; or

(B) in default of such appointment within ten (10) Business Days after the requirement or right (as applicable) to refer the matter to an expert arose, the person nominated by (at request of any party to the Dispute) ~~the QCA~~;

(1) if the parties agree that the Dispute is purely of a technical nature, the President (for the time being) of the Resolution Institute; or

(2) in any other case (including where the parties are unable to agree on the nature of the Dispute), the President (for the time being) of the Queensland Law Society Incorporated;

(ii) if the person referred to in **clause 11.1.4(b)(i)(B)** declines to nominate a person as the expert but provides a list of people that could be appointed as the expert, then:

(A) the first person specified in that list will be taken to be nominated as the Expert;

(B) if the first person specified in that list does not accept the appointment as the Expert, then the next person specified in that list will be taken to be nominated as the Expert; and

(C) the process specified in **clause 11.1.4(b)(ii)(B)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the Expert accepts the appointment as the Expert;

(iii) subject to **clause 11.1.4(b)(ii)**, if the expert is to be nominated by a person referred to in **clause 11.1.4(b)(i)(B)** and the person nominated as the expert does not accept appointment as the expert, then an alternative person is to be nominated as the

expert at the request of any party to the Dispute by the relevant person referred to in clause 11.1.4(b)(i)(B):

~~(ii)~~(iv) the parties to the Dispute must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated expert (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne by the parties in equal shares)) that must be satisfied or complied with as a condition of that person accepting the appointment as an expert;

~~(iii)~~(v) the expert must:

- (A) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
- (B) have no interest or duty which conflicts or may conflict with their function as expert, the expert being required to fully disclose any such interest or duty by notice to the parties before their appointment;
- (C) not be, or have been in the last five (5) Years, an employee of any of the parties to the Dispute or of a Related Party of any of them;
- (D) not be permitted to act until the expert has given notice to each party that the expert is willing and able to accept the appointment;
- (E) have regard to the provisions of this Undertaking and consider all submissions (including oral submissions by each party provided that such oral submissions are made in the presence of the other parties to the Dispute), supporting documentation, information and data with respect to the matter submitted by the parties;
- (F) not make a determination in relation to a Dispute that is inconsistent with this Undertaking;
- (G) have regard to the matters specified in section 120(1)(a) to (l) of the Act;
- (H) provide to the parties a copy of the expert's determination in relation to the Dispute in the form of a report setting out reasonable details of the reasons for the expert's determination within a reasonable time after their appointment;

- | (I) be required to undertake to keep confidential all matters coming to their knowledge by reason of their appointment and performance of their duties (including, if required by a party, by entering into a confidentiality agreement in favour of the parties to the relevant Dispute); and
- | (J) be deemed to be and must act as an expert and not an arbitrator and the law relating to arbitration (including the *Commercial Arbitration Act 2013* (Qld)), does not apply to the expert or to the determination or the procedures by which the expert may reach a determination.

- (c) For clarity, an expert may make a determination relating to:
 - (i) the interpretation or application of any provision of this Undertaking; or
 - (ii) whether a party has complied with the terms of this Undertaking,

where the interpretation or application of this Undertaking or compliance with this Undertaking is the matter that is in dispute.

- (d) Any Dispute subject to expert determination under this **clause 11.1.4** must be determined in accordance with the Expert Determination Rules of the Resolution Institute to the extent those rules are not inconsistent with the terms of this **clause 11.1.4**.
- (e) If, at any time during the determination, the expert becomes aware of circumstances that might reasonably be considered to adversely affect the expert's capacity to act independently or impartially, the expert must:
 - (i) inform the parties to the Dispute immediately;
 - (ii) unless the parties to the Dispute agree otherwise in writing, terminate the engagement; and
 - (iii) in which case any determination of the expert will be of no effect and a new expert must be appointed in accordance with the procedure outlined in this **clause 11.1.4**.
- (f) The parties must do everything reasonably requested by the expert to assist the expert in determining the Dispute, including providing or making available to the expert, as soon as reasonably practicable, all information and materials in their possession or control requested by the expert and attending any hearing convened by the expert.

- (g) If the parties to a Dispute agree it is appropriate appoint multiple experts to determine the Dispute, each expert must:
- (i) cooperate with the other experts appointed to determine the Dispute;
 - (ii) endeavour to reach a unanimous decision with the other appointed experts; and
 - (iii) agree between the experts the procedure for drafting the written determination.
- (h) Subject to compliance by the expert with **clause 11.1.4(e)** and in the absence of fraud or manifest error, the expert's determination is final and binding as between the parties in relation to the subject matter of the Dispute. If a party believes that there has been a manifest error or fraud in the expert's ~~decision, determination or that the expert has not complied with **clause 11.1.4(e)**~~, it may refer the matter to the QCA for a determination. If the QCA determines that there has been a manifest error or fraud, ~~the expert's decision or that the expert has not complied with **clause 11.1.4(e)**~~, the expert's determination is not binding and:
- (i) the parties may agree to refer the Dispute to another expert in accordance with this **clause 11.1.4**; or
 - (ii) failing such agreement, ~~either~~any party may request the QCA to resolve the Dispute in accordance with **clause 11.1.5**.
- (i) Unless otherwise agreed by the parties to the Dispute:
- (i) the following must be borne by the parties in equal shares:
 - (A) the costs of the expert (and the costs of any advisers to the expert), including fees and disbursements; and
 - (B) any transcript fees;
 - (ii) each party must bear their own costs of and incidental to participating in the expert determination process, including their own costs of and incidental to the preparation of a confidentiality deed or agreement for the engagement of the expert.
- (j) An expert appointed under this **clause 11.1.4** must not, without the prior written consent of the parties to the Dispute, accept an appointment to act as arbitrator, or act as an advocate or adviser to ~~either~~any party, in any subsequent arbitral or judicial proceedings arising out of or in connection with the Dispute.

11.1.5 *Determination by the QCA*

- (a) If this Undertaking requires that a Dispute be resolved by the QCA under this **clause 11.1.5**, then that Dispute may only be referred to the QCA after **clause 11.1.4~~2~~** has been complied with in relation to that Dispute.
- (b) Despite this Undertaking requiring a Dispute to be resolved by the QCA, the parties may jointly request the QCA to refer the matter to an expert for determination in accordance with **clause 11.1.4** in which case the QCA (having regard to the object of Part 5 of the Act, as set out in section 69E of the Act) may, but is not required to, refer the matter to an expert.
- (c) If a Dispute is referred to the QCA, then:
 - (i) if the Dispute is a dispute for the purposes of Division 5 of Part 5 of the Act, any determination of that Dispute must occur subject to, and in accordance with, Division 5 of Part 5 of the Act; and
 - (ii) if the Dispute does not constitute a dispute for the purposes of Division 5 of Part 5 of the Act:
 - (A) any determination of the Dispute by the QCA must not commence unless, and can only be made if, all of the parties to the Dispute agree (in a legally binding way) to be bound by the outcome of the Dispute; and
 - (B) the QCA may make a determination through any process that it considers appropriate (including making any order it considers appropriate as set out in section 208 of the Act), provided that:
 - (1) prior to considering the Dispute, the QCA advises the parties to the Dispute of the process that it intends to use to make the determination, having regard to the processes in Division 5 of Part 5 of the Act, and the parties are given the opportunity to advise the QCA of any concerns with that process; and
 - (2) despite Clause 11.1.5(c)(ii)(B)(1) the QCA must not make a determination that is inconsistent with Division 5 of Part 5 of the Act or, except to the extent of inconsistency with Division 5 of Part 5 of the Act, the provisions of this Undertaking or section 119 of

the Act (unless the parties agree and no party (whether a party to the Dispute or not) is adversely affected:).

- (d) Any referral of a Dispute to the QCA must be accompanied by a Dispute Notice setting out the information required by section 113 of the Act.
- (e) If a Dispute is referred to the QCA, [the QCA](#) in accordance with this Undertaking, ~~the QCA~~ must provide notices of the Dispute to the parties specified in section 114 of the Act.
- (f) If a Dispute is referred to the QCA in accordance with this Undertaking, the QCA must [not make a decision or determination in relation to the Dispute which is inconsistent with Aurizon Network's Safety Management System or Aurizon Network's obligations arising under applicable safety or environmental legislation including the Rail Safety Act](#). The QCA must seek the advice of the Safety Regulator on any aspect of the Dispute that ~~either any~~ party to the Dispute or the QCA considers to be a safety related matter and must not make any decision [or determination](#) that is inconsistent with advice it receives from the Safety Regulator to the extent that the advice relates to any aspect of safety. The QCA must provide to the parties a copy of any advice it receives from the Safety Regulator.
- (g) Notwithstanding any provision in this Undertaking, an access determination made by the QCA will not be inconsistent with this Undertaking if it relates to (without limitation):
 - (i) the interpretation or application of any provision of this Undertaking;
 - (ii) whether a party has complied with the terms of this Undertaking;
 - (iii) any matter not expressly stated in this Undertaking; or
 - (iv) any part of a matter that is not expressly covered by this Undertaking even if another part of the matter is expressly covered by this Undertaking.

11.1.6 Procedure

- (a) Where a Dispute is referred to either an expert or the QCA (**decision maker**) for determination:
 - (i) ~~the parties~~ [each party](#) to the Dispute must provide written submissions to the decision maker outlining ~~their respective~~ [its](#) views on the matter(s) in dispute, including reasons why ~~their view~~ [its views](#) should be

preferred and an outline of how ~~they~~it would like to see the Dispute resolved;

(ii) each party to a ~~dispute~~Dispute will be provided with a reasonable opportunity to respond to submissions made to the decision maker by ~~the~~each other party; and

(iii) where the matter in ~~Dispute~~dispute arises under a provision of this Undertaking which sets out the relevant matters to be taken into account by Aurizon Network or the decision maker in making ~~a decision~~its determination, the submissions to the decision maker by the parties to the Dispute must address those matters.

(b) The decision maker's determination is final and binding upon the parties ~~and the parties~~ to the Dispute who must comply with the directions or determinations of the decision maker, unless:

(i) in the case of an expert, the QCA determines that the expert's determination is not binding under clause 11.1.4(h)~~applies;~~; or

(ii) a determination by the QCA is successfully challenged on the basis of a breach of a requirement in **clause 11.2**.

11.1.7 Application to Part 8 Disputes

(a) **Part 8** expressly sets out additional requirements in relation to resolution of specified Disputes.

(b) **Part 8** prevails to the extent of any inconsistency with this **Part 11**.

11.2 QCA decision-making

(a) The QCA may not make a decision (**Decision**) under this Undertaking (including a determination under this **Part 11**) that may affect Aurizon Network (including to require Aurizon Network to do, give or submit anything to the QCA, to resolve a Dispute or to refuse to approve, approve or consent to or grant anything), unless:

(i) the QCA observed the rules of natural justice;

(ii) the QCA observed any procedures that were required by law or this Undertaking;

(iii) the QCA had jurisdiction to make the Decision under this Undertaking;

(iv) the QCA was authorised to make the Decision under this Undertaking;

- (v) the QCA's Decision would not be an improper exercise of the power conferred by this Undertaking. An improper exercise of power includes a reference to:
 - (A) taking an irrelevant consideration into account in the exercise of a power;
 - (B) failing to take a relevant consideration into account in the exercise of a power;
 - (C) an exercise of a power for a purpose other than a purpose for which the power is conferred;
 - (D) an exercise of a discretionary power in bad faith;
 - (E) an exercise of a personal discretionary power at the discretion or behest of another person;
 - (F) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of a particular case;
 - (G) an exercise of a power that is so unreasonable that no reasonable person could so exercise the power;
 - (H) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
 - (I) any other exercise of a power in a way that is an abuse of the power;
- (vi) the QCA's Decision did not involve an error of law (whether or not the error appears on the record of the Decision);
- (vii) the QCA's Decision was not induced or affected by fraud;
- (viii) to the extent that any matters were required to be established before the Decision could be made or taken, there was some material or evidence from which the QCA could reasonably be satisfied the matter was established to justify the Decision or, to the

extent that the existence of a particular fact forms the basis on which the Decision is made, the fact did or does exist; and

- (ix) the Decision was not otherwise contrary to law or this Undertaking. For the avoidance of doubt, the terms of this **clause 11.2(a)** are intended to have the same meaning as used in the *Judicial Review Act 1991* (Qld).
- (b) If the QCA's Decision or conduct is challenged on the basis of a breach of a requirement in this **clause 11.2**, Aurizon Network and the QCA agree that Aurizon Network may seek an order suspending the operation of the Decision and a stay of any proceedings under the Decision.
- (c) This **clause 11.2** does not affect the right of any party to seek any other form of remedy or relief including relief by way of the equitable remedies of injunction or declaration or to seek review under the *Judicial Review Act 1991* (Qld).

Part 12 Definitions and Interpretation

12.1 Definitions

In this Undertaking these terms have the following meanings:

\$/NT Basis	Converted to a single \$/nt value on the basis of the applicable Nominal Train Payload.
2001 Undertaking	The access undertaking prepared by Queensland Rail and approved by the QCA pursuant to the Act which commenced on 1 March 2002 (as amended during the term of that access undertaking).
2005 Undertaking	The access undertaking prepared by Queensland Rail and approved by the QCA pursuant to the Act which commenced on 30 June 2006 (as amended during the term of that access undertaking).
2008 Undertaking	The access undertaking prepared by Aurizon Network (previously named QR Network Pty Ltd) and approved by the QCA pursuant to the Act which commenced on 23 October 2008 (as amended during the term of that access undertaking).
2010 Undertaking	The access undertaking prepared by Aurizon Network and approved by the QCA pursuant to the Act which commenced on 1 October 2010 (as amended during the term of that access undertaking).
<u>2016 Undertaking</u>	<u>The access undertaking prepared by Aurizon Network and approved by the QCA pursuant to the Act which was approved on 11 October 2016 (as amended during the term of that access undertaking).</u>
Above Rail Delay	A delay to a Train Service from its scheduled Train Path in the DTP, where that delay can be attributed directly to an Access Holder (including, if applicable, its Nominated Railway Operator) in operating its Train Services, but excludes: (a) cancellations; (b) delays resulting from compliance with a Passenger Priority Obligation; and (c) delays resulting from a Force Majeure Event.
Above Rail Services	Those activities, other than Below Rail Services, required to provide and operate Train Services (which includes Rollingstock provision for providing Train Services, maintenance of that Rollingstock, non Network Control related communications, train crewing, terminal provision and services, freight handling and marketing and

administration of those services) and **Above Rail** has a similar meaning.

Absolute Capacity

The maximum number of Train Paths (calculated on a Monthly and annual basis) that can be provided:

- (a) in each Coal System; and
- (b) for the mainline and each branch line of each Coal System,

using the following assumptions:

- (c) the Rail Infrastructure is not affected by maintenance, renewal or Expansion activities;
- (d) there are no speed restrictions affecting the Rail Infrastructure;
- (e) there are sufficient origins and destinations, and sufficient infrastructure at those origins and destinations, to enable all Train Paths to be utilised;
- (f) there are no delays or failures occurring in the relevant Supply Chain;
- (g) there is sufficient rollingstock and other above rail assets to enable all Train Paths to be utilised; and
- (h) the minimum headway of the relevant Coal System.

Access

The non-exclusive utilisation of a specified section of Rail Infrastructure for the purposes of operating Train Services including, to the extent necessary for the operation of Train Services:

- (a) the use of passing loops and Train queuing and staging including before and after loading and unloading of Trains;
- (b) the loading and unloading of Trains at facilities that are Rail Infrastructure;
- (c) Train marshalling and shunting:
 - (i) in preparation for running of a Train Service;
 - (ii) before or after loading or unloading of a Train; and
 - (iii) before or after maintenance and provisioning of a Train;
- (d) Stowage;
- (e) the benefit of other Below Rail Services essential to the use of the Rail Infrastructure such as:
 - (i) signalling;

- (ii) Network Control Services and associated communication;
 - (iii) access to walkways immediately adjacent to, and crew changeover points connecting to, Track; and
 - (iv) providing the use of electric transmission infrastructure on electrified sections of the Track, and the sale and supply of electric energy, so as to permit the acquisition of electric energy for traction; and
- (f) entry upon land:
- (i) to the extent that entry upon the land is incidental to and essential for the use of Rail Infrastructure; or
 - (ii) for access to walkways and crew changeover points referred to in **paragraph (e)(iii)** of this definition to the same degree as is available to Related Operators,

provided that:

- (i) the land is owned by Aurizon Network, or Aurizon Network has, through a lease, licence or other arrangement with the owners of the land or in accordance with the TIA, the authority to authorise access to that land; and
- (ii) the entry is not inconsistent with the terms of any lease, licence or other arrangement to which Aurizon Network is a party in respect of the land.

Access Agreement

An agreement between Aurizon Network and an Access Holder for the provision of Access.

Access Application

A written request for Access:

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

(except to the extent that the Non-availability Circumstances exist, in which case the Access Application must specify this extent), but does not include a request to enter into a Train Operations Deed.

Access Charge

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

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

Access Charge Rates

For a Train Service Type, the rates specified in the Access Agreement for that Train Service Type.

Access Conditions

Conditions which are additional to those in the Standard Access Agreement, (which conditions are not immaterial), whether the conditions are contained in an Access Agreement or a separate agreement, ~~that mitigate Aurizon Network's or the relevant Access Seeker's exposure to any additional costs or risks associated with providing Access for that Access Seeker's proposed Train Service(s) and which are not, or would not, be included in the calculation of the Reference Tariff based on the Approved WACC,~~ including conditions requiring:

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

Charges and all other monetary consideration (whether under an Access Agreement or another agreement) being calculated ~~on other than in accordance with the basis of a Varied WACC or other risk adjustments~~ Reference Tariffs.

~~(f) It is acknowledged that any conditions additional to projected cash flows,~~

~~but~~that contained in the Standard Access Agreement which an Access Seeker (or an affected Access Holder) consider are ~~not inconsistent with the Act. Such~~material are deemed to be material for the purposes of this definition (and therefore are Access Conditions).

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

(a) a minor variation to payment terms (for example, changing the time period for payment of an invoice to fit with an Access Holder's payment cycle);

(b) an amendment to insurance requirements to take account of a counterparty's existing insurance policies.

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

Access Facilitation Charge	An ongoing charge separate to an Access Charge for the facilitation of Access which is payable irrespective of the actual use of the Rail Infrastructure.
Access Holder	Unless expressed to the contrary, a person that has been granted Access Rights to operate Train Services on all or part of the Rail Infrastructure.
Access Provision Period	A Month or, where the period specified in the relevant Access Agreement in provisions relating to Claims and exclusions in respect of non-provision of Access Agreement is different, that different period.
Access Rights	An entitlement to Access in accordance with a specified Train Service Entitlement.
Access Seeker	Subject to clause 4.9(a) and unless expressed to the contrary, the entity that provides <u>(on a bona fide basis)</u> Aurizon Network with a properly completed Access Application, but does not include a request to enter into a Train Operations Deed.
Access Seeker	The meaning given to that term in clause 8.4.3(b)(i)(B)(2) .

Nomination

Acknowledgement Notice A notice given to an Access Seeker under **clause 4.4(a)** acknowledging the receipt of an Access Application.

Act *Queensland Competition Authority Act 1997 (Qld).*

Ad Hoc Train Service A Train Service:
(a) which is additional to the number of Train Services permitted to operate in a Month under a Train Service Entitlement for that Train Service but which is otherwise in accordance with the Train Service Entitlement under the relevant Access Agreement; or
(b) where **paragraph (a)** does not apply, that varies from the Train Service Entitlement under the relevant Access Agreement but which Aurizon Network permits to operate.

Additional Information The information required to be provided by Aurizon Network to an Access Seeker under **clause 2** of **Schedule A**.

Adjusted Allowable Revenue The amount described as such under **clause 4.3(c)** of **Schedule F**.

Adjustment Amount The meaning given to that term in **clause 6.1(a)** of **Schedule F**.

Adjustment Charge For a Billing Period, the amount calculated in accordance with **clause 6.1** of **Schedule F**.

Adjustment Date 1 July 2015.

Advice Date In respect of the Change in Reference Tariff Provisions for the purposes of **Schedule F**, the date on which the QCA's decision making or approving the Change in Reference Tariff Provisions is first published by the QCA.

Affected Access Holder An Access Holder whose Access Rights are affected by a Capacity Shortfall.

Affected Person The meaning given to that term in **clause 7A.2.4(c)(i)**.

Allotted Time Threshold	The threshold within which a Train Service is considered to be on time as follows, for a Train Service operated for the purpose of: <ul style="list-style-type: none"> (a) transporting coal, 30 minutes; (b) transporting bulk minerals (other than coal), 60 minutes; (c) transporting freight products, 60 minutes; and (d) providing long distance passenger transport, 30 minutes.
Allowable Revenue	In relation to a Reference Tariff for a Year, the amount described as such in accordance with clause 4.2 of Schedule F .
Alternative Baseline Capacity Assessment	The Capacity assessment, <u>if any</u> , undertaken by the QCA <u>under the 2016 Undertaking</u> in accordance with clause 7A.4.1(g) of the 2016 Undertaking.
Alternative Baseline Capacity Assessment Report	The meaning given to that term in clause 7A.4.1(f). <u>The report entitled Alternative Baseline Capacity Assessment Report, if any, published by the QCA under the 2016 Undertaking in accordance with clause 7A.4.1(f) of the 2016 Undertaking.</u>
<u>Ancillary Access Rights</u>	<u>Has the meaning given in clause 7.4.2(a)(A)(C).</u>
Ancillary Revenues	Charges for services that are ancillary to other services supplied under an Access Agreement (including, for example, repositioning, and license arrangements) to the extent that the QCA determines from time to time should be included in this definition.
Applicable Undertaking	This <u>Undertaking, the 2016 Undertaking</u> , the 2010 Undertaking, the 2008 Undertaking, the 2005 Undertaking or the 2001 Undertaking that applied at the relevant time.
Approval Date	The date on which this Undertaking was approved by the QCA.
<u>Approval Date of the 2016 Undertaking</u>	<u>11 October 2016.</u>
Approved Capital Expenditure	All capital expenditure approved by the QCA in accordance with Schedule E .
Approved PIC	For the purposes of clause 6.3 , Private Incremental Costs that have been approved by the QCA as prudently and efficiently incurred in accordance with clause 6.3.2 .
Approved	This <u>Undertaking, the 2016 Undertaking</u> , the 2010

Undertaking	Undertaking, the 2008 Undertaking, the 2005 Undertaking and the 2001 Undertaking.
Approved WACC	The post-tax nominal (vanilla) weighted average cost of capital of 7.47 <u>6.78</u> %.
Assessor	The meaning given to that term in clause 10.4.3(b) .
Asset Management Plan	The asset management plan accepted by the QCA under clause 3 of Schedule E , as amended from time to time.
Asset Replacement and Renewal	Capital projects required to maintain the Existing Capacity of the Rail Infrastructure including: <ul style="list-style-type: none"> (a) the replacement of life expired or obsolete assets; and (b) the replacement of assets which are lost, damaged or destroyed as a result of a Force Majeure Event, and which are required for Aurizon Network to meet its existing contractual obligations under Access Agreements.
Asset Replacement and Renewal Expenditure	Expenditure on Asset Replacement and Renewal.
AT₁	The meaning given in clause 2.2 of Schedule F .
AT₂	The meaning given in clause 2.2 of Schedule F .
AT₂₋₄	The aggregate of the AT ₂ , AT ₃ and AT ₄ components of Access Charges.
AT₂₋₄ Revenue Adjustment Amount	For a Coal System, the amount calculated under clause 4.3(a) of Schedule F for that Coal System.
AT₃	The meaning given in clause 2.2 of Schedule F .
AT₄	The meaning given in clause 2.2 of Schedule F .
AT₅	The meaning given in clause 2.2 of Schedule F .
AT₅ Revenue Adjustment Amount	For a Coal System, the amount calculated under clause 4.3(b) of Schedule F for that Coal System.
Auditor	An auditor appointed under clause 10.6.4(a) and compliant with the requirements of that clause 10.6.4(b) .
Aurizon Group	The group of companies for which the holding company (as defined under the Corporations Act) is the Ultimate Holding Company.
Aurizon Holdings	Aurizon Holdings Limited ACN 146 335 622.
Aurizon Network	Aurizon Network Pty Ltd ACN 132 181 116.

Aurizon Network Cause

Where Aurizon Network is unable to make Rail Infrastructure available for the operation of Train Services in accordance with any Access Holder's Train Service Entitlement, as a result of:

- (a) Planned Possessions, Emergency Possessions or Urgent Possessions;
- (b) a Force Majeure Event; or
- (c) any other action by Aurizon Network which directly resulted in the Rail Infrastructure not being so available,

where such inability by Aurizon Network is not attributable:

- (a) to the Access Holder (or its nominated Train Operator);
- (b) to Aurizon Network complying with its Passenger Priority Obligations;
- (c) to the unavailability of the relevant Access Holder's loading facility or an unloading facility;
- (d) to the failure to load a Train at the relevant Access Holder's loading facility within the maximum time at loading facility (as specified in the relevant Access Agreement) for that Train Service, or unload a Train at the relevant Access Holder's unloading facility within the maximum time at unloading facility (as specified in the relevant Access Agreement) for that Train Service; or
- (e) in respect of a Train Service that will operate on Private Infrastructure prior to entering and/or after exiting the Rail Infrastructure as part of its journey, to the unavailability of, or cancellation of train services on, that Private Infrastructure.

Aurizon Network Personnel

The:

- (a) directors and officers of Aurizon Network; and
- (b) employees, contractors and agents of Aurizon Network and any other person under the control or supervision of Aurizon Network (including secondees working in the business of Aurizon Network) who are involved in the provision of Below Rail Services.

Aurizon Network's Executive Officer

The person who is, from time to time, the chief executive of Aurizon Network.

Aurizon Operations

Aurizon Operations Limited ACN 124 649 967.

Aurizon Party

A Related Party of Aurizon Network other than a Related

	Party of Aurizon Network who is a User Funding Trustee.
Australian Taxation Office	The Australian Government's principal revenue collection agency.
Authority	The Crown (in right of the State or the Commonwealth), a minister of the Crown, a federal, state or local government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority, a court, a tribunal and any officer or agent of the foregoing acting as such.
Available Capacity Average Annual Payload	Capacity, excluding all Committed Capacity. <u>Has the meaning given to that term in the Standard Access Agreement.</u>
Baseline Available Capacity	The Capacity outlined in Aurizon Network's Baseline Capacity Assessment Report as a result of a Baseline Capacity Assessment conducted in accordance with clause 7A.4.1. <u>Capacity, excluding all Committed Capacity.</u>
Baseline Capacity Assessment	The Capacity assessment undertaken by Aurizon Network <u>under the 2016 Undertaking</u> in accordance with clause 7A.4.1 of the 2016 Undertaking.
Baseline Capacity Assessment Report	The meaning given to that term <u>report entitled Baseline Capacity Assessment Report published by the QCA under the 2016 Undertaking</u> in <u>accordance with clause 7A.4.1(a)(ii), as amended under clause 7A.4.1(e), if applicable</u> of the 2016 Undertaking.
Below Rail Delay	A delay to a Train Service from its scheduled Train Path in the DTP, where that delay can be attributed directly to Aurizon Network, but excludes: <ul style="list-style-type: none"> (a) cancellations; (b) delays resulting from compliance with a Passenger Priority Obligation; and (c) delays resulting from a Force Majeure Event.
Below Rail Services	The activities required to supply the declared services contemplated by section 250(1)(a) of the Act, including those activities associated with the provision and management of Rail Infrastructure and Access and which include the construction, maintenance and renewal of Rail Infrastructure assets, and the network management services required for the safe operation of Train Services on the Rail Infrastructure, including Network Control Services and the implementation of Safeworking Procedures and Below Rail has a similar meaning.
Below Rail Transit	For a Train Service travelling between its origin and

Time	<p>destination, the sum of:</p> <ul style="list-style-type: none"> (a) the relevant nominated section running times (in the direction of travel) as specified in the Train Service Entitlement; (b) identified Below Rail Delays for that Train Service; (c) the time taken in crossing other Trains to the extent that such time is not contributed to by Above Rail causes or Force Majeure Events or otherwise included in paragraph (a) of this definition; and (d) delays due to Operational Constraints directly caused by the activities of Aurizon Network in maintaining the Rail Infrastructure, provided such delays are not contributed to by Above Rail causes or Force Majeure Events or otherwise included in paragraphs (b) and (c) of this definition.
Below Rail Transit Time Percentage	<p>For a type of Train Service specified in a Train Service Entitlement, the proportion (expressed as a percentage) calculated by dividing the Below Rail Transit Time by the maximum sectional running times (as set out in the relevant Access Agreement) for all relevant sections (as set out in the relevant Access Agreement).</p>
Billing Period	<p>The meaning given to that term in the relevant Access Agreement.</p>
Blackwater System	<p>The Rail Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory, Minerva and Rolleston mines, and all branch lines directly connecting coal mine loading facilities to those corridors with the exception of the corridor to Oaky Creek (and beyond) and the corridor to Moura mine (and beyond).</p>
Business Day	<p>A day which is not a Saturday, Sunday or special or public holiday in Brisbane or, if and to the extent that this Undertaking expressly refers to another place, in that other place.</p>
Capacity	<p>The aggregate of Existing Capacity and Planned Capacity.</p>
Capacity Analysis	<p>A simulation modelling assessment of the Available Capacity of the Rail Infrastructure, based on the Network Management Principles, System Operating Parameters, System Rules, Train Operator's Operating Plans and any requested Access Seeker's Access Rights, to determine, as the context requires:</p> <ul style="list-style-type: none"> (a) Available Capacity; (b) whether there is sufficient Capacity to accommodate

Committed Capacity;

- (c) whether there is sufficient Available Capacity to accommodate the requested Access Rights not yet considered to be Committed Capacity;
- (d) if there is insufficient Capacity to accommodate Committed Capacity, the Expansions required to provide the Shortfall Capacity to accommodate Committed Capacity (and an indicative estimate of the cost of such works and timing for completion);
- (e) if there is insufficient Available Capacity to accommodate requested Access Rights not yet considered to be Committed Capacity, whether Expansions are required to provide the additional Capacity to accommodate the requested Access Rights (and an indicative estimate of the cost of such works and timing for completion); and
- (f) the operational impacts of the requested Access Rights including the impact of the requested Access Rights on the, Network Management Principles, System Operating Parameters, System Rules and Train Operator's Operating Plans,

and which:

- (g) provides a sufficient basis to enable Aurizon Network to finalise the relevant Train Service Entitlement, initial timetable, applicable Access Charges and associated funding arrangements (subject to other variations identified in the negotiation process); and
- (h) for information purposes only:
 - (i) includes the Monthly available tonnes based on Nominal Train Payloads outlined in Schedule F; and
 - (ii) identifies the assumed split of traffic to different destinations serviced by the relevant Coal System.

Capacity Assessment

An assessment undertaken under **clause 7A.4.2(a)(i)**.

Capacity Assessment Notice

A notice given under **clause 8.9.5(b)(i)**.

Capacity Assessment Report

The Preliminary Capacity Assessment Report, [as](#) amended in accordance with **clause 7A.4.2(e)** (if applicable).

Capacity Deficit

The meaning given to that term in **clause ~~7A.4.3(a)~~**.

	7A.1.1(a) or clause 7A.4.3(b) as applicable.
Capacity Information	The information required to be provided by Aurizon Network to an Access Seeker under clause 3 of Schedule A .
Capacity Notification Register	The register maintained by Aurizon Network under clause 7.2.2 .
Capacity Shortfall	A circumstance where the Capacity is: <ul style="list-style-type: none"> (a) less than the Committed Capacity of the relevant Coal System, Track Segment, Segment or other part of the Rail Infrastructure, as the context requires; or (b) less than the Committed Capacity of an Expansion where the Access Rights are conditional on that Expansion being completed and commissioned.
Capacity Shortfall Access Application	An Access Application that is taken to have been lodged with Aurizon Network in accordance with clause 8.9.3 .
Capital Expenditure Carryover Account	The account maintained by Aurizon Network recording the difference between Approved Capital Expenditure and the Capital Indicator in the manner specified in clause 5 of Schedule E .
Capital Indicator	The annual capital expenditure allowance approved by the QCA, from time to time, for the purpose of assessing the relevant Reference Tariffs.
CDMP	The meaning given to that term in clause 1.2 of Schedule J .
Change in Law	Any of the following: <ul style="list-style-type: none"> (a) any amendment, repeal or enactment of any Law; (b) any change in the interpretation or application, including by the exercise of delegated authority, of any Law resulting from a decision of a court or Authority; (c) the making of any new directive, or any change in an existing directive, of any Authority; (d) the imposition of a requirement for authorisations not required as at the Commencing Date; (e) after the date of grant of any authorisation, a change in the terms and conditions attaching to that authorisation or the attachment of any new terms or conditions; or (f) any such authorisation as has been granted ceasing to remain in full force and effect or, if granted for a limited period, not being renewed on a timely basis on application therefore being duly made, or being

	renewed on conditions which are materially less favourable than those attached to the original authorisation.
Change in Reference Tariff Provisions	Any change (including variation, repeal or replacement) of: <ul style="list-style-type: none"> (a) the Reference Tariff Provisions; or (b) the Reference Tariffs (including the creation of a new Reference Tariff), made or approved by the QCA from time to time.
Change in Relevant Taxes	Any of the following: <ul style="list-style-type: none"> (a) the imposition of a new Relevant Tax; (b) an increase in the rate of a Relevant Tax; or (c) a change in the basis of calculation of a Relevant Tax.
<u>CIT Access Rights</u>	<u>Has the meaning given in clause 7.4.7(b)(ii)(i).</u>
<u>CIT Date</u>	<u>Has the meaning given in clause 7.4.7(b)(i).</u>
<u>CIT Notice</u>	<u>Has the meaning given in clause 7.4.7(b).</u>
Claim	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.
Changes in Market Circumstances	Changes in circumstances which have occurred in any market and which have had, or will have, a material effect on an Access Holder's ability to pay the Access Charges.
Coal Loss Mitigation Provisions	The provisions set out in Schedule J .
Coal System	Any one of the following: <ul style="list-style-type: none"> (a) the Newlands System; (b) the Goonyella System; (c) the Blackwater System; (d) the Moura System; or (e) the Goonyella to Abbot Point System.
Commencing Date	1 July 2013 <u>2017</u> .
Committed Capacity	That portion of the Capacity that is required: <ul style="list-style-type: none"> (a) to meet Train Service Entitlements; (b) to satisfy Aurizon Network's obligations under clause 7.3(d) in respect of a Renewing Access Seeker;

- (c) to comply with any Passenger Priority Obligation or Preserved Train Path Obligation;
- (d) to provide Access Rights where Aurizon Network has, in relation to those Access Rights, contractually committed to construct an Expansion; and
- (e) to provide Access Rights where Aurizon Network has, in relation to those Access Rights, contractually committed to construct a Customer Specific Branch Line.

Committed Capacity Register

The register maintained by Aurizon Network under **clause 7.2.3.**

Common Corridor

That part of the Rail Infrastructure that:

- (a) either:
 - (i) would be utilised by a Railway Operator to operate Train Services for the Access Holder utilising the Nominated Access Rights; or
 - (ii) if the Access Holder has not nominated a Railway Operator to operate Train Services utilising the Nominated Access Rights, would have been utilised by a Railway Operator had the Access Holder nominated a Railway Operator to operate the relevant Train Services; and
- (b) will also be utilised by the Transferee's Train Services.

Common Costs

Those costs associated with provision of Rail Infrastructure that are not Incremental Costs for any particular Train Service using that Rail Infrastructure.

Comparative Length

In respect of a Train, the length of that Train calculated as:

- (a) the Static Length of that Train multiplied by 1.02; plus
- (b) 125mm multiplied the number of items of Rollingstock comprising or to comprise that Train (including the locomotive/s).¹

Competing Applications

The Access Applications of two or more Access Seekers that are seeking Access Rights relating to the same traffic task and are either:

- (a) the Access Applications of two or more Access Seekers who are competing in order to provide Train

¹ By way of explanation, this comparative Train length comprises the following: static Train length (which is the straight addition of individual Rollingstock lengths) plus an allowance of 2% of this static Train length for train handling accuracy plus 125mm per vehicle for slack movement in drawgear (includes free slack in the drag box, compression of the draftgear, clearance/free slack due to coupler wear and pin clearance at the yoke).

	Services under a rail haulage agreement with the same Customer for the same Train Services; or
	(b) the Access Applications of an Access Seeker who is seeking Access Rights in order to provide Train Services under a rail haulage agreement with a Customer and the Access Application of that Customer for the same Train Services.
Compliance Officer	The Aurizon Network employee designated as such by the Aurizon Network's Executive Officer.
Complainant	The meaning given to that term in clause 3.20(a) .
Completion Date	The meaning given to that term in clause 8.6(a)(i)(C) .
Concept Study	<p>A study that enables a preliminary assessment of the potential costs, benefits and risk involved in providing the capacity required in respect of a potential Expansion and includes:</p> <ul style="list-style-type: none"> (a) identification of a possible technical solution to provide the capacity required for the potential Expansion; (b) unless otherwise agreed by Aurizon Network and an Access Seeker, includes an indicative assessment of: <ul style="list-style-type: none"> (i) project objectives; (ii) a broad cost estimate of the potential solution with a +/-50% accuracy; (iii) preliminary financial analysis; (iv) preliminary risk assessment; and (v) indicative timeframes for the development and delivery of the project; (c) a Pre-feasibility Study execution plan, including a proposed scope of work (taking into account the scope of work required by the definition of "Pre-feasibility Study" in this Undertaking), budget, time schedule and deliverables; and (d) a written report on the outcome of the analysis and the reasons for the selection(s) made and the preliminary scope, cost and program details of the selected alternatives.
Conditional Access Holders	The meaning given to that term in clause 8.9.2 .
Conditional Access Provisions	The provisions set out in clause 8.9.5 .

Conditional Access Rights	The meaning given to that term in clause 8.9.2 .
Condition Based Assessment	The meaning given to that term in clause 10.4.3 .
Confidential Information	<p>Any information, data or other matter (“information”) disclosed to a party by, or on behalf of, another party where:</p> <ul style="list-style-type: none"> (a) the disclosure of the information by the recipient might reasonably be expected to affect the commercial affairs of the owner of the information; or (b) the information is marked confidential by a party when disclosed, <p>provided that such information:</p> <ul style="list-style-type: none"> (c) is not already in the public domain; (d) does not become available to the public through means other than a breach of the confidentiality provision in this Undertaking or any confidentiality deed contemplated in clause 3.12(a)(vi); (e) was not in the other party’s lawful possession prior to such disclosure; and (f) is not received by the other party independently from a third party free to disclose such information, data or other matter, <p>and provided further that information will cease to be Confidential Information if the information has ceased to retain its confidential nature, for example:</p> <ul style="list-style-type: none"> (g) the information is now in the public domain through means other than a breach of the confidentiality provisions in this Undertaking or any confidentiality deed contemplated in clause 3.12(a)(vi); or (h) the information has been received by the recipient independently from a third party free to disclose the information, <p>but does not include:</p> <ul style="list-style-type: none"> (i) information which relates solely in material respects to matters other than the supply of the declared services contemplated by section 250(1)(a) of the Act; (j) information which relates to matters other than the seeking of access to the declared services contemplated by section 250(1)(a) of the Act by a Related Operator or Related Competitor, or to the

	<p>provision by Aurizon Network of access to such party;</p> <p>(k) if a document or discussion is comprised of information only some of which would be Confidential Information as a result of paragraph (i) of this definition, the remainder of the information in the document or discussion to the extent that Aurizon Network can clearly separate the remainder of the information from the Confidential Information.</p>
Confidential Information Register	The register established and maintained under clause 3.14 .
Connecting Infrastructure	The rail transport infrastructure (including track, signalling and overhead electric traction (if applicable)) which connects the Private Infrastructure to the Rail Infrastructure and that on completion forms part of the Rail Infrastructure and, where Connecting Infrastructure is the subject of a Rail Connection Agreement, is more particularly defined in the relevant Rail Connection Agreement.
Connection Milestone	The meaning given to that term in clause 9.1(e) .
Construction Agreement	The meaning given to that term in the Standard Rail Connection Agreement.
Contested Train Path	A Train Path in respect of which more than one Access Holder has expressed an interest in operating a Train Service in the week in question.
Corporations Act	The <i>Corporations Act 2001</i> (Cth) and the regulations made under it, as amended from time to time.
Costing Manual	The cost allocation manual either: <ul style="list-style-type: none"> (a) prepared by Aurizon Network and approved by the QCA; or (b) prepared by the QCA under section 159(1) of the Act, as revised by the QCA from time to time under sections 159(2) and (3) of the Act.
CPI	The Consumer Price Index: All Groups – Brisbane (Australian Bureau of Statistics Publication No.6401.0).
Cross Subsidy	Where the Access Charges payable in respect of one Train Service or combination of Train Services are insufficient to meet: <ul style="list-style-type: none"> (a) the Incremental Cost imposed on the Rail Infrastructure by that Train Service or combination of Train Services; and (b) in respect of a combination of Train Services, the

Common Costs related specifically to sections of Rail Infrastructure that are used solely for the purpose of Train Services within that combination of Train Services,

and the shortfall is contributed to by another Train Service or combination of Train Services.

Cross System Train Service

A coal carrying Train Service that requires Access in respect of more than one Coal System (excluding any Train Service that operates solely within the Goonyella to Abbot Point System even though it might otherwise require Access to more than one Coal System – for example, the Goonyella System and the Newlands System).

Customer

A person in respect of which an Access Holder or an Access Seeker is or is intending to use Access Rights to provide Train Services for that person (in that Access Seeker's or Access Holder's capacity as a Railway Operator).

Customer Access Seeker

- (a) Where:
- (i) two or more Access Seekers have submitted Access Applications for the same Access Rights; and
 - (ii) one of those Access Seekers (**Principal Access Seeker**) is the Customer for one of the other Access Seekers,
- the Principal Access Seeker; or
- (b) in all other cases, an Access Seeker who is not and will not be the Train Operator in relation to the Access Rights sought.

Customer Initiated Transfer

Has the meaning given in **clause 7.4.7(a)**.

Customer Specific Branch Line

An extension, enhancement, expansion, augmentation, duplication or replacement of all or part of the Rail Infrastructure:

- (a) to be constructed solely to connect an Access Holder's or a Customer's loading facility to Rail Infrastructure; and
- (b) that on completion will form part of the Rail Infrastructure,

excluding:

- (c) Connecting Infrastructure; and
- (d) any capital expenditure project to the extent that it involves Asset Replacement and Renewal Expenditure.

Cyclic Traffic	A traffic, the Train Service Entitlements in respect of which are defined in terms of a number of Train Services within a particular period of time, for example, a year, Month, week or day. Coal traffic is an example of such traffic.
Daily Train Plan or DTP	The meaning given to that term in clause 5.1 of Schedule G .
Decision	The meaning given to that term in clause 11.2(a) .
Demand Assessment	<p>An estimation (acting reasonably) of:</p> <ul style="list-style-type: none">(a) the demand for Capacity beyond Available Capacity and Committed Capacity; and(b) the estimated time for which the Capacity referred to in paragraph (a) is required, <p>having regard to the relevant information in accordance with clause 8.2.4(b).</p>
Depreciated Optimised Replacement Cost or DORC	<p>The value of assets determined in the following manner:</p> <ul style="list-style-type: none">(a) the replacement value of the assets will be assessed as the cost of the modern engineering equivalent replacement asset;(b) optimisation of the asset base will occur, but such optimisation will only consider whether or not the infrastructure standard and infrastructure capacity are excessive, given the current and likely future requirements of Access Holders; and(c) depreciation of the optimised replacement asset value will be undertaken over the useful life of the assets.
Destination System	<ul style="list-style-type: none">(a) For any Train Service which originates in the Blackwater System and uses the Goonyella Newlands Connection, the Goonyella to Abbot Point System; or(b) in all other cases, the Coal System on which the Nominated Unloading Facility is located.
Destination Tariff	The relevant Reference Tariff applying to the relevant Cross System Train Service in the Destination System.
Discount Rate	The rate equivalent to the ROA, as defined in clause 6.6.3(c) .

Dispute	The meaning given to that term in clause 11.1.1(a)11.1.1(a) .
Dispute Notice	A notice given under clause 11.1.1 specifying the nature of the Dispute and the proposed resolution.
Distribution Entities	The meaning given to that term in the <i>Electricity Act 1994</i> (Qld).
Draft System Rules	The meaning given to that term in clause 7A.2.3(b) .
DTMR	The Department of Transport and Main Roads for the State of Queensland or other department from time to time responsible for the administration of the TIA.
Dwell	Where a Train stops for a short period on Rail Infrastructure at locations specified by Aurizon Network as required for crew changes, meal breaks and maintenance, examination and provisioning of that Train.
EC	The electric energy charge defined as “EC” in clause 2.2(a) of Schedule F .
Efficient Cost	The cost for each Year during the Evaluation Period, that reflects the cost that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices in the provision of the Rail Infrastructure to the required service standard, having regard to any matters particular to the environment in which Aurizon Network operates, and including any transitional arrangements agreed between Aurizon Network and the QCA to reflect the transition from Aurizon Network’s actual cost to that efficient cost.
egtk	The electric gross tonne kilometres attributed to the relevant Train Service, being: <ul style="list-style-type: none"> (a) the gtk for the Train Service, if that Train Service uses electric traction; and (b) zero, if the Train Service does not use electric traction.
Emergency Possession	A Possession required to rectify a serious fault with the Rail Infrastructure that Aurizon Network (acting reasonably) considers dangerous to any person, or where severe speed restrictions have been imposed affecting the scheduled Train Services of Railway Operators and that Aurizon Network, complying with the Possession Protocols, will use reasonable endeavours to carry out within seven days after the detection of the fault giving rise to the need for that Possession.
Emergency	The meaning given to that term in clause 12(a)(i)(B) of the

Response Plan	Standard Train Operations Deed.
Endorsed Variation Event	The occurrence of any of the events listed in clause 5.2 of Schedule F .
Environment Compliance Charge	<p>A charge determined by Aurizon Network equal to the aggregate of any fine, penalty, cost, impost or other amount incurred by, or imposed on, Aurizon Network by an Authority under any Environmental Law (including the EP Act) in relation to any non-compliance with the CDMP:</p> <p>(a) as a result of or in connection with any act or omission of the Access Holder (excluding good faith acts and omissions in accordance with an express request by Aurizon Network in relation to compliance); or</p> <p>(b) where the Access Holder fails to do, or not do, anything requested by Aurizon Network that would have avoided or reduced the amount incurred by, or imposed on, Aurizon Network.</p>
Environmental Authorities	<p>(a) A “development approval” or “registration certificate” for a chapter 4 activity or an “environmental authority”, as those terms are defined under the EP Act; or</p> <p>(b) any approval (however described) which is deemed by the EP Act to be a “development approval”, “registration certificate” or “environmental authority” referred to in paragraph (a) of this definition.</p>
Environmental Harm	Serious environmental harm, material environmental harm or environmental nuisance as those terms are defined in the EP Act.
Environmental Laws	<p>A Law relating to the environment (as defined under the EP Act), including:</p> <p>(a) a Law relating to planning, health, toxic or contaminating materials, dangerous goods, waste disposal or pollution; and</p> <p>(b) environmental protection policies, guidelines, regulations and relevant approved codes of practice, and the conditions of all licences, notices, directions, approvals, consents, permissions or permits, issued under any such Law.</p>
Environmental Management Plan	The meaning given to that term in clause 12.1(f) of the Standard Train Operations Deed.

Environmental Risks	All risks to the environment (as defined under the EP Act) arising or potentially arising from the Access Seeker's or Access Holder's proposed operations (including risks associated with the matters identified in clause 2.2 of Schedule C).
EP Act	<i>Environmental Protection Act 1994 (Qld).</i>
Evaluation Period	<p>(a) When in reference to an individual Train Service, the period which is equal to the length of the expected duration of the existing or proposed Access Right under the Access Agreement in respect of the relevant Train Service;</p> <p>(b) when in reference to a combination of Train Services for the purpose of determining a Reference Tariff to apply for some or all of those Train Services, the period for which that Reference Tariff will apply; or</p> <p>(c) when in reference to a combination of Train Services other than referred to in paragraph (b) of this definition, the period which is equal to the length of the expected duration of the longest existing or proposed Access Right under an Access Agreement in respect of any of the Train Services comprising the combination of Train Services, provided that such period does not exceed 10 years.</p>
Existing Capacity	<p>Absolute Capacity, net of:</p> <p>(a) Aurizon Network's reasonable requirements for the exclusive or partial utilisation of the Rail Infrastructure for the purposes of performing activities associated with the maintenance and repair of the Rail Infrastructure, including the operation of work Trains; and</p> <p>(b) Aurizon Network's allowances for "day of operations" losses, speed restrictions and other operational losses or restrictions applicable to the Rail Infrastructure as set out in the System Operating Parameters.</p>
Expanding User Expansion	<p>The meaning given to that term in clause 6.4.1(a).</p> <p>An extension, enhancement, expansion, augmentation, duplication or replacement of all or part of the Rail Infrastructure that on completion forms part of the Rail Infrastructure, excluding:</p> <p>(a) Customer Specific Branch Lines;</p> <p>(b) Connecting Infrastructure;</p>

- (c) Asset Replacement and Renewal; and
- (d) any extension, enhancement, expansion, augmentation, duplication or replacement of all or part of the Rail Infrastructure which is delivered as part of a project the primary objective of which is the improvement of operational safety;
- (e) any extension, enhancement, expansion, augmentation, duplication or replacement of all or part of the Rail Infrastructure that is delivered as part of a project the primary objective of which is the improvement of operational performance and that project (**Operational Performance Project**):
 - (i) has a de minimus impact on capacity; and
 - (ii) involves a total capital expenditure of either:
 - (A) in respect of a single Operational Performance Project, under \$10 million; or
 - (B) where there has been more than one Operational Performance Project within the same Coal System within a Year, the cumulative total capital expenditure of all Operational Performance Projects within that Coal System within that Year is under \$20 million; or
 - (iii) has otherwise been approved by the QCA in writing as a project which is not an Expansion for the purposes of this Undertaking.

Expansion Costs	The meaning given to that term in clause 6.4.4(a)(ii) .
Expansion Funder	An Access Seeker, Access Holder or its Customer who has entered into a User Funding Agreement with Aurizon Network and includes the Preference Unit Holder nominated by the Access Seeker or Access Holder if it has nominated another party to hold the preference units created under the User Funding Agreement.
Expansion Tariff	The tariff determined in accordance with Part 6 for a specified Reference Train Service in relation to an Expansion.
Expected Access Revenue	<ul style="list-style-type: none"> (a) For an individual Train Service, the revenue reasonably expected from the Access Charge from that Train Service; and (b) for a combination of Train Services, the aggregate revenue reasonably expected from the Access Charges for all Train Services comprising that combination of Train Services, where the expected

Access Charges for different Train Services will be developed on a basis consistent with:

- (i) if a Reference Tariff is to be developed for a Train Service, the proposed Reference Tariff;
- (ii) the terms of the relevant Standard Access Agreement; and
- (iii) if **paragraph (b)(i)** of this definition does not apply, current applicable Access Charges, except as provided in **clause 6.7.1(b)(iv)**.

Feasibility Funder An Access Seeker or a Customer who is a party to a Studies Funding Agreement with Aurizon Network in respect of a Feasibility Study for an Expansion.

Feasibility Study A study with the following scope of work:

- (a) detailed assessment of technical and operating requirements of the proposed Expansion (utilising the preferred alternative identified in the Pre-feasibility Study but having regard to the options identified in that Pre-feasibility Study);
- (b) all necessary survey and geotechnical investigations to support the level of design and cost accuracy commensurate with the procurement strategy developed as part of the Feasibility Study;
- (c) detailed design of the proposed Expansion solution to a level commensurate with the procurement strategy developed as part of the Feasibility Study;
- (d) independent design verification, if required by the Feasibility Funders; and
- (e) a written report.

The written report referred to above must include:

- (a) the outcome of the analysis, decisions and specifications referred to above (with reasons, where applicable);
- (b) the project objectives for the proposed Expansion;
- (c) a “for construction level” specification for the proposed Expansion;
- (d) definition of an optimised project configuration that will provide the target capacity for an Expansion in accordance with the capacity requirements specified as part of the Feasibility Study scope of works;
- (e) confirmation of the technical and economic feasibility of the preferred alternative identified in the Pre-feasibility

Study;

- (f) financial evaluation of the proposed Expansion, including:
 - (i) the estimated impact on the System Reference Tariff and Expansion Tariff (including an appropriate Common Cost contribution);
 - (ii) the anticipated Expansion Tariff; and
 - (iii) an estimate of the Common Cost contribution, (determined in accordance with this Undertaking);
- (g) Capacity Analysis for the proposed Expansion to identify the target Capacity of the Expansion;
- (h) a detailed cost estimate for the proposed Expansion with a +/-10% level of accuracy (or a lower accuracy if agreed with the Feasibility Funders);
- (i) detailed design and construct project schedule for the proposed Expansion that includes:
 - (i) a fully stated program showing critical path;
 - (ii) time tolerances and project budget with a +/-10% margin (or lower accuracy if agreed with the Feasibility Funders);
 - (iii) an estimate of time and cost contingency supported by risk assessment and cost analysis;
 - (iv) probabilistic risk assessment analysis to establish the basis of project contingency; and
 - (v) a fully developed procurement methodology (including a report on previous approaches to the construction market undertaken by Aurizon Network, whether for the proposed Expansion or other works); and
- (j) a fully developed project management plan which includes:
 - (i) resource management plan;
 - (ii) cost management plan;
 - (iii) design management plan;
 - (iv) quality management plan;
 - (v) safety management plan;
 - (vi) schedule management plan;
 - (vii) risk management plan;

- (viii) project packaging and delivery strategy;
- (ix) procurement management plan;
- (x) interface management plan;
- (xi) change management plan;
- (xii) environmental plan;
- (xiii) project phases, milestones and deliverables;
- (xiv) project risk assessment report; and
- (xv) regulators notification, if needed.

Field Incident Management

The field management of incidents and accidents occurring on or affecting the Rail Infrastructure.

Force Majeure Event

Any cause, event or circumstance or combination of causes, events or circumstances which:

- (a) is beyond the reasonable control of the affected party; and
- (b) by the exercise of due diligence the affected party was not reasonably able to prevent or is not reasonably able to overcome,

and, provided that the requirements in **paragraphs (a) and (b)** of this definition are satisfied, includes:

- (c) compliance with a lawful requirement, order, demand or direction of an Authority or an order of any court having jurisdiction other than where that requirement, order, demand or direction results from any act or omission of the affected party;
- (d) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the affected party is a party to 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 or quarantine restriction; and
- (n) delay of a supplier due to any of the foregoing whether any such cause of delay exists before or after the Commencing Date.

General Track Maintenance

Includes maintenance of Track, structures, civil, signalling, electrical overhead and telecommunication systems.

Good Engineering Practices

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.

Goonyella Newlands Connection

The Rail Infrastructure between the North Goonyella mine junction and the Newlands mine junction.

Goonyella System

The Rail Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Hail Creek mine, Blair Athol mine, North Goonyella mine and the junction with the Gregory mine branch line and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of:

- (a) the branch line to Gregory mine; and
- (b) the corridor beyond North Goonyella mine to Newlands mine (and beyond).

Goonyella to Abbot Point System

The Rail Infrastructure comprising:

- (a) the Goonyella Newlands Connection; and
- (b) that part of any other Coal System which is used by a Train Service that also uses or connects to any part of the Goonyella Newlands Connection, except where that Train Service originates or terminates south of Gregory.
- (c)

GST	The meaning given to that term in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .
gtk	For an operated Train Service (whether loaded or empty) for a Train Service Type, gross tonne kilometres attributed to that Train Service being the amount which is the gross tonnes for the Train Service for the Train Service Type multiplied by: <ul style="list-style-type: none"> (a) if the Train Service was operated from the origin to destination for the Train Service Type, the number of kilometres of the loaded distance from origin to destination for the Train Service Type as specified in the Train Service Description for that Train Service Type; or (b) if the Train Service was operated from the destination to origin for the Train Service Type, the number of kilometres of the empty distance from the destination to origin for the Train Service Type as specified in the Train Description for that Train Service Type.
Gtk Forecast	The amount indicated as the 'Gtk Forecast' for the relevant Reference Tariff in Schedule F .
High-Risk Personnel or High-Risk Persons	The meaning given to that term in clause 3.16(b) .
High-Risk Personnel Register	The register established and maintained under clause 3.16 .
Incremental Costs	Those costs of providing Access, including capital (renewal and expansion) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Train Service or combination of Train Services (as appropriate) did not operate, where those costs are assessed as the Efficient Costs and based on the assets reasonably required for the provision of Access.
Indicative Access Proposal or IAP	The meaning given to that term in clause 4.6 .
Information Request Notice	The meaning given to that term in clause 7.6(a) .
Infrastructure Enhancement	Expansions and Customer Specific Branch Lines but excluding: <ul style="list-style-type: none"> (a) Asset Replacement and Renewal; or (b) Maintenance Work,

	required to deliver Committed Capacity.
Infrastructure Service Providers	Those parties who provide maintenance, construction and other related services in respect of the Rail Infrastructure.
Initial Capacity Assessment	<p>A preliminary Capacity Analysis limited to:</p> <p>(a) an indicative assessment of whether there is sufficient Available Capacity (provided that where the Access Application relates to a Transfer, the Nominated Access Rights in the Transfer Notice are deemed to be Available Capacity) to accommodate Committed Capacity and requested Access Rights; and</p> <p>(b) if there is not sufficient Available Capacity, to accommodate the requested Access Rights either:</p> <p>(i) an outline of the Expansions required to provide additional Capacity to accommodate the requested Access Rights (and an indicative estimate of the cost of such works and the timing for completion); or</p> <p>(ii) if Aurizon Network has not carried out the investigations required to provide the information in paragraph (i), an outline of the requirements for an investigation into the works required to accommodate the requested Access Rights.</p>
Insolvency Event	<p>Where one of the following events has happened in relation to the Access Seeker:</p> <p>(a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;</p> <p>(b) a meeting is convened to pass a resolution to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within 10 Business Days or the resolution fails to pass;</p> <p>(c) an application is made to a court for it to be wound up and the application is not dismissed within 10 Business Days after it is made;</p> <p>(d) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets if that appointment is not revoked within 10 Business Days after it is made;</p> <p>(e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company</p>

arrangement; or

- (f) any similar event occurs in respect of the Access Seeker under the laws of any jurisdiction other than Australia.

Inspecting Party	The meaning given to that term in clause 4.1(c) of Schedule C .
Issues Register	The register maintained by Aurizon Network under clause 10.5.3(c) .
Interested Participant	The meaning given to that term in clause 4.2(a) of Schedule E .
Interface Coordination Arrangement	An arrangement that identifies the procedures to be followed and the responsible officers from both Aurizon Network and the Access Holder, in respect of all regular operational interfaces between the parties that arise in the exercise of rights and the performance of obligations under a Train Operations Deed other than those specified in the Network Management Principles.
Interface Risk Assessment	<p>An assessment to:</p> <ul style="list-style-type: none">(a) identify all reasonably foreseeable Interface Risks and Environmental Risks;(b) assess:<ul style="list-style-type: none">(i) the likelihood of those Interface Risks and Environmental Risks occurring;(ii) the consequences (including commercial consequences) of those Interface Risks and Environmental Risks occurring; and(iii) any factors relevant to the effective management of those Interface Risks and Environmental Risks;(c) identify appropriate measures to effectively manage those Interface Risks and Environmental Risks within a risk management framework, including:<ul style="list-style-type: none">(i) an audit, inspection and review regime; and(ii) applicable Safeworking Procedures and Safety Standards having regard to existing Aurizon Network and industry practices; and(d) identify the party responsible for implementing, complying with and/or ensuring compliance with the measures referred to in paragraph (c) of this definition and ensuring the ongoing effectiveness of such measures.

Interface Risks	<p>All risks to the safety of persons or property arising or potentially arising from the interaction between the Access Seeker's, Access Holder's or a Train Operator's proposed operations and:</p> <ul style="list-style-type: none"> (a) the Rail Infrastructure; (b) any land relating to the Rail Infrastructure; (c) activities on the Rail Infrastructure (including other Train Services) or any land relating to the Rail Infrastructure; or (d) persons on, using or near the Rail Infrastructure or any land relating to the Rail Infrastructure.
Intermediate Train Plan or ITP	<p>A plan that details the indicative scheduled times for all Train Services and Planned Possessions, Urgent Possessions and Emergency Possessions on a specified part of the Rail Infrastructure on each day of the Relevant Period.</p>
IRMP	<p>An interface risk management plan which sets out each of the matters required to be identified and assessed during an Interface Risk Assessment.</p>
JORC Code	<p>The current edition of the <i>Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves</i> prepared by the Australasian Joint Ore Reserves Committee, from time to time.</p>
Law	<ul style="list-style-type: none"> (a) Any statute, rule, regulation, code, proclamation, ordinance or by-law, present or future, whether State, Commonwealth or otherwise; and (b) any requirement, condition, notice, consent, accreditation, order or direction or similar thing of any statutory, public or other competent authority (including the State in any of its regulatory capacities), present or future, given or imposed pursuant to anything specified in paragraph (a) of this definition.
Line Diagrams	<p>A diagrammatical representation of the rail network identifying:</p> <ul style="list-style-type: none"> (a) the configuration of the rail network; and (b) the parts of the rail network which are managed by Aurizon Network, a Related Operator or a person other than Aurizon Network.

Load Variation Table	A table published by Aurizon Network in respect of a nominated Reference Train Service or type of Train Service identifying allowable overloads for wagons and bogies and specifying relevant Operational Constraints and additional charges, where applicable, for such overloads.
Loading Time	<p>(e) —</p> <p>The time between a Train Service arriving at a Nominated Loading Facility and that same Train departing the Nominated Loading Facility, and for the purpose of clarity, this time runs from when a Train Service arrives at the entry signal to the Nominated Loading Facility until it has completed loading, presented at the exit signal, is ready to depart the Nominated Loading Facility and has advised the relevant Network Controller accordingly.</p>
<u>Long Term Transfer</u>	<u>Any Transfer which is not a Short Term Transfer.</u>
Maintenance Work	Any work involving maintenance or repairs to, or renewal, replacement and associated alterations or removal of, the whole or any part of the Rail Infrastructure (other than Infrastructure Enhancements) and includes any inspections or investigations of the Rail Infrastructure.
Major Periodic Maintenance	Activities that renovate the Rail Infrastructure to retain it in a functional condition completed on Track sections at intervals of more than one year, and includes activities such as re-railing, rail grinding, resurfacing, re-signalling, communications upgrades, renovating structures, ballast cleaning and re-sleeping.
Mainline Path	That part of any Train Path (in relation to a Coal System) as shown in the Preliminary Information.
Major Yards	The yards at Callemondah, Jilalan, Coppabella, and Pring.
Master Train Plan or MTP	That document detailing the distribution of Train Service Entitlements as advised by Aurizon Network from time to time for all Train Services and any Planned Possessions on a specified part of the Rail Infrastructure.
Material Default	<p>(a) Failure on more than one occasion to comply with any terms or conditions of a relevant agreement where that breach would not lawfully justify termination; or</p> <p>(b) a breach of a term or condition of a relevant agreement where that breach would lawfully justify termination,</p> <p>where a “relevant agreement” is an agreement described in clause 4.13(b)(ii).</p>
Material Variation	A variation to the relevant Access Application that will be detrimental to another Access Holder or Access Seeker’s

Capacity allocation as a result of either (or both):

- (a) the relevant Access Rights, if granted, being allocated more Capacity including any increase in tonnages to be carried by Train Services or in the required number of Train Paths; or
- (b) changes:
 - (i) in the Capacity consumed by Train Services relating to the Access Rights being sought as a result of the variation – except to the extent that the changes are to make the Train Service consistent with the description of the relevant Reference Train Service (if any);
 - (ii) the period for which the Access Rights are required, whether shorter or longer;
 - (iii) the nature or type of Access Rights (for example, from Cyclic Traffic to Timetabled Traffic); or
 - (iv) the origin or destination relevant to the Access Rights.

Maximum Allowable Revenue

The maximum revenue that Aurizon Network should be entitled to earn by way of Access Charges from the provision of Access to the relevant Train Service(s) over the Evaluation Period, as determined in accordance with **clause 6.6.3**.

Maximum Payload

[Has the meaning given to that term in the Standard Access Agreement.](#)

MCI

The maintenance cost index developed by Aurizon Network for the purposes of the escalation of Reference Tariffs and which has been approved by the QCA (and as adjusted from time to time to replace any index used in the calculation of the maintenance cost index that ceases to be published with the CPI, or an appropriate substitute index approved by the QCA).

Minimum Revenue Contribution

For the purposes of **clause 6.3**, the amount calculated under **clause 6.3.1(c)(ii)**.

Month

A calendar month.

Moura System

The Rail Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine and the loading facility for Baralaba mine in the vicinity of Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor but excluding the corridor to Blackwater (and beyond).

Mutually Exclusive Access Applications

In respect of:

(a) two or more Access Applications where if Aurizon Network grants Access Rights in respect of one or more of those Access Applications then Aurizon Network will have insufficient Available Capacity to grant Access Rights in respect of the remaining Access Applications; and

(b) an Access Application(s) and a proposed Transfer which requires Ancillary Access Rights, where if Aurizon Network grants Access Rights in respect of the Access Application(s) then Aurizon Network will have insufficient Available Capacity to grant the Ancillary Access Rights in respect of the Transfer.

Negotiation Cessation Notice

A notice issued by Aurizon Network in accordance with **Part 4**.

Negotiation Period

The period during which the terms and conditions of an Access Agreement will be negotiated, as described in **clause 4.11.1**.

Negotiation Process

The meaning given to that term in **clause 5.1(a)**.

~~(v)~~

Network Controller

A person performing Network Control Services from within a Network Control centre.

Network Control Services

The management and monitoring of all Train Movements and of all other operation of Rollingstock on the Rail Infrastructure and of any activities affecting or potentially affecting such Train Movements or Rollingstock operation including:

- (a) recording Train running times on Train diagrams and in Aurizon Network's information systems;
 - (b) reporting of incidents occurring on the Rail Infrastructure;
 - (c) managing incidents occurring on the Rail Infrastructure from within a Network Control centre;
 - (d) Field Incident Management and Yard Control services; and
 - (e) exchanging information with Railway Operators,
- and **Network Control** has a related meaning.

Network Development Plan	A plan setting out options and indicative plans relating to the short and medium term development, extension, use, or improvement of, or capital investment in, or interaction with, the Coal Systems to promote increased Capacity, which contains the information outlined in clause 7A.6 .
Network Incident	Any derailment, disablement or breakdown of Rollingstock, accident, collision or other unplanned occurrence, on or affecting the use of the Rail Infrastructure which causes or contributes to, or could cause or contribute to: <ul style="list-style-type: none"> (a) the death of, or injury to, any person; (b) damage to any property; (c) Environmental Harm; or (d) a disruption to, or cancellation by Aurizon Network of any Train Movement.
Network Management Principles	The principles set out in Schedule G and all System Rules existing from time to time.
New Access Agreement	An Access Agreement to the extent entered into or varied for the purpose of a Transfer from an Old Access Agreement.
New Expansion	The meaning given to that term in clause 6.4.5(b) .
Newlands System	The Rail Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor, with the exception of the corridor between the Newlands mine and the North Goonyella mine (and beyond).
<u>Nominal Payload</u>	(e) Has the meaning given to that term in the Standard Access Agreement.
Nominal Train Payload	The nominal nt that applies to the Train Service as specified under the System Reference Tariff or Expansion Tariff (such as, for the System Reference Tariffs under clause 7.2(e), 8.2(d), 9.2(d), 10.2(c) and 11.2(b) of Schedule F), as applicable.
Nominated Access Rights	As applicable: <ul style="list-style-type: none"> (a) in clause 7.4.2 (Transfers), the meaning given to that term in clause 7.4.2(b)(i)(A); and (b) in clause 7.4.3 (Relinquishments), the meaning given to that term in clause 7.4.3(b)(i).

Nominated Infrastructure

That Rail Infrastructure over which the relevant Reference Train Service travels between the Nominated Loading Facility/ies and Nominated Unloading Facility/ies.

Nominated Monthly Operational Rights

Has the meaning given to that term in the Standard Access Agreement.

Nominated Monthly Train Services

Has the meaning given to that term in the Standard Access Agreement.

Nominated Loading Facility

A loading facility specified for a nominated Reference Train Service in **Schedule F**.

Nominated Network

The meaning given to that term in the Standard Access Agreement.

Nominated Railway Operator

For an Access Holder, a Railway Operator nominated or appointed by that Access Holder in accordance with an Access Agreement for the purpose of operating Train Services for that Access Holder for specified periods in accordance with that Access Holder's Access Rights.

Nominated Unloading Facility

An unloading facility specified for a nominated Reference Train Service in **Schedule F**.

Nominee Operator

The meaning given to that term in **clause 4.10.1(a)**.

Non-availability Circumstances

The following requirements:

- (a) the relevant person has notified Aurizon Network that the evidence or information is not available and is not reasonably able to be produced, procured or otherwise obtained, including providing the relevant supporting facts or circumstances. (For example, the relevant facts or circumstances may relate to the development of the project being at too early a stage for the person to be able to produce or procure the relevant evidence or information.); and
- (b) having regard to the information provided under **paragraph (a)** of this definition, Aurizon Network (acting reasonably) is satisfied that:
 - (i) the evidence or information is not available and is not reasonably able to be produced, procured or otherwise obtained; and
 - (ii) the failure or inability does not indicate a lack of genuine intention to obtain the requested Access Rights or a reasonable likelihood that the Access Rights will not be utilised at the level sought.

Notice Date	The meaning given to that term in clause 7A.4.2(g)(iii) .
Notice of Intention to Relinquish	The meaning given to that term in clause 7.4.3(a) .
Notice of Intention to Transfer	The meaning given to that term in clause 7.4.2(a) .
nt	Unless otherwise specified, the net tonnes attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rollingstock when loaded utilised in the relevant Train Service (including all goods, product, persons or matter carried) less the weight of such Rollingstock (in tonnes) when empty.
ntk	The net tonne kilometres attributed to the relevant Train Service, being the nt for the Train Service multiplied by the distance (in kilometres) from origin to destination for the Train Service as set out, from time to time, in the Access Agreement relating to that Train Service or, where there is no Access Agreement or the Access Agreement does not set out that distance, as determined by Aurizon Network (acting reasonably).
Old Access Agreement	In relation to a New Access Agreement, the pre-existing Access Agreement to which the relevant Transfer relates.
Operating Plan	A description specifying reasonable details of how the proposed Train Services are to be operated, including the matters required in Schedule C .
Operational Constraint	Any restriction on the use of any part of the Rail Infrastructure that impacts adversely on Train Services, including speed restrictions, load restrictions, Possessions or signalling or overhead restrictions.
Origin System	The Coal System on which the Nominated Loading Facility is located.
Origin Tariff	The relevant Reference Tariff applying to the relevant Cross System Train Service in the Origin System.
OTCI	The Overall Track Condition Index for Aurizon Network's Below Rail network for each Coal System, and provides a quality measure of Aurizon Network's track.
Out-Of-Course Running	The circumstance that occurs when the actual running of one or more Train Service/s differs by more than the relevant agreed threshold/s as set out in the relevant Access Agreement, from that provided in the DTP.
Overload Charges	Charges that penalise the overloading of train wagons.
Part 8 Dispute	The meaning given to that term in clause 11.1.7(a) .
Passenger Priority	The obligations of a Railway Manager pursuant to sections

Obligation	265 and 266 of the TIA.
<u>Payload</u>	<u>Of a Train Service means the weight of product loaded onto any Train used in operating that Train Service.</u>
Performance Delay	The meaning given to that term in clause 8.6(a)(i)(C) .
Planned Capacity	<p>The additional Train Paths (calculated on a Monthly and annual basis) that is expected to result from an Expansion that Aurizon Network is contractually committed to construct, taking into account:</p> <p>(a) Aurizon Network’s reasonable requirements for the exclusive or partial utilisation of the Rail Infrastructure resulting from that Expansion for the purposes of performing activities associated with the maintenance and repair of the Rail Infrastructure resulting from that Expansion, including the operation of work Trains; and</p> <p>(b) Aurizon Network’s allowances for “day of operations” losses, speed restrictions and other operational losses or restrictions applicable to the Rail Infrastructure resulting from that Expansion as set out in the System Operating Parameters.</p>
Planned Possession	A Possession that is entered into the MTP and may adversely impact upon the operation of Train Services and is notified to Access Holders at least twenty-one (21) days prior to taking effect and, for clarity, includes Maintenance Work.
Possession	The temporary closure and/or occupation by Aurizon Network on part of the Rail Infrastructure (including closure of Track or isolation of any electrical overhead traction system) for the purposes of carrying out Planned Possession, Urgent Possession or Emergency Possession on or in the proximity of the Rail Infrastructure which may affect the safety of any person or property.
Possession Protocols	The protocols developed and advised by Aurizon Network from time to time (as varied in accordance with any Access Agreement) for managing and scheduling Possessions.
Potential Feasibility Funders	In respect of a proposed Feasibility Study, the Access Seekers (or if applicable, Customers or Conditional Access Holders) who are required to be given an opportunity to fund that Feasibility Study as determined in accordance with clause 8.4.3(a) .
Potential Pre-feasibility	In respect of a proposed Pre-feasibility Study, the Access Seekers (or if applicable Customers or Conditional Access

Funders	<p>Holders) who are required to be given an opportunity to fund that Pre-feasibility Study as determined in accordance with clause 8.4.2(c).</p>
Pre-30 June 2006 Coal Access Agreements	<p>(a) Access Agreements in place on the day immediately prior to 30 June 2006; or</p> <p>(b) new Access Agreements entered as part of transferring Access Rights from such Access Agreements but only to the extent that the terms of the Access Agreement described in paragraph (a) apply in respect of the relevant Access Rights.</p>
Pre-1 October 2010 Coal Access Agreements	<p>(a) Access Agreements in place on the day immediately prior to 1 October 2010; or</p> <p>(b) new Access Agreements entered as part of transferring Access Rights from such Access Agreements but only to the extent that the terms of the Access Agreement described in paragraph (a) apply in respect of the relevant Access Rights,</p> <p>but does not include a Pre-30 June 2006 Coal Access Agreement.</p>
Pre-Approval Date Coal Access Agreements	<p>(a) Access Agreements in place on the day immediately prior to the Approval Date; or</p> <p>(b) new Access Agreements entered as part of transferring Access Rights from such Access Agreements but only to the extent that the terms of the Access Agreement described in paragraph (a) apply in respect of the relevant Access Rights,</p> <p>but does not include a Pre-30 June 2006 Coal Access Agreement.</p>
Pre-feasibility Funder	<p>An Access Seeker or a Customer who is a party to a Studies Funding Agreement with Aurizon Network in respect of a Pre-feasibility Study for an Expansion.</p>
Pre-feasibility Study	<p>A study with the following scope of work:</p> <p>(a) identification and assessment of all technical solutions that a prudent engineering consultant would identify and assess, to deliver the required Capacity, taking into account the full Supply Chain;</p> <p>(b) assessment of technical and operating requirements of the proposed Expansion;</p> <p>(c) Capacity Analysis of:</p> <p>(i) the proposed Expansion; and</p> <p>(ii) any alternatives identified in paragraph (b) above,</p>

based on the most recent Capacity Analysis undertaken by Aurizon Network;

- (d) all necessary survey and geotechnical investigations to support the level of design and cost accuracy required in **paragraph (g)** below;
- (e) identification of a single preferred solution for the proposed Expansion (to be studied in detail during the Feasibility Study phase);
- (f) high level value engineering assessment of the preferred solution to lower the total cost of ownership, after allowing for risk, of the proposed Expansion; and
- (g) a written report.

The written report referred to above must include:

- (a) the project objectives for the proposed Expansion;
- (b) the outcome of the analysis, decisions and specifications referred to above (with reasons, where applicable);
- (c) evaluation of all of the project configuration alternatives that would provide the Capacity requirements of the proposed Expansion;
- (d) preliminary risk assessment of the proposed Expansion, including the alternatives identified in **paragraph (b)** above;
- (e) identification of the project configuration alternative (referred to in **paragraph (b)** above) that has the lowest total cost of ownership, after allowing for risk;
- (f) analysis of the technical and economic feasibility of the preferred alternative and provides reasons why it is the preferred alternative;
- (g) design and construct project schedule for preferred alternative for the proposed Expansion that includes time tolerances and project budget with a +/-20% margin;
- (h) potential benefits, including capacity, maintenance and operating benefits of the proposed Expansion;
- (i) the design, estimate and schedule of the preferred alternative for the proposed Expansion, including;
- (j) details of any variation to the budgeted costs to undertake the Pre-feasibility Study; and
- (k) a Feasibility Study execution plan, including the scope of work (taking into account the scope of work required

by the definition of “Feasibility Study” in this Undertaking), budget, time schedule and deliverables.

Preference Unit Holder	The holder of a preference unit created under a User Funding Agreement.
Preliminary Capacity Assessment Report	The meaning given to that term in clause 7A.4.2(ed)(i) .
Preliminary Information	The information referred to in clause 1 of Schedule A (as applicable) and, where that information is published on the Website, that information as published on the Website from time to time.
<u>Preliminary System Capacity Assessment Report</u>	<u>The meaning given to that term in clause 7A.4.2(d)(ii).</u>
Preserved Train Path Obligations	The obligations of a Railway Manager under section 266A of the TIA.
Pricing Proposal	The meaning given to that term in clause 6.4.4(a) .
Private Efficient Cost	For the purposes of clause 6.3 , the cost for each Year, during the period for which the relevant Reference Tariff will apply, that reflects the costs that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices in the provision of the relevant Private Infrastructure to the required service standard.
Private Incremental Costs	<p>For the purposes of clause 6.3, those costs of providing access to the relevant Private Infrastructure, including capital (renewal and expansions) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Train Service or combination of Train Services (as appropriate) did not operate, where those costs:</p> <ul style="list-style-type: none">(a) are assessed as Private Efficient Costs and based on the assets reasonably required for the provision of access to the relevant Private Infrastructure;(b) have been reviewed and endorsed by the QCA; and(c) have been submitted to Aurizon Network by the owner or operator of the relevant Private Infrastructure for the purpose of calculating the relevant tariffs.
Private Infrastructure	The rail transport infrastructure (as defined under the TIA), including track, signalling and electrical overhead traction system (if applicable), that is not Rail Infrastructure.

Private Infrastructure Owner	A person who owns, or proposes to construct and own, Private Infrastructure which will connect to the Rail Infrastructure in order to allow Trains operating on that Private Infrastructure to enter or exit from the Rail Infrastructure for the purposes of Access.
Projected Cost	The projected cost, including capital, maintenance and operating costs, (on a “most likely case” basis) of an Expansion applying the costing details and approach specified in the Pre-feasibility Study report for the Expansion to the capacity requirements of the Feasibility Funders in relation to the Feasibility Study for the Expansion.
Proposed Amendments	The meaning given to that term in clause 7A.2.4(c)(i)(F) .
Proposed System Rules	The meaning given to that term in clause 7A.2.5(a) .
Prospective Access Seeker	A person who (in good faith and on a bona fide basis) notifies Aurizon Network that the person wants Access, or increased Access, but has not yet provided Aurizon Network with a properly completed Access Application.
Provisional Capacity Allocation	The meaning given to that term in clause 8.5(a) .
<u>Publication Date</u>	The meaning given to that term in clause 7A.1.1(a)(iv) or clause 7.6(b)(ii) as applicable.
PV Amount	The meaning given to that term: <ul style="list-style-type: none"> (a) in respect of clause 7.4.2 (Transfers), in clause 1.1.1(a)(i); and (b) in respect of clause 7.4.3 (Relinquishments), in clause 7.4.3(e)(ii).
QCA	The Queensland Competition Authority as established by the Act.
QCA Levy	The fee allocated to the nominated Train Services to cover the fees imposed by the QCA on beneficiaries of its regulatory services and, for a Reference Train Service, is that amount specified as such for that Reference Train Service in Schedule F .
Quarter	Each period of three consecutive Months commencing each 1 July, 1 October, 1 January and 1 April in each year.
Queensland Rail	Queensland Rail Limited ACN 132 181 090.
Queue	The meaning given to that term in clause 7.5.2(b) .

QTH	Queensland Treasury Holdings Pty Ltd ABN 52 011 027 295.
Rail Connection Agreement	An agreement by which Aurizon Network agrees to the connection of Private Infrastructure to the Rail Infrastructure.
Rail Infrastructure	Rail transport infrastructure (as defined under the TIA) for which Aurizon Network is the owner or lessee, the use of which is taken to be a service declared for the purposes of Part 5 of the Act pursuant to section 250(1)(a) of the Act.
Rail Infrastructure Manager	The meaning given to that term in the Rail Safety Act.
Rail Safety Act	<i>Transport (Rail Safety) Act 2010</i> (Qld).
Railway Manager	The meaning given to that term in the TIA.
Railway Operator	The meaning given to that term in the TIA and, for clarity, includes an Access Holder's nominated Train Operator.
Rapid Capacity Assessment	A Capacity Analysis which is limited to an analysis of Available Capacity having regard to the Baseline Capacity Assessment or most recent Capacity Assessment (if any) and any subsequent changes to the Available Capacity to determine if there is sufficient Available Capacity (if the Nominated Access Rights are deemed to be Available Capacity for the purposes of the Rapid Capacity Assessment) for the Transferred Access Rights.
Recipient	A person or entity to whom access to or disclosure of Confidential Information is made.
Reduced Conditional Access Rights	The Access Rights for a Segment of an Expansion, as determined in accordance with the formula in clause 8.9.5(b) .
Reduction Factor	The amount calculated in accordance with clause 7.4.4(d) .
Reduction Factor Provisions	The provisions set out in clause 7.4.4(d) .
Reference Tariff Provisions	The provisions set out in Schedule F .
Reference Tariffs	System Reference Tariffs and Expansion Tariffs.
Reference Train Service	A notional Train Service described in clause 1.3 of Schedule F .
Regulatory Asset Base	The asset value for the Rail Infrastructure accepted by the QCA for the purpose of developing Reference Tariffs for coal carrying Train Services.
Rejection Notice	The meaning given to that term in clause 4.4(d) .

Related Competitors	Functional units within the Aurizon Group or an Aurizon Party that has a direct or indirect interest (whether as owner, lessee, trust unit holder, operator, manager or otherwise and whether alone or together with others) in a: <ul style="list-style-type: none"> (a) port; or (b) coal mine or coal-extraction project, that is an origin or destination for any good conveyed over the Rail Infrastructure.
Related Operators	Functional units within the Aurizon Group that provide Above Rail Services.
Related Party	A related body corporate as defined in the Corporations Act.
Relevant Period	The relevant seven day period commencing at 12:00 am on Monday and ending immediately prior to 12:00 am on the following Sunday or such other period as expressly specified in the relevant System Rules.
Relevant Tax	Any tax, charge, levy, duty, impost, rate, royalty or imposition which is imposed on Aurizon Network by, or payable by Aurizon Network to, any Authority but does not include any income tax, fringe benefits tax, capital gains tax or any tax that replaces any of those taxes.
Relinquishment Date	The meaning given to that term in clause 7.4.3(b)(ii) .
Relinquishment Fee	The relinquishment fee determined in accordance with clause 7.4.3(e) .
Relinquishment Provisions	The provisions set out in clauses 7.4.3 and 7.4.4 .
Renewal	The meaning given to that term under clause 7.3(a) .
Renewing Access Seeker	The meaning given to that term under clause 7.3(a) .
Resumed Access Rights	For a Train Service Type, the meaning given to that term in clause 7.6(e)(ii)(A) .
Resumption Date	The meaning given to that term in clause 7.6(e)(ii)(B) .
Resumption Notice	The meaning given to that term in clause 7.6(d) .
Resumption Provisions	The provisions set out in clause 7.6 .
Resumption Trigger Event	The meaning given to that term clause 7.6(a) .

Revenue Adjustment Amounts	Collectively the AT ₂₋₄ Revenue Adjustment Amount and the AT ₅ Revenue Adjustment Amount and Revenue Adjustment Amount means one of them.
Review Date	in respect of a Change in Reference Tariff Provisions, the first day of the Month during which the Change in Reference Tariff Provisions takes effect.
Review Event	The occurrence of any of the events listed in clause 5.3 of Schedule F .
ROA	The meaning given to that term in clause 6.6.3(c) .
Rollingstock	Locomotives, carriages, wagons, rail cars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicle that operates on or uses the Track.
Rollingstock Configuration	The description of the combination of Rollingstock comprising a Train including identification number and gross mass of individual items of Rollingstock and the order in which those Rollingstock items are placed in the Train.
Rollingstock Interface Standards	The minimum standards relating to Rollingstock and Rollingstock Configurations specified in Aurizon Network's document entitled "Interface Standards" published on the Website (as amended and replaced from time to time).
rtp	The number of reference Train Paths used by the relevant Train Service calculated in accordance with clause 6.2.3(c) .
Safety Management System	Aurizon Network's safety management system as required under the Rail Safety Act.
Safety Regulator	The rail safety regulator as defined under the Rail Safety Act.
Safety Standards	All standards relating to safety, including occupational health and safety, established in published guidelines, industry practice or Aurizon Network policies and all standards relating to safety, including occupational health and safety, prescribed by any Laws.

Safeworking Procedures	<p>The procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of worksites on the Infrastructure specified in Aurizon Network’s document entitled Safeworking Procedures as:</p> <p>(a) notified by Aurizon Network to the relevant Train Operator; or</p> <p>(b) published on the Website,</p> <p>(as amended and replaced from time to time).</p>
Scheduled Train Path	<p>For a Timetabled Traffic, the entitlement of an Access Holder, as identified in its Train Service Entitlement, to use a specified portion of the Rail Infrastructure at the times and between the locations specified in the relevant MTP, so as to allow the passage of one Train.</p>
Second Year Allowable Revenue	<p>The meaning given to that term in clause 4.4(a)(i) of Schedule F.</p>
Segment	<p>Each segment of the Expansion specified as such in the Train Description for the Conditional Access Rights in the relevant Access Agreement which are conditional upon the completion and commissioning of the Expansion.</p>
Self-Insurance	<p>Any funds set aside by Aurizon Network for the purpose of allowing Aurizon Network to manage its own financial risks, including all claims that may be made against Aurizon Network or its relevant Access Holders for which Aurizon Network self-insures.</p>
Shortfall Expansion	<p>The meaning given to that term in clause 8.9.4(a).</p>
Short Term Transfer	<p>The meaning given to that<u>A Transfer:</u></p> <p><u>(a) for a term of less than or equal to 2 years; and</u></p> <p><u>(a) in respect of which the Transferee (or its Customer) has an existing Access Agreement under which the Transferred Access Rights can be added in accordance with clause 7.4.2(h).7.4.2(a)(v)(A); and</u></p> <p><u>(b) the origin for the Transferred Access Rights is on the same Mainline Path as the Nominated Access Rights, but excluding a Customer Initiated Transfer.</u></p>
Short Term Transfer Period	<p>The meaning given to that term in clause 7.4.2(h)(ii)(A).</p>

Stand Alone Costs	<p>Those costs that Aurizon Network would incur if the relevant Train Service(s) was (were) the only Train Service(s) provided Access by Aurizon Network, where those costs are assessed:</p> <p>(a) as the Efficient Costs; and</p> <p>(b) on the basis of the assets reasonably required for the provision of Access,</p> <p>and includes an allowable rate of return expressed in nominal post tax terms (with the cost of debt expressed on a before tax basis), as agreed by Aurizon Network and the QCA or, failing such agreement, as determined by the QCA, and Stand Alone has a similar meaning.</p>
Standard Access Agreement	The standard form Access Agreement set out in Volume 3.
Standard Agreement	Any agreement that is in the form of a Standard Access Agreement, Standard Rail Connection Agreement, Standard User Funding Agreement, Standard Studies Funding Agreement or Standard Train Operations Deed.
Standard Rail Connection Agreement	The standard form of Rail Connection Agreement set out in Volume 3.
Standard Studies Funding Agreement	The standard form of Studies Funding Agreement set out in Volume 3.
Standard Train Operations Deed	The standard form of Train Operations Deed set out in Volume 3.
Standard User Funding Agreement or SUFA	The standard form of User Funding Agreement set out in Volume 3.
State	The State of Queensland.
Static Length	In respect of a Train, the length of that Train calculated as the aggregate of the lengths of each item of Rollingstock comprising or to comprise that Train (including the locomotive/s).
Stowage	<p>(a) Dwell; and</p> <p>(b) the short-term storage of Trains on the Rail Infrastructure at locations specified by Aurizon Network where an Access Holder cannot operate its Train Service in accordance with its Train Service Entitlement as the result of a breakdown or other temporary outage of the Access Holder, the loading</p>

facility or the unloading facility, and/or the unavailability of Rail Infrastructure, but does not include storage of individual items of Rollingstock or the long-term storage of Trains.

Studies Funding Agreement

In respect of Pre-feasibility Study or a Feasibility Study, as applicable, an agreement with Aurizon Network in relation to the provision of funding to Aurizon Network for that Pre-feasibility Study or Feasibility Study.

Subsidiary

The meaning given to that term in the Corporations Act.

Supply Chain

All aspects that affect the transportation of coal from a mine to the end customer, including loading facilities, Rail Infrastructure, Railway Operators, load out facilities and coal export terminal facilities. For clarity, a number of supply chains can exist within a Coal System and can be denoted by reference to the destination coal export terminal.

Supply Chain Group

A group:

- (a) that has been established as a supply chain coordination group for the purpose of coordinating some or all aspects of the planning or operation of a Supply Chain; ~~or~~
- (b) ~~a group~~ which has the support of sufficient participants in the Supply Chain to effectively perform that coordination purpose; ~~and~~
- (c) but in each case the group which includes consideration of the service taken to be declared under section 250(1)(a) of the Act.

Supply Chain Master Plan

An integrated plan identifying feasible investment options for increasing the capacity of a Supply Chain (including variations to Supply Chain operating assumptions for the Supply Chain) and evaluating those investment options from a total cost, risk and timing perspective.

Supply Chain Rights

The following rights:

- (a) where any Supply Chain infrastructure is required to be accessed or used to operate Train Services, rights on the Rail Infrastructure;
- (b) in respect of Train Services that will operate on Supply Chain infrastructure prior to entering and/or after exiting the Rail Infrastructure as part of its journey, rights which are sufficient to allow the Train Services to enter or exit (as applicable) the Rail Infrastructure from or to (as applicable) that Private Infrastructure; and
- (c) if the Train Services are to be operated to an unloading

facility or loading facility, rights which are sufficient to allow:

- (i) in relation to an unloading facility:
 - (A) access to the relevant unloading facility with a fully loaded Train which complies with the proposed Train Service Entitlement for the Train Services; and
 - (B) the unloading of all coal from the Train at the relevant unloading facility; and
- (ii) in relation to a loading facility:
 - (A) access to the relevant loading facility with a Train which complies with the proposed Train Service Entitlement for the Train Services; and
 - (B) the loading of coal onto the Train at the relevant unloading facility,

assuming, in either case, 100% utilisation of the Access Rights for the relevant Train Services in accordance with the proposed Train Service Entitlement.

<u>Surplus Access Rights</u>	<u>Has the meaning given to that term in the Standard Access Agreement.</u>
Suspension Period	The meaning given to that term in clause 4.5(I) .
<u>System Available Capacity</u>	<u>System Capacity, excluding all Committed Capacity.</u>
<u>System Capacity</u>	<p><u>(a) The maximum number of Train Paths (calculated on a Monthly and annual basis) that can be provided; plus</u></p> <p><u>(b) the number of Train Paths (calculated on a Monthly and annual basis) that are expected to result from an Expansion that Aurizon Network is contractually committed to construct,</u></p> <p><u>in respect of each Coal System and for the mainline and each branch line of each Coal System, using the following assumptions:</u></p> <p><u>(c) reasonable requirements in respect of maintenance and repair of each element of the Supply Chain (including loading facilities, load out facilities and coal export terminal facilities);</u></p> <p><u>(d) reasonably foreseeable delays or failures occurring in the relevant Supply Chain (including mine, port and</u></p>

	<p>rolling stock associated losses);</p> <p>(e) the Supply Chain operating mode; and</p> <p>(f) [insert others]</p>
System Capacity Analysis	<p>A simulation modelling assessment of the System Available Capacity to determine, as the context requires:</p> <p>(a) System Available Capacity;</p> <p>(b) whether there is sufficient System Capacity to accommodate Committed Capacity; and</p> <p>(c) whether there is sufficient System Available Capacity to accommodate the requested Access Rights not yet considered to be Committed Capacity.</p>
System Capacity Assessment	An assessment undertaken under clause 7A.4.2(a)(ii).
System Capacity Assessment Report	The Preliminary System Capacity Assessment Report, as amended in accordance with clause 7A.4.2(f) (if applicable).
System Discount	The amount specified as such, in Schedule F , for the relevant Reference Train Service.
System Operating Parameters	Aurizon Network’s assumptions on the operation of each element of the coal Supply Chain and the interfaces between those elements including in relation to the Supply Chain operating mode, seasonal variations and live run losses, as published on its Website from time to time.
System Path	A path that can be taken by a Train Service from a specific origin to a Nominated Unloading Facility.
System Premium	The amount specified as such, in Schedule F , for the relevant Reference Train Service.
System Reference Tariff	The tariffs set out in clauses 7, 8, 9, 10 and 11 of Schedule F for a specified Reference Train Service in relation to a Coal System (as amended, varied or escalated in accordance with this Undertaking or the Act from time to time).
System Rules	<p>Rules specifying the way in which Aurizon Network will plan, schedule and control the operation of Train Services on a one or combination of Coal Systems:</p> <p>(a) which:</p> <p>(i) are approved for a Coal System under clause 7A.2.5; or</p> <p>(ii) existed under the 20102016 Undertaking immediately prior to the Approval Date,</p>

as amended from time to time under **clause 7A.2.4**;
and

- (b) which may include, for example:
- (i) the declaration of System Paths for a Coal System;
 - (ii) the procedures for Access Holders to submit Train Orders and for Aurizon Network to schedule Train Services in the ITP;
 - (iii) the procedures for Aurizon Network to schedule the DTP from the ITP, provided that these procedures must be consistent with the matters referred to in **clauses 5.2 and 5.4(c) of Schedule G**;
 - (iv) the relevant critical objectives for Train Services operating in one or a combination of Coal Systems to assist decision-making for Network Control under **clause 7 of Schedule G**;
 - (v) a methodology for defining path availability/use for the purpose of calculating TOP Charges; and
 - (vi) the identification of any circumstances where a full Initial Capacity Assessment or Capacity Analysis is not required for the purposes of **clause 4.6(c) or clause 4.11.2(a)(v)**.

Take or Pay	A charge payable to Aurizon Network in circumstances where contracted Train Services are not operated by or for the relevant Access Holder. For a Reference Tariff, the Take or Pay requirements and calculations are set out in clause 3 of Schedule F .
Target Capacity	The meaning given to that term in clause 8.3.3(b) .
Tariff Based Access Agreement	In relation to a Reference Tariff, an Access Agreement to the extent that the Access Charges under that Access Agreement are set by reference to that Reference Tariff.
Tariff Gtk	In respect of a Train Service Type, the aggregate of the gtk for all coal carrying Train Services that are subject to the same type of Reference Tariff as the that Train Service Type.
Tariff Take or Pay	Take or Pay in relation to Train Service Entitlements for which Access Charges are set by reference to the same Reference Tariff.
Tax Act	The <i>Income Tax Assessment Act 1997</i> (Cth) and regulations made under it, as amended from time to time.

Term	The period between the Approval Date and the Terminating Date.
Terminating Date	The earlier of: <ul style="list-style-type: none"> (a) <u>30 June 2017</u>2021; (b) <u>the date on which the service to which this Undertaking relates, ceases to be a service declared for the purposes of Part 5 of the Act;</u> and (c) the date on which this Undertaking is withdrawn in accordance with the Act.
Third Party	A person other than an Aurizon Party.
Third Party Access Seeker	A Third Party which is an Access Seeker and, for the purposes of Part 3 , includes a Third Party who wants Access, or increased Access whether or not an Access Application has been lodged.
TIA	<i>Transport Infrastructure Act 1994</i> (Qld).
Timetabled Traffic	A traffic, the Train Service Entitlement in respect of which, is defined in terms of a specified Train Path on a particular day and/or week (but excluding any traffic that is a coal carrying Train Service).
TOP Charges	The charge for contracted Train Services where the contracted Train Services are not operated by, or by a Railway Operator for, the relevant Access Holder under the relevant Access Agreement and is the amount determined under clause 3.2 and 3.3 of Schedule F .
Total Actual Revenue	(a) For AT ₂₋₄ in relation to an Coal System, the amount calculated in accordance with clauses 4.3(d) to (f) of Schedule F ; and (b) for the AT ₅ component of Access Charges in relation to a Coal System, the amount calculated in accordance with clause 4.3(g) of Schedule F .
Track	That part of the Rail Infrastructure comprising the rail, ballast, sleepers and associated fittings.
Track Segment	A part of the Rail Infrastructure comprising a rail corridor shown as a specified "Track Segment" as shown in the Preliminary Information including all branch lines directly connecting coal mine loading facilities to that "Track Segment".
Train	Any configuration of Rollingstock operating as a unit on Track.
Train Description	The meaning given to that term in the relevant Access Agreement.

Train Movement	Any operation of a Train on the Rail Infrastructure by a Train Operator or any other Railway Operator.
Train Orders	Railing requests for a nominated period of time submitted to Aurizon Network, by or on behalf of an Access Holder or a Train Operator, after taking into account any restrictions on or unavailability of loading or unloading facilities, Private Infrastructure, Rollingstock or other Above Rail Services, to assist in the scheduling of Train Services.
Train Operations Deed	A Train Operations Deed agreed (or otherwise entered into) between Aurizon Network and the relevant Train Operator under clause 5.3(c) of this Undertaking.
Train Operator	A person nominated by an Access Seeker or an Access Holder to operate Train Services for that Access Seeker or Access Holder under the terms of a Train Operations Deed.
Train Path	The occupation of a specified portion of Rail Infrastructure, which may include multiple sections in sequential order, for a specified time.
Train Service	A Train operating on the Rail Infrastructure from a specified origin to a specified destination.
Train Service Change	<p>A change to:</p> <p>(a) for Timetabled Traffic, the time or times at which; or</p> <p>(b) for Cyclic Traffic, the Train Path or Train Paths for which,</p> <p>one or more Train Services are planned or scheduled to operate, as applicable, (and not the other terms under which a person has an entitlement to run those Train Services, for example, the Rollingstock or Rollingstock Configuration for those Train Services or the Rail Infrastructure on which those Train Services may operate).</p>
Train Service Commitment Date	The date specified as such for a Train Service Type in the relevant Access Agreement.
Train Service Entitlement	An Access Holder's entitlement pursuant to an Access Agreement to operate or cause to be operated a specified number and type of Train Services over the Rail Infrastructure including within a specified time period, in accordance with specified scheduling constraints and for the purpose of either carrying a specified commodity or providing a specified transport service.
Train Service Type	In respect of an Access Holder, a 'Train Service Type' as defined in that Access Holder's Access Agreement.
Transfer	The transfer of all or part of an Access Holder's Access Rights under clause 7.4.2 (or the Access Rights held for the

[benefit of the Customer\) for a term which is no longer than the remaining term of the Access Agreement but excluding:](#)

[\(a\) a Customer Initiated Transfer; or](#)

[\(b\) a change in the nomination of a Train Operator by an Access Holder.](#)

Transfer Cancellation Notice	The meaning given to that term in clause 7.4.2(v) .
Transfer Date	The meaning given to that term in clause 7.4.2(b)(i)(C) .
Transferee	The meaning given to that term in clause 7.4.2(a) .
Transfer Fee	An amount payable to Aurizon Network under clause 1.1.1(a)(i) .
Transfer Notice	The meaning given to that term in clause 7.4.3(a).
Transferor	The meaning given to that term in clause 7.4.2(a) .
Transfer Period	The period commencing on the Transfer Date and ending on the date on which the transfer of the Nominated Access Rights is terminated (if any).
Transfer Provisions	The provisions outlined in clauses 7.4.2 and 7.4.4 .
Transferred Access Rights	The meaning given to that term in clause 7.4.2(b)(ii)(A) .
Transmission Entities	The meaning given to that term in the <i>Electricity Act 1994</i> (Qld).
Ultimate Holding Company	The holding company (as defined in the Corporations Act) of Aurizon Network, which is the ultimate owner of Aurizon Network – being as at the Approval Date, Aurizon Holdings.
Ultimate Holding Company Support Deed	The deed required under clause 2.5(a) .
Unallocated Delay	A delay to a Train Service from its Train Path scheduled in the DTP that is neither an Above Rail Delay nor a Below Rail Delay.
Undertaking	This document (including all volumes and schedules) which is an access undertaking for the purposes of the Act.
Unloading Time	The time between a Train Service arriving at a Nominated Unloading Facility and that same Train departing the Nominated Unloading Facility, and for the purpose of clarity, this time runs from when a Train Service arrives at the entry signal to the Nominated Unloading Facility until it has completed unloading, presented at the exit signal, is

	ready to depart the Nominated Unloading Facility and has advised the relevant Network Controller accordingly.
Urgent Possession	<p>A Possession:</p> <ul style="list-style-type: none"> (a) required to correct problems that Aurizon Network (acting reasonably) considers potentially dangerous to any person, or property; (b) notified to Access Holders less than twenty-one (21) days in advance of taking effect; and (c) that Aurizon Network, complying with the Possession Protocols, will use reasonable endeavours to carry out between seven (7) days and three (3) Months after the detection of the fault giving rise to the need for that Possession.
User Funded Expansion	An Expansion that is funded wholly or partly by Expansion Funders under a User Funding Agreement.
User Funding	The provision of funding to Aurizon Network by an Expansion Funder (including indirectly through a User Funding Trustee or other person) in accordance with a User Funding Agreement.
User Funding Agreement	An agreement, or a number of related agreements, to which Aurizon Network is a party under which, among other things, Access Seekers (and/or their Customers) agree to provide funding for the construction of an Expansion (including agreements in the form of the Standard User Funding Agreement).
User Funding Trust	The trust established under a User Funding Agreement.
User Funding Trustee	An entity that is the trustee of a User Funding Trust.
Users	Access Seekers, Access Holders and/or their Customers (if any).
Varied WACC	A weighted average cost of capital different to that of the Approved WACC.
Volume Risk	The meaning given to that term in clause 6.4.4(a)(iv) .
Website	www.aurizon.com.au .
Yard Control	The control of Train Movements and other activities affecting Train Movements at those locations that are not under the direct control of a Network Controller.
Year	A period of twelve (12) Months commencing 1 July.

12.2 Interpretation

- (a) Unless expressed to the contrary, in this Undertaking:
- (i) a reference to:
- (A) a specified position name is a reference to that position name as it changes during the Term, provided that the position retains responsibility for the same or substantially the same tasks;
 - (B) a person includes a partnership, an unincorporated joint venture, an unincorporated association, a corporation, a government or statutory body or authority and any other entity recognised by law;
 - (C) 'dollars' or '\$' means a reference to Australian dollars;
 - (D) any parties by their defined terms includes that party's executors, administrators, permitted assigns or permitted subcontractors or, being a company, its successors, permitted assigns or permitted subcontractors and the obligation of any party extends to those persons;
 - (E) a right includes a benefit, remedy, discretion, authority or power;
 - (F) conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
 - (G) 'includes' means includes without limitation;
 - (H) time is to local time in Brisbane, Queensland;
 - (I) this or any other document or agreement includes the document or agreement as varied, amended or replaced from time to time;

- (J) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
- (K) this Undertaking includes this Undertaking as amended from time to time in accordance with the Act or this Undertaking;
- (L) an input of a Reference Tariff or an Access Charge is reference to each amount that is a tariff or input which is applied in the calculation for that Reference Tariff or Access Charge – for example, the amounts for AT₁, AT₂, AT₃, AT₄, AT₅, EC and the QCA Levy specified in **clauses 7.2, 8.2, 9.2, 10.2 and 11.2 of Schedule F**, as applicable for each Reference Tariff, are each inputs for the Reference Tariff; and
- (M) a component of a Reference Tariff or an Access Charge is a reference to each sub-calculation for that Reference Tariff or Access Charge that involves an input being multiplied by an applicable multiplier – for example, in the formula under **clause 2.2(a) of Schedule F** each individual bracketed calculation comprised in that formula is a separate component of the Reference Tariff;

- (ii) words importing the singular number includes the plural number and vice versa;
- (iii) words importing any gender include the other gender;
- (iv) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (v) clause headings are for reference purposes only and do not affect the interpretation of this Undertaking;

(vi) where:

- (A) a group of persons are in a partnership, an unincorporated joint venture, an unincorporated association or other similar arrangement; and
- (B) that group of persons together execute or seek to execute an agreement (including an Access Agreement or a rail haulage agreement) or such an agreement is executed or is sought to be executed for or on behalf of that group of persons,

then:

- (C) that group of persons is deemed to constitute a single person, Customer, Access Seeker or Access Holder (as applicable); and
- (D) where a notification required to be given under this Undertaking is given by one member of that group of persons it will be deemed to have been given on behalf of all members of that group persons;

(vii) every agreement or undertaking expressed or implied by which more than one person agrees or undertakes any obligations or derives any benefit binds or ensures for the benefit of those persons jointly and each of them severally;

(viii) subject to **clause 12.2(a)(ix)**, a reference to:

- (A) a part or clause is a reference to the corresponding part or clause found in **Part 1 to Part 12** of this Undertaking;
- (B) a volume is a reference to the corresponding volume of this Undertaking; or
- (C) a schedule is a reference to the corresponding schedule to this Undertaking,

as amended or replaced from time to time;

- (ix) in a schedule to this Undertaking, a reference to:
 - (A) a part or clause, is a reference to a part or clause of that schedule unless otherwise stated; and
 - (B) a part or clause of this Undertaking, is a reference to a part or clause found in **Part 1** to **Part 12** of this Undertaking; and
- (x) Subject to **clause 12.2(b)**, if there is any inconsistency between matters contained in a schedule and **Part 1** to **Part 12** of this Undertaking, the provisions in **Part 1** to **Part 12** of this Undertaking prevail.
- (b) A term that is used in this Undertaking but not defined in this **Part 12** and which is defined in a Standard Access Agreement, will have the meaning given to that term in the Standard Access Agreement.
- (c) Where a provision of this Undertaking includes a reference to preventing or hindering an Access Seeker's or Access Holder's Access:
 - (i) that reference is solely a reflection of Aurizon Network's obligations under sections 104 and 125 of the Act (as applicable) and does not expand those obligations; and
 - (ii) must be given the same meaning as in sections 104 and 125 of the Act (as applicable).
- (d) To the extent that Aurizon Network's obligations under this Undertaking are or become inconsistent with Aurizon Network's obligations under any Law, this Undertaking does not apply to the extent of that inconsistency.
- (e) If this Undertaking obliges Aurizon Network to provide any information, reports, documents or other material (in whatever form) (**Information**) to the QCA or any other person (including an Auditor) then, despite any other provision in this Undertaking, Aurizon Network is not required to comply with that obligation if Aurizon Network claims:
 - (i) on the ground of self-incrimination a privilege Aurizon Network would be entitled to claim against providing the Information were Aurizon Network a witness in a prosecution for an offence in the Supreme Court of Queensland; or
 - (ii) that legal professional privilege applies in respect of that Information.

But if Aurizon Network does not comply with an obligation on that basis, Aurizon Network must notify the QCA of this and Aurizon Network or the QCA may apply to the Supreme Court of Queensland for a determination of the validity of such a claim of privilege.

- (f) Despite any other provision in this Undertaking, this Undertaking does not expressly or impliedly waive any claim that Aurizon Network may have to legal professional privilege in respect of any information, reports, documents or other material (in whatever form).

12.3 Notices

- (a) A notice, consent, approval, undertaking or any other communication or document (**Notice**) connected with this Undertaking has no legal effect unless it is in writing.
- (b) Where this Undertaking requires a Notice be given to a person, the Notice may, in addition to any other lawful means be given by being hand delivered, sent by pre-paid post, facsimile or, if agreed by Aurizon Network, email.
- (c) Unless a later time is specified in it, any Notice takes effect and, subject to **clause 12.3(d)**, is given from the earlier of the time it is actually given or is taken to be given.
- (d) A Notice is taken to be given, in the case of a Notice given by:
 - (i) hand delivery, at the time of delivery;
 - (ii) post:
 - (A) three Business Days after the date of posting – if posted within Australia to an Australian address; and
 - (B) 10 Business Days after the date of posting – in any other case;
 - (iii) facsimile, on the sender's facsimile machine producing a transmission report indicating that the facsimile was sent in full to the facsimile number of the addressee (and that report is conclusive evidence that the addressee received the facsimile in full at the time indicated on that report); and
 - (iv) email, on the next Business Day after being sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.
- (e) If a Notice is given:
 - (i) after 5:00 pm in the place of receipt; or

- (ii) on a day which is not a Business Day in the place of receipt,

it is taken as having been given at 9:00 am on the next Business Day in the place of receipt.

12.4 Transitional

- (a) All acts, applications, approvals, approval processes, arrangements, circumstances, conduct, decisions, determinations, dispute resolution processes, events, Force Majeure Events, matters, negotiations, notices, omissions, queues, registers, requests, time periods, votes, warranties or any other process or thing whatsoever (**Matter**) done, agreed, arising, given, received, undertaken, commenced or established (**Done**) or deemed to be Done under the ~~2010~~2016 Undertaking are deemed to be Done and, as applicable, continue under this Undertaking as though the Matter was Done under this Undertaking to the extent that this Undertaking provides for equivalent Matters to be Done.
- (b) For the purposes of this Undertaking, the date of execution for an Access Agreement executed in accordance with Subparagraph 2.5.2(f) of the 2008 Undertaking is deemed to be the date when the Internal Access Agreement (as defined under the 2008 Undertaking) it replaced was put in place.
- (c) If this Undertaking requires Aurizon Network to report to the QCA on a Quarter or a Year that began prior to the Approval Date, then:
 - (i) the relevant report will include information in respect of the period prior to the Approval Date; and
 - (ii) Aurizon Network is only obliged to provide information for the period prior to the Approval Date as would have been required to be provided under the ~~2010~~2016 Undertaking in respect of that same type of report.
- (d) If the Approval Date is not the first day of a Year, then this Undertaking will apply in respect of any calculation of Revenue Adjustment Amounts, adjustments to Second Year Allowable Revenue and other relevant revenue cap calculations in relation to the whole of the Year within which the Approval Date falls.
- (e) If the Approval Date occurs prior to the calculation of Revenue Adjustment Amounts, adjustments to Second Year Allowable Revenue and other revenue cap calculations for the preceding Year being undertaken and submitted to the QCA for approval, then those calculations may still be undertaken, and submitted to the QCA, by Aurizon Network as though the provisions under the ~~2010~~2016 Undertaking still applied in respect of those calculations and their approval by the QCA.

- (f) If a transitional matter is not otherwise dealt with under **clauses 12.4(a) – (e)**, the QCA and Aurizon Network may agree in writing the arrangements that apply to manage the transition between the undertaking in place on the day immediately prior to the Approval Date and this Undertaking.

Schedule A

Preliminary, Additional and Capacity Information

1 Preliminary Information

The following preliminary information will be made available on the Website for Access Seekers:

- (a) **(Introduction)** The criteria for the use of data and the purpose of the preliminary information.
- (b) **(Civil Infrastructure)** A description of the railway and Track and any operational constraints, e.g. grades and curves.
- (c) **(Telecommunications)** A description of the communication system used.
- (d) **(Electric Traction)** A general system description.
- (e) **(Interface Requirements)** Information on track gauge, axle loads, train speeds, Rollingstock gauge and noise limits.
- (f) **(Locality Information)** Terrain information and climatic conditions and resultant system disruptions.
- (g) **(Committed Corridor Upgrades)** Identification of any relevant committed corridor upgrades.
- (h) **(Maps and Drawings)** Corridor maps and Line Diagrams including plans specifying Track Segments and Mainline Paths.
- (i) **(Level Crossings)** The number of public and occupational level crossings and the type of protection used.
- (j) **(Train Operations)** Sectional running times (calculated based on the projected average sectional running times), maximum Train lengths incident recovery times, crew change locations and facilities forming part of the Rail Infrastructure² and stowage infrastructure locations.
- (k) **(Systems)** A description of operational, safeworking and signalling systems.
- (l) **(Rollingstock Interface Standards)** A copy of the relevant Rollingstock Interface Standards.
- (m) **(Description of entitlements)** Information relating to the description of, and calculations in respect of, Train Service Entitlements and Capacity.

² For example, safety matting next to Track to help people safely walk on the ballast.

- (n) **(Commercial Information)** The applicable Reference Tariffs and Standard Access Agreement and System Rules together with a sample IRMP listing Interface Risks and Environmental Risks that should, at a minimum, be addressed during an Interface Risk Assessment, along with suggested control measures that are at least industry standard or otherwise required by Aurizon Network's accreditation requirements under the Rail Safety Act.

However, the sample IRMP is not exhaustive of the matters that should be considered as part of an Interface Risk Assessment. An IRMP may set out additional or different matters depending on the circumstances (including additional safety and/or Rollingstock issues and associated controls) as long as those additional matters are industry standard or otherwise required by Aurizon Network's accreditation requirements under the Rail Safety Act.

2 Additional Information

For the purpose of **clause 4.11.2(a)(ii)** of this Undertaking, Aurizon Network is required to provide the following information to an Access Seeker:

<p>Access to rail corridor</p>	<p>Where Aurizon Network does not have authority to authorise the Access Seeker to access land on which Rail Infrastructure on a route nominated by the Access Seeker is situated, the following information in relation to access to that land:</p> <ul style="list-style-type: none"> (a) the name, address and contact details of the person (Landholder) that the Access Seeker needs approval from to access that land, where this information is reasonably available to Aurizon Network without breaching its confidentiality obligations under this Undertaking, an Access Agreement or any lease, licence or other agreement with the Landholder; (b) advice as to the nature and extent of the rights, if any, that Aurizon Network holds in relation to the relevant land without breaching its confidentiality obligations under this Undertaking, an Access Agreement or any lease, licence or other agreement with the Landholder; and (c) a notice that may be provided to that person indicating that Aurizon Network has no objection to the Access Seeker negotiating for access to that land.
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Compliance information	Subject to the Access Seeker having entered into an applicable confidentiality agreement with Aurizon Network, the protocols, standards and procedures an Access Holder is required to comply with under the terms of the relevant Standard Access Agreement.
Other information	(a) Information required under section 101(2) of the Act, to the extent not already provided. (b) Other information that is reasonably required by the Access Seeker in accordance with Aurizon Network's obligation under section 101(1) of the Act, provided such information cannot reasonably be obtained from another source.

3 Capacity Information

- (a) This **clause 3** only applies in respect of information which can be provided by Aurizon Network without breaching either Aurizon Network's obligations under **Part 3** of this Undertaking, an Access Agreement or any relevant confidentiality agreement.
- (b) The following information will be provided to an Access Seeker by Aurizon Network on request by that Access Seeker:
- (i) in addition to the Preliminary Information, the Master Train Plan; and
 - (ii) in addition to the Additional Information, the Daily Train Plan (as assessed under **clause 3(c)**) for the relevant part of the Rail Infrastructure,
- subject to:
- (iii) the identity of other Access Holders not being detailed; and
 - (iv) the terms of other Access Holders' Train Service Entitlements not being detailed.
- In addition, the Master Train Plan and the Daily Train Plan may not show all parts of the Rail Infrastructure, and as such may not show all Train Services that may impact on the Existing Capacity detailed. However, Aurizon Network will note those other parts of the Rail Infrastructure where interaction with other Train Services is most likely to impact on the Existing Capacity detailed.
- (c) The relevant current Daily Train Plan will be assessed as, for an Access Application in respect of:
- (i) a Timetabled Traffic, the current Daily Train Plan for the relevant day (or days) of the week; or

- (ii) a Cyclic Traffic, the current Daily Train Plans for a week, unless Aurizon Network reasonably believes that provision of Daily Train Plans for a longer period of time is required in order that the Daily Train Plans show a use of Existing Capacity that is representative of current utilisation.
- (d) Aurizon Network will also provide access to Network Control diagrams, indicating actual running of Train Services against the relevant Daily Train Plan, for those days for which the Daily Train Plan has been provided under **clause 3(b)(ii)**.

Schedule B

Access Application information requirements

1 Application

- (a) Without limiting the information requirements that an Access Application must satisfy in accordance with this Undertaking, an Access Application must satisfy the information requirements set out in this **Schedule B**.
- (b) This **Schedule B** applies as follows:
 - (i) where the proposed Access Application is solely for a Transfer in respect of Transferred Access Rights, **clause 6** applies (and, except as expressly referred to in **clause 6**, **clauses 2 to 5** and **clause 7** do not apply);
 - (ii) where the proposed Access Application is solely for a Renewal, **clause 7** applies (and, except as expressly referred to in **clause 7**, **clauses 2 to 6** do not apply); and
 - (iii) subject to **clauses 1(b)(i) and (ii)**, for all other proposed Access Applications, **clauses 2 to 5** apply.

2 Access Seeker and Customer

Relevant contact details including:

- (a) the Access Seeker's name and contact details;
- (b) if the Access Seeker has a Customer (or prospective Customer), that Customer's (or prospective Customer's) name and contact details; and
- (c) if the Access Seeker or its Customer (or prospective Customer) is an unincorporated joint venture, the names and contact details for all joint venture participants.

3 Ability to use Access Rights

Information needed to assess matters referred to in **clause 4.13(c)** of this Undertaking, including the following information about matters to be taken in account under **clause 4.13(c)** of this Undertaking:

- (a) where an Access Seeker is seeking Access Rights that will be used for a person other than the Access Seeker (that is, a person who is the Access Seeker's Customer or prospective Customer), the identity of the Customer or prospective Customer for those Access Rights are sought is to be confirmed along with information evidencing that the Access Seeker has or is reasonably likely to have such a Customer,

and that the Customer or prospective Customer has authorised the Access Seeker to apply for the relevant Access Rights. Aurizon Network will disregard for this purpose the effect that granting the Access Rights to the Access Seeker will have on the Access Seeker's ability to attract a Customer in the future;

- (b) for a Train Operator, the identity of the relevant Access Seeker or Access Holder for whom they are the Train Operator;
- (c) whether the Access Seeker has secured, or is reasonably likely to secure, Supply Chain Rights;
- (d) whether the Access Seeker, or its Customer (if any), has secured or is reasonably likely to secure a rail haulage agreement for the operation of the proposed Train Services within the timeframes and in the manner contemplated by the Access Application, if applicable;
- (e) whether the Access Seeker or its Railway Operator is reasonably likely to have facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Services to fully utilise the Access Rights sought;
- (f) where the Access Rights are sought to transport the output of a mine, whether the anticipated output of the mine is sufficient to support full utilisation of the Access Rights sought and all relevant existing Access Rights relevant to that mine; and
- (g) where the Access Rights sought require a Customer Specific Branch Line for the relevant Train Services, whether the Customer Specific Branch Line has been constructed and commissioned or is reasonably likely to be constructed and commissioned prior to the date on which the relevant Train Services are to commence.

4 Coal and freight Train Services

4.1 Train Service description

Information describing the Train Services, including:

- (a) the route of operation (including a diagram if necessary) including origin, destination, loading facility, unloading facility and depot;
- (b) the proposed commencement date for Train Services;
- (c) the proposed term of the Access Agreement;
- (d) the method of transporting freight (e.g. containers, louvered wagons, bulk wagons);
- (e) a description of freight/ commodity;
- (f) the Coal System(s) in which the Train Service will operate;
- (g) the net tonnes of product per annum each Year of operation, represented on a Monthly basis, or where Monthly railings are not even, the proposed distribution of the net tonnes;

- (h) the proposed sectional run times;
- (i) the proposed maximum Dwell times, time at loading facility, time at unloading facility and time at depot;
- (j) the proposed non-standard operating modes or methods (if applicable); and
- (k) the proposed Stowage requirements.

4.2 Timetable requirements

Information setting out the timetabling requirements, including:

- (a) whether the Access Rights sought are for a new Train Service, or a variation to an existing Train Service, for the Access Seeker;
- (b) whether the Access Rights sought are for a new Train Service or variation to an existing Train Service on the Rail Infrastructure;
- (c) the required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the proposed Access Agreement term;
- (d) the preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys, where relevant; and
- (e) the requirements for shunting or Dwell times en route, separately for forward and return journeys.

4.3 Rollingstock details

For all Access Seekers, information describing the Rollingstock and Rollingstock Configurations, including:

- (a) the proposed number of locomotives per Train;
- (b) the proposed number of wagons per Train;
- (c) the type and class of locomotive;
- (d) the mass of each locomotive (includes full sand and fuel load);
- (e) the type and class of wagons;
- (f) the nominal gross mass of wagons;
- (g) the tare mass of each wagon;
- (h) the tare mass per container;
- (i) the average number of containers per wagon;
- (j) the average proposed load (of product) per wagon;
- (k) the maximum proposed gross tonnes per wagon;
- (l) the maximum axle load of locomotives and wagons;
- (m) locomotive traction type;

- (n) where the traction type is electric traction, the regenerative braking capability and relevant details relating to that regenerative braking capability including electricity metering;
- (o) the gross tonnes per Train Service, separately for forward and return journeys;
- (p) the nominal payload per Train Service, separately for forward and return journeys; and
- (q) the Static Length and Comparative Length for the proposed Train.

4.4 Infrastructure requirements

Details of any Expansions or Customer Specific Branch Lines that may be necessary for operation of service, where known.

5 Passenger Train Services

5.1 Train Service description

Information describing the Train Services, including:

- (a) the route of operation (including a diagram, if necessary);
- (b) the proposed term of the Access Agreement; and
- (c) the type of passenger traffic (e.g. long distance, commuter, tourist).

5.2 Timetable requirements

Information setting out the timetabling requirements, including:

- (a) whether the Access Rights sought are for a new Train Service, or a variation to an existing Train Service, for the Access Seeker;
- (b) whether the Access Rights sought are for a new Train Service, or a variation to an existing Train Service, for the Rail Infrastructure;
- (c) the required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the proposed Access Agreement term;
- (d) the preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys; and
- (e) the requirements for shunting or Dwell times en route, separately for forward and return journeys.

5.3 Rollingstock details

Information describing the Rollingstock, including:

- (a) the total number of locomotives per Train;
- (b) the total number of carriages per Train;
- (c) the total number of passenger multiple units (**PMU**) per Train;
- (d) the type and class of locomotive;

- (e) the mass of each locomotive (including full sand and fuel load);
- (f) the type and class of carriage;
- (g) the nominal gross mass of each carriage;
- (h) the type and class of PMU;
- (i) the average gross mass of PMU;
- (j) the maximum number of vehicles including locomotives, wagons or units within PMU;
- (k) the maximum axle load of locomotives and wagons;
- (l) locomotive traction type;
- (m) the total length of Train (including locomotives);
- (n) the gross tonnes per Train Service, separately for forward and return journeys; and
- (o) the maximum operation speed separately for loaded and empty Trains.

5.4 Infrastructure requirements

Details of any Expansions or Customer Specific Branch Lines that may be necessary for operation of service, where known.

6 Transfers

Information relating to the Transfer including:

- (a) relevant contact details including:
 - (i) the Transferee's name and contact details;
 - (ii) if the Transferee has a Customer, that Customer's name and contact details;
 - (iii) if the Transferee or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants; and
 - (iv) the relevant Access Agreement (if applicable) held by the Transferee;
- (b) where the Transferee is not the current Access Holder (**Transferor**) who intends to undertake the relevant Transfer, relevant contact details for the Transferor including:
 - (i) the Transferor's name and contact details;
 - (ii) if the Transferor has a Customer, that Customer's name and contact details; and
 - (iii) if the Transferor or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;

- (c) details identifying the Transferor's Access Agreement, and the Access Right under it (including by reference to origin and destination), to which the Transfer relates;
- (d) details referred to in **clause 3** with reference to the proposed Transfer;
- (e) the proposed date and term for the Transfer;
- (f) the information referred to in **clauses 3, 4.1 to 4.3** or **clauses 5.1 to 5.3** (as applicable);
- (g) evidence that the Transferor's Customer and the Transferee's Customer have been notified of, and have agreed to, the Transfer (except where the Transferor's Customer initiated the Transfer by notice to Aurizon Network); and
- (h) except to the extent that the Non-availability Circumstances exist, any other information that:
 - (i) it is necessary to provide under this Undertaking; or
 - (ii) is otherwise necessary and has been notified to the Access Seeker by Aurizon Network.

7 Renewals

Information relating to the Renewal including:

- (a) relevant contact details including:
 - (i) the Renewing Access Seeker's name and contact details;
 - (ii) if the Renewing Access Seeker has a Customer, that Customer's name and contact details; and
 - (iii) if the Renewing Access Seeker or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;
- (b) where the Renewing Access Seeker is not the current Access Holder, relevant contact details for the current Access Holder including:
 - (i) the current Access Holder's name and contact details;
 - (ii) if the current Access Holder has a Customer, that Customer's name and contact details; and
 - (iii) if the current Access Holder or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;
- (c) a description identifying the current Access Agreement to which the Renewal relates;
- (d) details referred to in **clause 3** with reference to the proposed Renewal;

- (e) whether the Renewal is for all or part of the relevant existing Access Rights and, where for part only, details of the relevant part;
- (f) details of all changes (if any) in:
 - (i) the information referred to in **clauses 3, 4.1 to 4.3** or **clauses 5.1 to 5.3** (as applicable)³; and
 - (ii) the Operating Plan,from that relating to the relevant existing Access Agreement.

³ A Renewal will not require any Expansion or Customer Specific Branch Line therefore **clauses 4.4** and **5.4**, as applicable, are not relevant.

Schedule C

Operating and other plan requirements

1 Operating Plan

- (g) The following matters must, amongst others, be included in an Operating Plan.
- (h) An Operating Plan will adopt a three tiered presentation of information with information for the following categories:
- (i) whole of network information that applies generally to the Train Services of the Access Seeker or the Access Holder (see **clause 1.1 below**);
 - (ii) Coal System specific information that applies to the Train Services of the Access Seeker or the Access Holder operating in that Coal System (see **clause 1.2 below**) but was not provided under **clause 1.3**; and
 - (iii) origin/destination pair specific information that applies to the Train Services of the Access Seeker or Access Holder for that origin/destination pair (**clause 1.3 below**) but was not provided under **clauses 1.1 or 1.2**.

1.1 Umbrella Central Queensland Coal Network information

The following information must be provided in an Operating Plan on a whole of network basis.

Area of Operation	<ul style="list-style-type: none">• Depot locations
Operation	<ul style="list-style-type: none">• Type of service (passenger, freight) or commodity• Dangerous goods details• Overload management system• Stowage locations held by the operator• Timing of scheduled servicing/provisioning activities• The maximum Rollingstock operational speed separately for loaded and empty Trains
Train Information	<ul style="list-style-type: none">• Safety systems• Communication systems
Information in compliance with	<ul style="list-style-type: none">• Rollingstock Interface Standard• Rollingstock and Rollingstock configuration details (number

standards and protocols	<ul style="list-style-type: none"> of wagons, locomotives, carriages/self-propelled units) • Overload management standard • Load tables (including loads for Train Services and all relevant requirements and information in relation to the specification of those loads)
Crewing Plan	<ul style="list-style-type: none"> • Train Service crew requirements: • Location of crew depots • Crew change points • Dwell times at change points (minimum and maximum)
Recovery Methods	<ul style="list-style-type: none"> • Recovery of marked off Rollingstock at loading/unloading locations/en route • Recovery of derailments • Recovery of failed locomotive
Environmental impacts	<ul style="list-style-type: none"> • Profiling and veneering

1.2 Coal System specific information

- (a) The requirement for the information under this **clause 1.2** is in addition to **clause 1.1**.
- (b) The following information must be provided in an Operating Plan on Coal System basis, so that the information is provided separately for each relevant Coal System (as applicable).
- (c) For clarity, it is not necessary to repeat information already provided under **clause 1.1**.

Area of operation	<ul style="list-style-type: none"> • Origin and destination • Cycle description (including nominated stops en route) • Entry and exit points onto or off of Rail Infrastructure • Details regarding repositioning of Rollingstock (prior to, during and after operation of the Train Service) • Authority from Private Infrastructure manager to enter and/or exit the Private Infrastructure to enable use of Access Rights (where applicable)
Operation	<ul style="list-style-type: none"> • Description of any activities that may negatively impact main line running (e.g. shunting and reversing) • Dwell times at loading facility (minimum and maximum) • Dwell times at unloading facility (minimum and maximum)

- Dwell times en route and operational requirements (minimum and maximum)
- Indicative timetable requirements or sectional running times
- Train information**
- Type, class and number of locomotives per Train
- Maximum and average gross tonnage of loaded Train (including locomotives)
- Tare of empty Train
- Method of operation
- Traction type
- Train length
- Rollingstock and Rollingstock Configuration details (number of wagons/locomotives/carriages/self-propelled units)

1.3 Origin/destination pair specific information

- (a) The requirement for the information under this **clause 1.3** is in addition to **clauses 1.1** and **1.2**.
- (b) The following information must be provided in an Operating Plan on an origin/destination pair basis, so that the information is provided separately for each origin/destination pair of the relevant Train Services (as applicable).
- (c) For clarity, it is not necessary to repeat information already provided under **clauses 1.1** or **1.2**.

- Area of operation**
- Authority from Private Infrastructure manager to enter and/or exit the Private Infrastructure to enable use of Access Rights (where applicable)

- Operation**
- Special operating parameters (e.g. key arrival and departure windows)
- Any critical timings at specified locations
- Description of any activities that may negatively impact main line running (e.g. shunting and reversing)
- Load tables (including the loads for Train Services and all relevant requirements and information in relation to the specification of those loads)
- Additional information applying to the requested Train Service which differs from other Train Services on the same Coal System

2 Interface Risk Management Plan

2.1 General

- (a) As a Railway Manager, Aurizon Network is responsible for ensuring that the Interface Risks associated with the operation of Train Services on the Rail Infrastructure are managed appropriately.
- (b) For the purpose of identifying the Interface Risks posed by the operation of a particular Train Service on the Rail Infrastructure, and agreeing an IRMP for managing those Interface Risks, Aurizon Network, the Access Holder and the Train Operator must participate in a process that commences with an Interface Risk Assessment and culminates in an IRMP (**Interface Risk Management Process**).
- (c) In progressing the Interface Risk Management Process, Aurizon Network, the Access Holder and the Train Operator must:
 - (i) ensure that their representatives involved in the process have the appropriate competence to conduct the process in a diligent manner;
 - (ii) ensure that all relevant information, that is reasonably available, is provided to the other party on a timely basis to facilitate the process; and
 - (iii) ensure that all information provided is accurate.
- (d) The Interface Risk Management Process must be conducted for all new Train Services and for any variation to Train Services (including changes in the Operating Plan or Rollingstock specification). For the avoidance of doubt, a variation to an existing Train Services will not require a new IRMP and varying the existing IRMP for those Train Services will be satisfy the Interface Risk Management Process.
- (e) The IRMP must reflect the outcome of the Interface Risk Assessment. In particular, the IRMP will detail the controls agreed between Aurizon Network, the Access Holder and the Train Operator for the Interface Risks identified and assessed during the Interface Risk Assessment.
- (f) The IRMP must incorporate the audit, inspection and review regime under **clause 4** below and must specify:
 - (i) the Safeworking Procedures and Safety Standards are applicable to the proposed operation;
 - (ii) the additional controls, including Rollingstock Interface Standards, agreed between the parties for the proposed operation; and

- (iii) the particular party responsible for ensuring that the various elements of the IRMP are implemented and that the IRMP remains effective in addressing the Interface Risks it was developed to address.
- (g) The IRMP must be a schedule to the Train Operator's Train Operations Deed. If a Train Operations Deed has been negotiated before the finalisation of the IRMP, the implementation of the IRMP may require changes to the terms and conditions of the Train Operations Deed, and the parties must agree those changes.
- (h) If Aurizon Network and an Access Holder or a Train Operator agree that training of the Access Holder's or Train Operator's personnel (as applicable) is required as a control, or part of a control, for a particular Interface Risk identified in the Interface Risk Assessment, and the Access Holder or Train Operator (as applicable) can only obtain that training from Aurizon Network, Aurizon Network must provide the Access Holder or Train Operator (as applicable) with that training (and Aurizon Network may recover its reasonable costs for providing such training).

2.2 Environmental matters

- (a) General
 - (i) The matters identified in this **clause 2.2** are the minimum environmental matters that must be addressed by the parties in an Interface Risk Assessment. The parties' assessment of Environmental Risks in an Interface Risk Assessment should not be restricted to an assessment of the matters referred to in this **clause 2.2**.
- (b) Water quality management
 - (i) The Train Operator must comply with all relevant water quality standards when carrying out activities under or in connection with the Train Operations Deed.
 - (ii) The Interface Risk Assessment must include an assessment of the impact of the Train Operator's proposed activities under or in connection with the Train Operations Deed on stormwater systems and natural waterways.
- (c) Air pollution management
 - (i) The Train Operator must consider the impact of its operations on air quality. In doing so, all relevant air quality standards and regulations should be met.
 - (ii) The Train Operator must undertake an Interface Risk Assessment which must consider the impact of the proposed operations on air quality. In doing so, all relevant air quality

standards and regulations (including all requirements for coal train operators in Aurizon Network's 'Coal Dust Management Plan' (as published on the Website from time to time) must be met.

- (iii) The Interface Risk Assessment must assess the likelihood:
 - (A) for dust and/or exhaust emissions from the proposed operations (including by reference to the type and chemical composition of the commodity being transported); and
 - (B) of those dust and/or exhaust emissions causing nuisance at any dwelling or home, library, childcare centre, kindergarten, school, college, university or other educational institution and hospital surgery or other medical institution.
- (d) Management of land contamination
 - (i) The Train Operator must comply with all relevant Laws, standards and guidelines in relation to land contamination when carrying out activities under or in connection with the Train Operations Deed.
 - (ii) The Interface Risk Assessment must include an assessment of the likelihood that the Train Operator's proposed activities under or in connection with the Train Operations Deed (including the Train Operator's activities during accidents, incidents and emergencies) will cause or contribute to land contamination.⁴
 - (iii) The Interface Risk Assessment must include all practicable control measures to prevent and manage land contamination.
- (e) Nature conservation
 - (i) The Interface Risk Assessment must include an assessment of:
 - (A) the impact of the Train Operator's proposed activities under or in connection with the Train Operations Deed on flora and fauna, including sensitive receptors in the vicinity of the Train Operator's proposed activities; and
 - (B) the risks and controls associated with wildfires being caused by exhaust or sparks from the Train Operator's Rollingstock.

⁴ Land contamination is a reference to the 'contamination' of land by a 'hazardous contaminant' as those terms are defined under the EP Act.

- (f) Management of dangerous goods
 - (i) The Train Operator must comply with Aurizon Network's requirements for the management of hazardous contaminants (as defined in the EP Act) and Dangerous Goods.
 - (ii) The Interface Risk Assessment must include an assessment of the risks associated with the management of "Dangerous Goods" (as defined in the Standard Train Operations Deed) by the Train Operator.
 - (iii) The Interface Risk Assessment must address any risks associated with the management of Dangerous Goods that are not specifically addressed by the requirements of **clause 22.7** of the Standard Train Operations Deed.
- (g) Waste management
 - (i) The Train Operator must comply with all relevant Laws and the requirements of any Authority in relation to the collection, removal, transport and disposal of any waste generated by the activities of the Train Operator under or in connection with the Train Operations Deed.
 - (ii) The Interface Risk Assessment must include an assessment of the impact of any waste produced by the Train Operator's proposed activities under or in connection with the Train Operations Deed.
- (h) Environmental noise management
 - (i) The Interface Risk Assessment must include an assessment of:
 - (A) The likely noise impacts attributable to the Train Operator's proposed activities under or in connection with the Train Operations Deed; and
 - (B) Whether the Train Operator's proposed activities under or in connection with the Train Operations Deed will comply with the "Noise Code" (as defined in the Train Operations Deed) or cause or contribute to any non-compliance with the Noise Code and detail all measures that will be taken to ensure that the Train Operator's proposed activities under or in connection with the Train Operations Deed do not cause or contribute to any non-compliance with the Noise Code.
- (i) Complaint management
 - (i) The interface Risk Assessment must detail the Train Operator's procedure for handling complaints that are

received by the Train Operator as per the requirements of **clause 22.9** of the Standard Train Operations Deed.

- (j) Refuelling
 - (i) The Interface Risk Assessment must include an assessment of the impacts associated with refuelling activities (including mobile refuelling) undertaken in connection with the Train Operator's proposed activities under or in connection with the Train Operations Deed.

3 Environmental Management Plan

The Environmental Management Plan must specify (as a minimum):

- (a) the Environmental Risks identified in the IRMP from time to time and the measures in respect of those Environmental Risks specified in the IRMP from time to time of which the Train Operator is responsible for implementing, complying with, ensuring compliance with and/or ensuring the ongoing effectiveness;
- (b) processes for ensuring that the Train Operator at all times complies with all requirements imposed on it under Environmental Laws from time to time;
- (c) processes for ensuring that the Train Operator at all times complies with any requirements of the Environmental Authorities held by Aurizon Network from time to time that are notified by Aurizon Network to the Train Operator as relevant to the Train Operator's Train Services;
- (d) processes for ensuring that the Train Operator, its Rollingstock, Rollingstock Configurations and Train Services at all times comply with the requirements of this Agreement, including the IRMP and the Emergency Response Plan;
- (e) systems (including audit systems) and procedures to address and monitor all relevant Environmental Risks identified in the IRMP and to ensure compliance with all Environmental Laws;
- (f) the relevant roles, responsibilities and training of the Train Operator's staff involved in the implementation of the Environmental Management Plan; and
- (g) the following sections:

Introduction

- (i) Description of Operational Activities
- (ii) Purpose and Objectives of the Environmental Management Plan
- (iii) Description of Environmental Management Plan
- (iv) Operator's Environmental Policy

Environmental Management

- (v) Environmental Risks identified in the Interface Risk Assessment
- (vi) Legislation and Other Requirements
- (vii) Target/s

Implementation and Operation

- (viii) Responsibilities, Accountabilities & Authorities
- (ix) Competence, Training and Awareness
- (x) Internal and External Communication (including liaison with regulatory agencies)
- (xi) Document Control and Information / Record Management
- (xii) Emergency Preparedness and Management
- (xiii) Specific Procedures for identified environmental risks

Operational Activities Review Process

- (xiv) Monitoring and Measurement
- (xv) Evaluation of Compliance / Audit
- (xvi) Management Review

Environmental Complaints & Incidents

- (xvii) Managing Environmental Incidents
- (xviii) Notification of Environmental Incidents
- (xix) Managing Environmental Complaints

4 Inspection and Audit Provisions

4.1 Rights of inspection and audit

- (a) The IRMP must include a right for a party to conduct, or require the conduct of, an inspection or audit in accordance with this **clause 4** to assess the other party's compliance with the IRMP, the "Applicable Safeworking Procedures" and "Applicable Safety Standards" (each as defined by the Train Operations Deed) periodically as specified in the IRMP.
- (b) If a party reasonably believes that the other party has not complied, or is not complying, with any aspect of the IRMP, then that party may conduct, or require the conduct of, an inspection or audit in accordance with this **clause 4** and the process in the IRMP to assess the other party's compliance with the IRMP.
- (c) The party conducting, or requiring the conduct of, an inspection or audit (**Inspecting Party**) must give the other party at least five (5) Business Days prior notice of such inspection or audit (except that

such notice is not required in the case of emergencies) and that notice must include:

- (i) details of the inspection or audit to be carried out;
- (ii) the name of the person conducting the inspection or audit;
- (iii) the timing and expected duration of the inspection or audit;
- (iv) the location of the inspection or audit;
- (v) the grounds upon which the party requires the inspection or audit; and
- (vi) the party's requirements of the other party in relation to the inspection or audit.

4.2 Conduct of inspection or audit

- (a) Any inspection or audit may be conducted by the Inspecting Party, its appointed representative or by a suitably qualified person reasonably acceptable to both parties, but if the inspection or audit requires access to commercially sensitive information, then:
 - (i) person conducting the inspecting or audit must be independent of both parties; and
 - (ii) that person must, prior to being given access to the commercially sensitive information by the party the subject of the inspection or audit, execute a confidentiality deed on terms similar to the document in **Schedule I** in favour of the party the subject of the inspection or audit.
- (b) Aurizon Network, the Access Holder and/or the Train Operator (as applicable) must use reasonable endeavours to ensure that the Inspecting Party, its appointed representative or the person appointed to conduct an inspection or audit are entitled to enter and be upon its land and premises (whether or not owned or leased) for the purposes of carrying out any inspection or audit.
- (c) In exercising any inspection or audit, the Inspecting Party:
 - (i) must not interfere unreasonably with the Rail Infrastructure and the other party's Trains and Rollingstock or Train Movements on the Nominated Network; and
 - (ii) must use its reasonable endeavours to avoid damage or injury and to minimise any disruption to the other party's business activities.
- (d) The Inspecting Party is not liable for any delays or cancellation of Train Services or Claims suffered or incurred by or made or brought by or against the other party as a result of conducting the inspection or audit provided the Inspecting Party complies with this **clause 4.2**.
- (e) Aurizon Network, the Access Holder and/or the Train Operator (as applicable) must provide all reasonable assistance to the Inspecting

Party in conducting any inspection or audit including allowing the Inspecting Party, its appointed representative or person appointed to conduct an inspection or audit to discuss any relevant matter with its staff. A member of the "Staff" (as defined in the Train Operations Deed) of the party the subject of the inspection or audit may be present at the inspection or audit.

- (f) The parties must provide each other with a copy of any report of any inspection or audit in respect of its compliance with the IRMP.

4.3 Costs of inspection or audit

- (a) The Inspecting Party bears the reasonable costs of conducting the inspection or audit unless the inspection or audit confirms the stated grounds for the conduct of an inspection or audit of a party's operations have been demonstrated to exist, in which case the party whose operations are inspected or audited (**Audited Party**) must:
 - (i) bear the reasonable costs of conducting such inspection or audit; and
 - (ii) to the extent that the Inspecting Party has paid any costs of conducting such inspection or audit, reimburse the Inspecting Party such reasonable amounts paid by the Inspecting Party in conducting the inspection or audit.
- (b) Unless otherwise agreed, whether the Inspecting Party requires the conduct of an inspection or an audit, the Inspecting Party is liable to the other party in respect of any reasonable loss or damage suffered or incurred by the audited party arising from the conduct of the inspection or audit if, and only if, no reasonable person in the position of the Inspecting Party could have formed the view that the stated grounds for such inspection or audit existed.
- (c) The Inspecting Party bears the burden of establishing that a reasonable person in its position could have formed that view.
- (d) Notwithstanding clauses **4.3(b)** and **4.3(c)**, Aurizon Network will not be liable to a Train Operator for any third party claims (including a claim for Consequential Loss) made against the Train Operator in relation to an inspection or audit where the third party is the Access Holder and the Access Holder has a direct contractual relationship with Aurizon Network in respect to the Access Rights to which the inspection or audit relates.

Schedule D

Ultimate Holding Company Deed

Aurizon Holdings Limited

Ultimate Holding Company Support Deed

Date:

~~2013~~2017

Party

Aurizon Holdings Limited ACN 146 335 622 of Level 15, 175 Eagle Street, Brisbane in the State of Queensland (**Aurizon Holdings**)

Background

- A Aurizon Network is the railway manager of certain rail transport infrastructure, access to which is provided in accordance with the Undertaking.
- B In order to comply with certain obligations imposed on Aurizon Network in accordance with the Access Undertaking, Aurizon Network seeks the cooperation of members of the Aurizon Corporate Group.
- C As required by **clause 2.5** of the Undertaking and the QCA's decision to approve the Undertaking, Aurizon Network has requested that Aurizon Holdings, as Aurizon Network's ultimate holding company, enter into this Deed in favour of the QCA. Aurizon Holdings has agreed to do so.
-

Agreed terms

1 Definitions

In this Deed the following terms will have the meanings set out below. All other terms have the meaning ascribed to them in the Access Undertaking.

Access Undertaking	The current access undertaking submitted by Aurizon Network to the Queensland Competition Authority and approved by the Queensland Competition Authority under the <i>Queensland Competition Authority Act 1997</i> (Qld) as at the date of this Deed and as amended or replaced from time to time.
Aurizon Corporate Group	Aurizon Holdings and each of its related bodies corporate (as that term is defined in the <i>Corporations Act 2001</i> (Cth)).
Aurizon Network	Aurizon Network Pty Ltd (ACN 132 181 116).
QCA	Queensland Competition Authority.

2 Term

Aurizon Holdings' obligations under this Deed will terminate upon the earlier of:

- (a) any new ultimate holding company of Aurizon Network providing a deed poll in substantially similar form to this Deed; or
- (b) expiry of the Access Undertaking.

3 Procuring Compliance by Aurizon Corporate Group

3.1 Procuring compliance with Access Undertaking

- (a) Aurizon Holdings must, and must use reasonable endeavours to procure that each other member of the Aurizon Corporate Group:
 - (i) take such reasonable steps as required to enable Aurizon Network to comply with the arrangements prescribed in **Part 3** of the Undertaking;
 - (ii) not direct or request Aurizon Network to act in contravention of **Part 3** of the Undertaking;
 - (iii) does not otherwise engage in any conduct which may prevent or hinder Aurizon Network from complying with **Part 3** of the Undertaking;
 - (iv) in relation to Confidential Information, not disclose Confidential Information received from Aurizon Network to any Third Party other than as permitted by the Undertaking or with the consent of the Access Seeker or Access Holder to which the Confidential Information belongs or relates;
 - (v) has the authority to provide or authorise access to land that an Access Seeker or Access Holder requires access to in accordance with the provision of Access under the Undertaking, where that land is owned by a member of the Aurizon Corporate Group, or where a member of the Aurizon Corporate Group has a lease, licence or other arrangement with the owners of the land or in accordance with the TIA (except that if a member of the Aurizon Corporate Group has entered into a lease, licence or other arrangement that does not permit Aurizon Network or Access Seekers onto the land, and access is otherwise required to provide the service taken to be declared under section 250(1)(a) of the Act, that member of the Aurizon Corporate Group may provide the QCA with details of the specific provisions and seek a waiver of this requirement);
 - (vi) takes steps required to allow Aurizon Network to sell or supply electric energy; and
 - (vii) enable or assist Aurizon Network to comply with its obligations in respect of the Undertaking.

- (b) No Aurizon Corporate Group member, including Aurizon Holdings, will take any action that would cause Aurizon Network to be in breach of its obligations in the Undertaking.

3.2 Benefit of Deed

This Deed is provided in favour of the QCA.

3.3 Non-compliance

The consequences of non-compliance with the obligations in clause 3.1 of this Deed will be limited to those described in clause 2.5(b) of the Access Undertaking.

4 New Ultimate Holding Company

To the extent that Aurizon Holdings ceases to be the ultimate holding company of Aurizon Network, Aurizon Holdings will use its best endeavours to procure that the new ultimate holding company of Aurizon Network enters a deed poll in substantially similar form to this Deed as soon as reasonably practicable.

Execution

Executed as a deed.

**Executed by Aurizon Holdings
Limited**

.....

Director Signature

.....

Company Secretary Signature

.....

Name of Director (print)

.....

Name of Company Secretary (print)

Schedule E

Regulatory Asset Base

1 Maintenance of Regulatory Asset Base

1.1 Roll-forward principles

On an annual basis, Aurizon Network will roll forward the asset values in its Regulatory Asset Base applying the following principles:

- (a) the opening asset value, being for:
 - (i) the first Year of the Term, the value in the Regulatory Asset Base at the expiry of the ~~2010~~2016 Undertaking; and
 - (ii) each other Year in the Term, the value in the Regulatory Asset Base at the end of the immediately prior Year, will be indexed for the Year using the change in the forecast CPI ~~between value that was used for the June Quarter~~purpose of determining the previous Year and relevant Reference Tariff for the June Quarter for that Year~~relevant year~~;
- (b) depreciation of the assets will be calculated for the Year using asset lives and a depreciation profile as endorsed by the QCA;
- (c) if an asset is disposed of during the Year, the value of that asset recorded in the Regulatory Asset Base will be removed from the Regulatory Asset Base unless:
 - (i) the disposal necessarily results from an Expansion of or Maintenance Work on the Rail Infrastructure, in which case the Regulatory Asset Base will be reduced only by the net proceeds, if any, of the sale (on an arm's length basis) by Aurizon Network of the disposed asset; or
 - ~~(e)~~(ii) if clause 1.1(c)(i) does not apply, Aurizon Network can demonstrate to the QCA's satisfaction that less than that amount should be removed from the Regulatory Asset Base (in which case the amount approved by the QCA will be removed from the Regulatory Asset Base);
- (d) prudent and efficient capital expenditure for an asset will be added to the Regulatory Asset Base, where that expenditure has been approved by the QCA for inclusion into the Regulatory Asset Base in accordance with **clause 2**; and
- (e) the value of the assets in the Regulatory Asset Base will be adjusted in accordance with **clauses 1.2** and **1.4**, but only where that adjustment is approved by the QCA in accordance with those clauses.

~~For the purposes of this Schedule E, "Dispose" excludes any unsold asset that is replaced (in whole or in part) by an Expansion or Maintenance Work on the Rail Infrastructure.~~

1.2 Adjusting the value of assets in the Regulatory Asset Base

- (a) Subject to Aurizon Network obtaining the QCA's approval, the value of assets contained in the Regulatory Asset Base may be increased by including:
- (i) all or part (as appropriate) of the value of assets previously removed from the Regulatory Asset Base as a result of the operation of **clause 1.2(b)(ii)** if Aurizon Network can show to the QCA's satisfaction that demand for the declared service utilising those assets has increased sufficiently, or the factors giving rise to the removal have been sufficiently reduced or modified by new circumstances to justify including the value of the assets in the Regulatory Asset Base;
 - (ii) all or part (as appropriate) of the value of assets previously removed from the Regulatory Asset Base as a result of the operation of **clause 1.2(b)(iii)** where the deterioration of the Rail Infrastructure has been successfully addressed by Aurizon Network to the satisfaction of the QCA,
- In making its determination, the QCA may:
- (iii) consult with, or seek submissions from, persons in relation to any consideration by the QCA of increasing the value of assets contained in the Regulatory Asset Base;
 - (iv) consider any relevant submissions made to the QCA; and
 - (v) request additional information from Aurizon Network that is reasonably required to make its determination in accordance with **clause 2.3(b)**.
- (b) The QCA may require the value of assets contained in the Regulatory Asset Base to be reduced if:
- (i) the QCA made its decision to approve the relevant capital expenditure into the Regulatory Asset Base on the basis of information provided by Aurizon Network that was inaccurate, ~~inadequate~~ or misleading, but only to the extent that were the information not inaccurate, ~~inadequate~~ or misleading, the QCA's decision would have been different;
 - (ii) where the QCA determines that:
 - (A) actual demand for the declared service utilising an asset has deteriorated and that deterioration will be long term and sustained; and

- (B) applying existing regulated pricing to those reduced volumes utilising that asset will result in a further material deterioration in demand for the declared service utilising that asset (including, without limitation, by reason of mine closures, curtailing of mine production, or long term suspension of mine operations); ~~and~~ but
 - (C) the reduction in the RAB may be made only to the extent necessary to address the circumstances set out in clause 1.2(b)(ii)(A) and (B);
- (iii) where:
- (A) a Condition Based Assessment demonstrates that:
 - (1) the Rail Infrastructure has deteriorated as a result of Aurizon Network's failure to implement good operating practice and pursue prudent and effective maintenance and asset replacement policies and practices; and
 - (2) the deterioration of the Rail Infrastructure will be long term and sustained; and
 - (B) Aurizon Network has no plan to remedy that deterioration; ~~and~~ but
 - (C) The reduction in the RAB may be made only to the extent of the deterioration of the Rail Infrastructure described in clause 1.2(b)(iii)(A); and
- (iv) where, in respect of an Expansion:
- (A) after the QCA made its decision to approve the relevant capital expenditure into the Regulatory Asset Base, Aurizon Network determines there is a Capacity Shortfall in respect of that Expansion; and
 - (B) in light of that Capacity Shortfall, the QCA's decision to approve the relevant capital expenditure would have been different.
- (c) Where the QCA requires the value of the assets in the Regulatory Asset Base to be reduced:
- (i) it must have regard to section 138(2) of the Act in:
 - (A) considering any proposal that may be provided by Aurizon Network (including a draft amending access undertaking) to address a deterioration in demand; and

- (B) acting reasonably, determining whether the proposal will be effective to avoid a reduction in the Regulatory Asset Base;
- (ii) it must identify those specific assets including the class and location of those assets;
- (iii) in reaching its decision it:
 - (A) must consult with, or seek submissions from, persons affected or likely to be affected by the decision;
 - (B) may disclose any relevant information in respect of the specific assets to persons while seeking submissions;
 - (C) must consider all submissions made to it in relation to a reduction of the Regulatory Asset Base including any alternative proposal submitted by Aurizon Network that would avoid a Regulatory Asset Base reduction;
 - (D) may request any additional information from Aurizon Network that is reasonably required to make its determination; and
 - (E) may consider asset removal only if it determines, acting reasonably, that no other alternative mechanism which is appropriate having regard to the factors in s138(2) of the Act will be effective in addressing the circumstances set out in **clause 1.2(b)(ii)**.
- (iv) it must publish its draft decision and consult with, or seek submissions from persons in relation to its draft decision and consider all submissions made to it;
- (v) it must have regard to section 138(2) of the Act in making its decision; and
- (vi) it must publish its decision.

1.3 Reports on capital expenditure and Regulatory Asset Base roll-forward

- (a) Unless otherwise agreed between Aurizon Network and the QCA, Aurizon Network will, as soon as reasonably practicable and no later than four Months after the end of each Year in the Term, provide to the QCA the details for capital expenditure that Aurizon Network considers should be included in the Regulatory Asset Base with sufficient supporting evidence that the QCA may require to determine the prudence and efficiency of the capital expenditure under **clause 2**, including, as applicable:

- (i) any relevant business case or Feasibility Study;
 - (ii) evidence of actual expenditure of the capital expenditure and commissioning of the associated asset; and
 - (iii) capacity modelling, if any, undertaken as part of the business case or Feasibility Study and on commissioning of the asset.
- (b) Unless otherwise agreed between Aurizon Network and the QCA, to the extent that the QCA, under **clause 2.2**, has accepted the capital expenditure in the report under **clause 1.3(a)** into the Regulatory Asset Base, Aurizon Network (as soon as reasonably practicable and no later than one Month after the QCA's acceptance of the capital expenditure report under **clause 1.3(a)**) will provide to the QCA for approval Aurizon Network's roll-forward of the Regulatory Asset Base under **clause 1.1**, subject to **clause 1.2**, including details of:
- (i) the opening value of the Regulatory Asset Base for the relevant Year;
 - (ii) indexation of the Regulatory Asset Base;
 - (iii) depreciation of the Regulatory Asset Base;
 - (iv) capital expenditure that is included in the Regulatory Asset Base;
 - (v) disposals and transfers from the Regulatory Asset Base; and
 - (vi) the closing value of the Regulatory Asset Base for the relevant Year (which will be the opening value of the Regulatory Asset Base for the following Year),
- separately reported for each Coal System (including for each Reference Tariff and each User Funded Expansion).
- (c) If the information set out in a report provided to the QCA under this **clause 1.3** is insufficient, the QCA may request additional relevant information in accordance with **clause 2.3(b)**.
- (d) Information provided to the QCA under this **clause 1.3** :
- (i) will be accompanied by a statement signed by Aurizon Network's Executive Officer confirming that, to the best of their knowledge, information is, in all material respects, correct; and
 - (ii) in respect of the report referred to in **clause 1.3(b)**, must be based on the roll forward principles in **clause 1.1**.
- (e) The QCA must approve the roll-forward of the Regulatory Asset Base submitted to it by Aurizon Network in accordance with **clause 1.3(b)**, if the QCA is satisfied that it has been conducted in accordance with the roll-forward principles in **clause 1.1**.

1.4 Equity raising costs

- (a) During or after the end of the Term, the value of assets contained in the Regulatory Asset Base may be increased by Aurizon Network by including an amount for any equity raising costs for the Approved Capital Expenditure over the Term which are reasonably required to maintain the benchmark capital structure of 55% debt and 45% equity (**Reasonable Equity Raising Costs**). Aurizon Network may increase the value of assets contained in the Regulatory Asset Base if the Reasonable Equity Raising Costs are calculated in accordance with this **clause 1.4** and approved by the QCA.
- :
- (b) The amount approved by the QCA in **clause 1.4(a)** will be allocated amongst the Coal Systems (including allocations amongst Reference Tariffs), on a pro-rated basis by reference to Aurizon Network's Approved Capital Expenditure over the Term that will, subject to the QCA's approval, be applied in determining Reference Tariffs for the next regulatory period.
- (c) If the Expansion is a User Funded Expansion, references to Aurizon Network in this **clause 1.4** will be deemed to be references to Expansion Funders.

2 Approval of capital expenditure by the QCA

2.1 Overview

- (a) This **clause 2** refers to various determinations that the QCA may be requested to make for capital expenditure to be included in the Regulatory Asset Base.
- (b) These determinations may be made:
- (i) in response to a report provided to it under **clause 1.3**; or
 - (ii) in advance of the capital expenditure being incurred.
- (c) Aurizon Network must obtain the QCA's approval under this **clause 2** of any capital expenditure prior to including that capital expenditure in the Regulatory Asset Base.
- (d) Failure by Aurizon Network to obtain the QCA's approval of any matters under this **clause 2** in relation to a capital expenditure project or part of the capital expenditure for a project, does not affect its right to seek approval under this **clause 2** at a later time in respect of part or all of that capital expenditure.
- (e) Subject to **clause 2.1(f)**, Aurizon Network must promptly seek approval of capital expenditure for a project under this **clause 2** following receipt of a request to do so by:

- (i) an Access Seeker (or its Customer) requiring the capital expenditure project to be able to secure Access Rights;
- (ii) an Expansion Funder for the Expansion; or
- (iii) an Interested Participant,

who requires Aurizon Network to obtain the QCA's approval of capital expenditure for a project or part of the capital expenditure for a project prior to incurring expenditure on the construction of that project.

- (f) Aurizon Network must promptly seek approval of capital expenditure for a project under this **clause 2** following acceptance of a Voting Proposal in respect of that capital expenditure project under **clause 4**.
- (g) If the capital expenditure for an Expansion is pre-approved for inclusion into the Regulatory Asset Base by the QCA:
 - (i) the actual expenditure of the Expansion up to the total of the pre-approved proposed expenditure under this **Schedule E** will be included into the Regulatory Asset Base if the process in **clause 2.2(e)** of this **Schedule E** is complied with; and
 - (ii) the amount of any actual expenditure above the pre-approved proposed expenditure must be approved by the QCA prior to it being included into the Regulatory Asset Base.
- (h) For the purpose of **clause 2.2(a)** and related provisions in this **Schedule E**, a reference to capital expenditure includes expenditure for a Concept Study, Pre-feasibility Study, Feasibility Study or other study in connection with a capital expenditure project.

2.2 Prudency and efficiency

- (a) The QCA must approve including capital expenditure into the Regulatory Asset Base if that capital expenditure is for the prudent and efficient value of the assets that are used or intended to be used by Aurizon Network to provide the service taken to be declared under section 250(1)(a) of the Act.
- (b) In determining the prudency and efficiency of capital expenditure, the QCA must have regard to the following:
 - (i) the scope of works for the project (including whether the requirement for the works is prudent and efficient) which must include having regard, where relevant, to:
 - (A) any relevant Network Development Plan;
 - (B) the need to accommodate what is reasonably required to comply with Access Agreements;
 - (C) the need for new capital expenditure projects to accommodate the current contracted demand and

- potential future demand that Aurizon Network, acting reasonably, considers is required within a reasonable timeframe;
- (D) the age and condition of existing assets, the need for asset replacement capital expenditure projects and the extent of consistency with the Asset Management Plan;
 - (E) the extent to which the capital expenditure project promotes the economically efficient operation of, use of or investment in the Rail Infrastructure, whether present or future (for example, in relation to extending the life of assets whose economic and/or functional life would otherwise have expired, reducing future operating and maintenance costs or improving the capability or capacity of existing assets, systems and processes);
 - (F) Aurizon Network's legislative and tenure requirements, including relating to rail safety, workplace health, safety and environmental requirements;
 - (G) the outcomes of consultation (if any) about the capital expenditure project, with Access Seekers and Access Holders whose Access Charges (or likely Access Charges) would be affected by including the amount of capital expenditure for the capital expenditure project into the Regulatory Asset Base; and
 - (H) any other matters in submissions to the QCA by Aurizon Network or Funding Users;
- (ii) the standard of works for the project (including whether the standard could be expected to deliver the requirements for that project without it being overdesigned or likely to deliver a capital works project which is beyond the requirements of its scope) which must include having regard, where relevant, to:
- (A) the requirements of Railway Operators and what is reasonably required to comply with Access Agreements;
 - (B) current and likely future usage levels;
 - (C) the requirements of relevant Australian design and construction standards;
 - (D) if applicable, the extent of consistency with the Asset Management Plan;

- (E) Aurizon Network's design standards contained within the Safety Management System;
 - (F) all relevant Laws and the requirements of any Authority (including the Safety Regulator); and
 - (G) any other matters in submissions to the QCA by Aurizon Network or Funding Users; and
- (iii) whether the costs of that project are prudent and efficient, having regard to the scope and standard of work undertaken or to be undertaken for the project which must include having regard, where relevant, to:
- (A) any relevant Network Development Plan;
 - (B) the level of such costs relative to the scale, nature, cost and complexity of the project;
 - (C) the circumstances prevailing in the markets for:
 - (1) engineering, equipment supply and construction;
 - (2) labour; and
 - (3) materials;
 - (D) the Asset Management Plan;
 - (E) Aurizon Network's actions, or proposed actions, in relation to:
 - (1) safety during construction and operation;
 - (2) compliance with environmental requirements during construction and operation;
 - (3) compliance with Laws and the requirements of Authorities;
 - (4) minimising disruption to the operation of Train Services during construction;
 - (5) accommodating reasonable requests of Access Holders to amend the scope and sequence of works undertaken to suit their needs;
 - (6) minimising total project cost which may at times not be consistent with minimisation of individual contract costs;
 - (7) aligning other elements in the Supply Chain; and

- (8) meeting contractual timeframes and dealing with external factors; and
 - (F) any other matters in submissions to the QCA by Aurizon Network or Funding Users.
- (c) When Aurizon Network submits information to the QCA for the QCA's assessment of whether capital expenditure is prudent and efficient, nothing in **clause 2** obliges Aurizon Network to submit such information to address all of the requirements of scope of work, standard of work and costs set out at **clauses 2.2(b)(i) to (iii)**, but where one of those requirements is addressed by Aurizon Network, it must submit all of the information set out in **clauses 2.2(b)(i) to (iii)**, as applicable, as is reasonably relevant to the submission.
- (d) The QCA's acceptance of the prudence and efficiency of any of the scope of works, standard of works or costs of the capital expenditure project does not imply that it accepts other aspects of that project or approves of the inclusion of the capital expenditure in the Regulatory Asset Base.
- (e) If the QCA is requested to determine the prudence and efficiency of capital expenditure before the capital expenditure is incurred, the QCA may include as conditions of its approval for any capital expenditure for a project:
 - (i) the assumptions relevant to its approval including:
 - (A) cost to construct;
 - (B) time for completion of, and
 - (C) estimated capacity to be delivered by, the project;
 - (ii) other matters considered by the QCA to be material to its approval; and
 - (iii) the period of time in which the approval has effect (and if the project is not completed within the nominated time, the QCA may decide the approval ceases to have effect).
- (f) Despite **clause 2.3(d)**:
 - (i) if the QCA approves capital expenditure under this clause 2 prior to that capital expenditure is incurred (**pre-approval capital expenditure**), that capital expenditure must not be included in the Regulatory Asset Base until it is incurred; and
 - (ii) once pre-approval capital expenditure is incurred, then Aurizon Network must obtain the QCA's approval under this **clause 2** prior to including the capital expenditure in the Regulatory Asset Base, and the QCA must approve the capital expenditure if the QCA confirms the capital

expenditure has been incurred and Aurizon Network has satisfied the conditions required by the QCA as part of its pre-approval under **clause 2.2(e)**.

- (g) The QCA must, in assessing under **clause 2.2(b)** whether capital expenditure is prudent and efficient, consider only the circumstances relevant

at the time of making the decision to incur the capital expenditure (or in relation to assessing prudence of costs, at the time when the costs were incurred or the capital expenditure project was undertaken, as applicable):

In assessing the prudence of capital expenditure on the basis of those circumstances, the QCA may take advice as it considers necessary from independent advisors using appropriate benchmarks and experience, and consult as it considers necessary with relevant stakeholders.

- (h) If Interested Participants vote in respect of whether to accept capital expenditure under **clause 4**:

- (i) Aurizon Network must provide the QCA with the outcome of that vote promptly after the completion of the vote;
- (ii) the QCA must take that vote into account when approving whether the capital expenditure is prudent and efficient; and
- (iii) the vote by the Interested Participants under **clause 4** does not limit the QCA's review of the prudence and efficiency of the capital expenditure.

- (i) If Interested Participants accept a Voting Proposal under **clause 4** in respect of capital expenditure:

- (i) the QCA may audit Aurizon Network's compliance with **clause 4** in accordance with **clause 10.6.3** of the Undertaking;
- (ii) if that audit identifies any non-compliance with **clause 4** then:
 - (A) the QCA may require Aurizon Network to remedy the non-compliance; or
 - (B) if the non-compliance cannot be remedied, the QCA must deem the Interested Participants' vote to be invalid;
- (iii) the QCA must take that vote into account when approving whether the capital expenditure is prudent and efficient; and
- (iv) if the Interested Participant's vote is found or deemed to be invalid, Aurizon Network may elect to:

- (A) withdraw its request to the QCA to approve the capital expenditure project under this **clause 2** and commence a new Voting Proposal in respect of that capital expenditure project under **clause 4**; or
- (B) not commence a new Voting Proposal but to seek the approval of the QCA under this **clause 2** in respect of the capital expenditure project.

2.3 Approval by the QCA

- (a) To make its determination under **clause 2.2**, the QCA:
 - (i) must consult with, or seek submissions from, persons in relation to any consideration by the QCA of the prudence and efficiency of capital expenditure;
 - (ii) may disclose any Feasibility Study in respect of a capital expenditure project or the Asset Management Plan provided to it under **clause 3** to persons while seeking submissions; or
 - (iii) must consider any relevant submissions made to the QCA, provided that without limiting the principles in **clause 11.2** of this Undertaking, the QCA must provide Aurizon Network with a reasonable opportunity to respond to any such submissions.
- (b) The QCA may request additional information from Aurizon Network that is reasonably required to make any determination under this **clause 2**.
- (c) The QCA must notify Aurizon Network if it approves capital expenditure for inclusion into the Regulatory Asset Base.
- (d) If the QCA is considering refusing to approve all or part of any capital expenditure into the Regulatory Asset Base:
 - (i) the QCA must give Aurizon Network (and the User Funding Trustee and User Funders, if the capital expenditure is a User Funded Expansion) a draft of the QCA's decision (including a statement of reasons for reaching its decision);
 - (ii) Aurizon Network may, within twenty (20) Business Days after being given that draft decision (or such longer period as agreed by the QCA), revise the capital expenditure and/or provide additional information supporting its view that the capital expenditure or the revised amount should be included in the Regulatory Asset Base; and
 - (iii) the QCA must consider that revision and/or additional information when deciding whether to approve or refuse to approve the inclusion of the capital expenditure into the Regulatory Asset Base.

- (e) If the QCA refuses to approve all or part of any capital expenditure for inclusion in the Regulatory Asset Base, the QCA must give Aurizon Network (and the User Funding Trustee and User Funders, if the capital expenditure is a User Funded Expansion) a notice of the QCA's decision (including a statement of reasons and the clear identification of the capital expenditure project and the capital expenditure to which its decision relates).
- (f) For the avoidance of doubt, the Capital Indicator does not imply any acceptance by the QCA of that level of capital expenditure into the Regulatory Asset Base.
- (g) Unless Aurizon Network otherwise elects to do so under **Part 8** of this Undertaking, Aurizon Network does not have an obligation to construct or fund a capital expenditure project as a result of seeking or obtaining any approval of the scope, standard or cost of a capital expenditure project under this **Schedule E**.
- (h) For clarity, this clause 2.3 does not apply where:
 - (i) The QCA has already accepted the scope of the capital expenditure project as prudent;
 - (ii) The QCA accepts the scope of the capital expenditure project as prudent in accordance with Clause 2.2; or
 - (iii) The scope of the capital expenditure project has been accepted as prudent by Interested Participants by a vote in accordance with clause 4 of this Schedule E.

3 Asset Management Plan

- (a) Aurizon Network may prepare a proposed Asset Management Plan describing the standards that Aurizon Network will apply in determining whether to incur capital expenditure by replacing assets within the Regulatory Asset Base rather than maintaining those assets and submit that proposed Asset Management Plan to the QCA for approval.
- (b) To the extent that a capital expenditure project includes Asset Replacement and Renewal Expenditure and there is an Asset Management Plan, Aurizon Network may request the QCA's acceptance of the capital expenditure for that Asset Replacement and Renewal Expenditure as prudent and efficient.
- (c) If a request is made under **clause 3(b)**, the QCA may take into account whether the Asset Replacement and Renewal Expenditure is consistent with the Asset Management Plan.
- (d) **Clause 2** applies to any decision by the QCA in respect of the Asset Management Plan which, for clarity, includes refusing to approve the Asset Management Plan if it does not adequately assess the

prudence and efficiency of the scope and standard of any Asset Replacement or Renewal Expenditure.

4 Acceptance of capital expenditure projects by Interested Participants

4.1 Application and purpose

(a) This **clause 4** is for the purpose of informing Aurizon Network and the QCA of the views of a broad range of Interested Participants in relation to capital expenditure projects, but [\(other than as described in clause 2.1\(f\) of this Schedule E\)](#) it does not bind either Aurizon Network or the QCA to accept those views. It therefore sets out a voting process for Access Holders, Customers and Access Seekers to provide their views on:

- (i) the prudence and efficiency of the scope of a capital expenditure project of any kind;
- (ii) the prudence and efficiency of the standard of works of a capital expenditure project of any kind;
- (iii) the prudence and efficiency of the costs of a capital expenditure project of any kind; or
- (iv) a material change to the scope, standard of works or costs of a capital expenditure project previously accepted by Interested Participants.

For clarity, Aurizon Network can seek a vote on any one or more of the matters listed in this clause.

(b) Aurizon Network may not seek a vote under this **clause 4** in relation to the matters set out in **clause 4.1(a)** unless:

- (i) it has completed the Feasibility Study for that project and provides the results of the Feasibility Study to the QCA and the Interested Participants (unless the Interested Participants agree that a Pre-feasibility Study is sufficient, in which case, it provides the results of the Pre-feasibility Study to the QCA and Interested Participants); and
- (ii) the Voting Proposal includes (either by reference to the results of the Feasibility Study or Pre-feasibility Study, if agreed by the Interested Participants, or as part of the proposal):
 - (A) the timeframe (including milestones (if any) and anticipated completion date) for constructing the capital expenditure project; and
 - (B) the cost tolerance for the capital expenditure project that is to be accepted as part of the Voting Proposal.

- (c) An unsuccessful vote does not prevent Aurizon Network from seeking the QCA's acceptance on the same matter or a future vote.
- (d) Aurizon Network must promptly notify the QCA:
 - (i) that it is seeking a vote; and
 - (ii) of the outcome of a vote,under this **clause 4**.
- (e) Aurizon Network is not obliged to seek acceptance of the matters set out in **clause 4.1(a)**, unless:
 - (i) an Access Seeker (or its Customer) requiring the capital expenditure project to be able to secure Access Rights;
 - (ii) an Expansion Funder for the Expansion; or
 - (iii) an Interested Participant,requires Aurizon Network to obtain a vote from Interested Participants, in which case Aurizon Network must promptly (and in any event within 20 Business Days of completion of the Feasibility Study for the relevant project) seek acceptance under this **clause 4**.
- (f) Promptly (and in any event within twenty (20) Business Days) after Interested Participants accept a Voting Proposal in respect of the matters set out in **clause 4.1(a)**, Aurizon Network must, unless otherwise agreed with the QCA, seek the approval of the QCA to include that capital expenditure into the Regulatory Asset Base.
- (g) In this **clause 4**:
 - (i) **Affected Train Path** means a Train Path:
 - (A) where the applicable Reference Tariff for a Train Service using that Train Path would be affected by including the amount of capital expenditure for the relevant capital expenditure project into the Regulatory Asset Base; or
 - (B) that will be impacted by the proposed capital expenditure project after construction of the proposed Expansion is completed;
 - (ii) **Interested Participants** means persons who satisfy the criteria set out in **clause 4.2(a)**;
 - (iii) **Voting Period** means:
 - (A) the period specified in the notice under **clause 4.4(a)(i)**, being at least six weeks after the notice is given; or

- (B) where the Interested Participants for at least 60% of the aggregated Affected Train Paths for all Interested Participants notify Aurizon Network request a specified extension to the period specified in the notice under **clause 4.4(a)(i)**, that extended period; and
- (iv) **Voting Proposal** means a proposal by Aurizon Network that Interested Participants accept by a vote relating to:
 - (A) any one or more of the following:
 - (1) the prudence and efficiency of scope of a capital expenditure project of any kind;
 - (2) the prudence and efficiency of standard of works of a capital expenditure project of any kind; and
 - (3) the prudence and efficiency of costs of a capital expenditure project of any kind;
 - (B) a material change to:
 - (1) the scope, standard or works or costs of; or
 - (2) the timeframe or cost tolerances for, a capital expenditure project previously accepted by Interested Participants; or
 - (C) a capital expenditure project commencing greater than two (2) years after the date that capital expenditure project was previously accepted by the Interested Participants.

4.2 Identification of Interested Participants

- (a) The Interested Participants for a Voting Proposal are Customers, and Access Holders and Access Seekers without Customers, where:
 - (i) the Access Charges (or likely Access Charges) relevant to the person:
 - (A) are (or will be) determined by reference to a Reference Tariff; and
 - (B) would be affected by including the amount of capital expenditure for a capital expenditure project into the Regulatory Asset Base; or
 - (ii) the proposed capital expenditure project will impact on the person's contracted Capacity or Train Paths after construction of the proposed Expansion is completed.

- (b) A Customer who is an Interested Participant may (by notice to Aurizon Network) nominate its Access Seeker or Access Holder, as applicable, (**Nominee**) to vote on its behalf in which case:
 - (i) the Nominee is taken to be the Customer's agent for the purposes of the vote; and
 - (ii) if requested by the Customer, Aurizon Network must provide the Customer with a copy of notices given to the Nominee under this **clause 4** contemporaneously with the giving of that notice to the Nominee.
- (c) Despite **clause 4.2(a)**:
 - (i) Aurizon Network may not include a person as an Interested Participant if that would result in any 'double counting' of votes (for example, if two Access Seekers are competing to provide rail haulage services to a prospective Customer that Customer will not be treated as a Customer for each Access Seeker which would double its Affected Train Paths and consequential voting power); and
 - (ii) if a person has not been invited to participate as an Interested Participant but that person believes that it is entitled to participate, then that person:
 - (A) may notify Aurizon Network and the QCA together with its reasons for believing it is entitled to participate; and
 - (B) is an Interested Participant if the person satisfies the criteria set out in **clause 4.2(a)**,

and Aurizon Network must promptly notify the person and the QCA of its determination as to whether the person is an Interested Participant.

4.3 Voting rights

- (a) Each Interested Participant's vote will be that Interested Participant's Affected Train Paths determined by Aurizon Network (acting reasonably) as the Interested Participant's Access Rights (whether under an Access Agreement or the subject of an Access Application) as follows:
 - (i) where the Access Agreement:
 - (A) will be in force five years after the first day of the Voting Period; or
 - (B) is subject to a legally binding commitment (even if conditional on the completion of an Expansion or Customer Specific Branch Line or other conditions which are Aurizon Network's responsibility to satisfy or can be waived by Aurizon Network),

the Affected Train Paths must be determined based on the Access Rights specified in that Access Agreement for a 12 Month period starting five years after the first day of the Voting Period;

(ii) where:

(A) the Access Agreement is due to expire within five years after the first day of the Voting Period; and

(B) Aurizon Network reasonably expects that a Renewal will occur in relation to the relevant Access Rights under that Access Agreement,

the Affected Train Paths must be determined based on the Access Rights specified in that Access Agreement for the last period of twelve (12) Months of that Access Agreement;

(iii) to the extent that the Interested Participant is (or is also) an Access Seeker or an Access Seeker's Customer:

(A) where the Available Capacity, plus the Capacity expected to be created by the capital expenditure project, that may potentially be used for Affected Train Paths (**Total Available Capacity**) is less than that needed by Aurizon Network to provide all of the Access Rights sought by Access Seekers (who, or whose Customers, are Interested Participants) for Affected Train Paths (**Requested Capacity**), the Affected Train Paths must be calculated as the Access Seeker's proportion of the Total Available Capacity calculated on a pro-rated basis by reference the Access Seeker's proportion of the Requested Capacity; or

(B) where the Total Available Capacity is greater than the Requested Capacity, the Affected Train Paths sought by the Access Seeker,

in either case, for a 12 Month period starting five years after the first day of the Voting Period; and

(iv) if more than one of **clauses 4.3(a)(i) to (iii)** apply in respect of an Interested Participant, then the Affected Train Paths calculated under those clauses will be aggregated for that Interested Participant except that an Affected Train Path may not be counted more than once.

4.4 Acceptance process

(a) If Aurizon Network intends to put forward a Voting Proposal, then Aurizon Network must:

- (i) identify the Interested Participants and notify each identified Interested Participant of the Voting Proposal; and
 - (ii) make available information the information set out in this **clause 4.4** to those Interested Participants.
- (b) During the Voting Period:
- (i) Aurizon Network must use reasonable endeavours to provide information, forums and engage in discussions with Interested Participants in relation to the relevant Voting Proposal if requested by any Interested Participants; and
 - (ii) Interested Participants are to notify Aurizon Network of whether they accept or do not accept the Voting Proposal by voting 'yes' or 'no'.
- (c) If an Interested Participant votes:
- (i) "no", the Interested Participant must provide its reasons for that vote so that the QCA may understand the Interested Participant's reasons; and
 - (ii) "yes", the Interested Participant may but is not required to provide any reasons for its decision.
- (d) If an Interested Participant does not respond within the Voting Period or does not respond in a way that is a clear 'yes' or 'no' vote, then the Interested Participant is deemed to have accepted the relevant Voting Proposal – that is, voted 'yes'.
- (e) The Interested Participants are deemed to have accepted the relevant Voting Proposal if Interested Participants for at least 60% of the aggregated Affected Train Paths for all Interested Participants have voted 'yes'.
- (f) Aurizon Network must notify each of those Interested Participants of the results of the vote within five (5) Business Days after Aurizon Network has determined those results.

4.5 Information and materials relating to acceptance votes

- (a) Aurizon Network must make available information, when it considers it relevant or necessary to do so, to Interested Participants relating to proposed capital expenditure projects relevant to Coal Systems.
- (b) Aurizon Network must make available to Interested Participants and the QCA information on the relevant capital expenditure project, including the report prepared as a result of the Pre-feasibility Study (if agreed by Interested Participants) and the Feasibility Study (unless the Interested Participants agree to access the Pre-feasibility Study) for the relevant capital expenditure project.
- (c) Aurizon Network may require an Interested Participant to sign a confidentiality agreement substantially in the form set out in **Schedule I** prior to providing it information under this **clause 4.5**.

4.6 Compliance

- (a) Any person who is an Interested Participant in respect of a Voting Proposal who has any concerns about Aurizon Network's compliance with this **clause 4** in respect of the proposed vote may notify Aurizon Network and the QCA of those concerns in writing including providing reasons or other information in support of those concerns prior to the end of the Voting Period.
- (b) Aurizon Network must take whatever action is reasonably required to address any concerns notified to it under **clause 4.6(a)** to achieve compliance with this **clause 4**.
- (c) An audit of Aurizon Network's compliance with this **clause 4** in relation to a vote must be procured by Aurizon Network:
 - (i) prior to Aurizon Network relying on that vote for the purposes of the QCA's acceptance of prudence and efficiency of a capital expenditure project; and
 - (ii) subject to **clauses 4.6(d) to 4.6(f)**, in accordance with **clause 10.6.4** of the Undertaking.
- (d) Where an audit is commenced under **clause 4.6(c)**:
 - (i) Aurizon Network must provide to the auditor copies of all concerns notified to it under **clause 4.6(a)** in relation to the relevant vote for the purpose of the audit certificate's preparation; and
 - (ii) the auditor will compile an audit report identifying:
 - (A) whether Aurizon Network has complied in all material respects with this **clause 4** and, if not, details as to the relevant non-compliance; and
 - (B) the process adopted for the conduct of the audit.
- (e) If, in preparing an audit certificate, the auditor identifies flaws in the calculation of the Affected Train Paths, then:
 - (i) Aurizon Network must recalculate the Affected Train Paths and recount the votes in a manner consistent with the auditor's findings;
 - (ii) the auditor will take that recalculation and recount into account in preparing the audit certificate; and
 - (iii) to the extent that the Aurizon Network has already notified Interested Participants of the outcome of the vote, Aurizon Network will notify the Interested Participants as soon as reasonably practicable of the recounted vote.
- (f) If in preparing an audit certificate, the auditor identifies a material discrepancy in a vote of Interested Participants under this **clause 4**, then Aurizon Network must redo the voting process.

5 Capital Expenditure Carryover Account

- (a) Aurizon Network will maintain a register in which it annually records all Approved Capital Expenditure including identifying the relevant capital expenditure:
- (i) by project;
 - (ii) by whether it relates to electrification assets; and
 - (iii) by Coal System.
- (b) If, at the end of each Year, the Approved Capital Expenditure differs from the Capital Indicator, the difference will be entered in the Capital Expenditure Carryover Account for assets funded under User Funding Agreements and assets funded by Aurizon Network. If the Approved Capital Expenditure exceeds the Capital Indicator, it will be deemed an under recovery of revenue. If the Approved Capital Expenditure is less than the Capital Indicator, it will be deemed an over-recovery of revenue.
- (c) The balance recorded in the Capital Expenditure Carryover Account will include:
- (i) a return on capital component, calculated as the difference between the return on capital assumed for the Capital Indicator and the return on capital that should have applied for the Approved Capital Expenditure, accrued at the Discount Rate;
 - (ii) a depreciation component, calculated as the difference between the depreciation assumed for the Capital Indicator and the depreciation that should have applied for the Approved Capital Expenditure; and
 - (iii) a tax depreciation component, calculated as the difference between the tax depreciation assumed for the Capital Indicator and the tax depreciation that should have applied for the Approved Capital Expenditure,
- and will be calculated using the modelling parameters and assumptions used to determine the Reference Tariffs.
- (d) The balance in the Capital Expenditure Carryover Account at the end of each Year will be rolled forward at the Discount Rate.
- (e) The balance in the Capital Expenditure Carryover Account at the end of the Term will be taken into account when determining Reference Tariffs to apply in the next undertaking with the intention of clearing the Capital Expenditure Carryover Account over the term of that next undertaking. In the event there is no next undertaking within one year after the withdrawal or expiry of this Undertaking, the balance in the Capital Expenditure Carryover Account will be recovered from, or

returned to, Access Holders (as the case may be) in the form of a single payment following the Terminating Date.

Schedule F

Reference Tariff

1 General provisions

1.1 Purpose

This **Schedule F** will be used for the following purposes:

- (a) Aurizon Network's formulation of Access Charges for a Train Service to which a Reference Tariff applies; and
- (b) where Access Charges, and related provisions, in an Access Agreement that were originally determined based on this **Schedule F** or **Schedule F** of an Applicable Undertaking, to allow for the adjustment of those Access Charges, and related provisions, in accordance with that Access Agreement for consistency with this **Schedule F** (as amended or replaced from time to time).

1.2 Application of Reference Tariffs

The Reference Tariffs in this **Schedule F**:

- (a) apply to coal carrying Train Services from the Commencing Date to the Terminating Date; and
- (b) are based on a Reference Train Service.

1.3 General characteristics of Reference Train Services

The Reference Train Service in respect of the Reference Tariffs:

- (a) **(Commodity)** carries only bulk coal;⁵
- (b) **(Operational characteristics)** meets the following criteria:
 - (i) the additional Reference Train Service criteria listed in relation to the applicable Reference Tariff (for example, in **clauses 7.1, 8.1, 9.1, 10.1, and 11.1**);
 - (ii) complies with the maximum speeds permitted on the Nominated Infrastructure as specified in the relevant Preliminary Information;
 - (iii) complies with Aurizon Network's Rollingstock Interface Standards applicable to the Nominated Infrastructure;

⁵ In defining bulk coal, no differentiation is to be made between coal qualities or types, or between the end use markets of the coal.

- (iv) is otherwise compatible with the Nominated Infrastructure described in the relevant Preliminary Information and requires no additional expenditure by Aurizon Network to implement varied Below Rail controls identified in the IRMP;
 - (v) operates in accordance with nominated sectional running times specified in the relevant Preliminary Information;
 - (vi) uses bottom dump wagons with the “KWIK DROP” door operating mechanism; and
 - (vii) uses measures to minimise coal spillage and leakage and coal dust emissions en route that are consistent with the Coal Loss Mitigation Provisions in **Schedule J**;
- (c) **(Below Rail Services)** only requires services from Aurizon Network that are Below Rail Services and that Below Rail Services comprised in Access are provided in accordance with this Undertaking;
- (d) **(Conditions of Access)** operates in accordance with an Access Agreement on substantially the same terms as a Standard Access Agreement applicable to coal carrying Train Services, where the differences from the Standard Access Agreement do not give rise to a material increase in cost or risk; and
- (e) **(Train Service Entitlement)** has a Train Service Entitlement:
- (i) based on Trains being available for operation 24 hours per day and 360 days per year; and
 - (ii) specified in terms of Cyclic Traffic which will:
 - (A) operate in accordance with the distribution set out in the MTP;
 - (B) have regard to Planned Possessions and any other matters agreed between Aurizon Network and other service providers in the relevant Supply Chain; and
 - (C) comply with the applicable scheduling procedures as set out in the Network Management Principles.

2 Reference Tariff

2.1 Composition of Reference Tariff

The Reference Tariff is a charge in relation to Train Services that have operated, calculated in accordance with **clause 2.2** and, if applicable, **clause 2.3** (including Adjustment Charges) with specified Reference Tariff inputs and, if applicable, any System Premiums or System Discounts.

2.2 Calculations for Reference Train Services

- (a) Subject to **clause 2.3**, a charge for Reference Train Services is calculated as:

$$\left(AT_1 \times \frac{gtk}{1000} \right) + (AT_2 \times rtp) + \left(AT_3 \times \frac{ntk}{1000} \right) + (AT_4 \times nt) + \left(AT_5 \times \frac{egtk}{1000} \right) + \left(EC \times \frac{egtk}{1000} \right) + (QCALevy \times nt)$$

where:

AT₁ is the incremental maintenance tariff specified as the AT₁ input for the nominated Reference Train Service as specified for the relevant Reference Tariff (for example, as specified in **clauses 7.2, 8.2, 9.2, 10.2 and 11.2**, as applicable);

AT₂ is the incremental capacity tariff specified as the AT₂ input for the nominated Reference Train Service as specified for the relevant Reference Tariff (for example, as specified in **clauses 7.2, 8.2, 9.2, 10.2 and 11.2**, as applicable);

AT₃ is an allocative tariff specified as the AT₃ input for the nominated Reference Train Service as specified for the relevant Reference Tariff (for example, as specified in **clauses 7.2, 8.2, 9.2, 10.2 and 11.2**, as applicable);

AT₄ is an allocative tariff specified as the AT₄ input for the nominated Reference Train Service as specified for the relevant Reference Tariff (for example, as specified in **clauses 7.2, 8.2, 9.2, 10.2 and 11.2**, as applicable);

AT₅ is the electric access tariff specified as the AT₅ input for the nominated Reference Train Service as specified for the relevant Reference Tariff (for example, as specified in **clauses 7.2 and 8.2**, as applicable); and

EC is the electric energy charge which is initially (from the Commencing Date) as specified as the EC input for the nominated Reference Train Service as specified for the relevant Reference Tariff (for example, as specified in **clauses 7.2 and 8.2**, as applicable), and after the Approval Date as otherwise published by Aurizon Network on the Website on or about each 31 May during the Term after Aurizon Network seeks and obtains the QCA's approval for a new electric energy charge (taking into account any over or under recovery in the previous Year),

provided that the above calculation is subject to the addition of any applicable Adjustment Charge from time to time (including, if necessary, on a pro rata basis with other Train Services that have the same origin and destination and Access Holder and are run during same Billing Period, as the nominated Reference Train Service).

For clarity, the rtp for a Reference Train Service equals one.

- (b) The amounts of the AT₁, AT₂, AT₃, AT₄, AT₅, EC and the QCA Levy inputs (including the System Discounts and System Premiums, if

applicable) specified for the relevant Reference Tariff and any Adjustment Charge are GST exclusive.⁶

- (c) For the purposes of this **Schedule F**, a Train Service is a one way Train Service, that is, the journey from the Nominated Loading Facility to the Nominated Unloading Facility is one Train Service, and the return journey from the Nominated Unloading Facility to the Nominated Loading Facility is a second Train Service.
- (d) To the extent that the calculation of gtk and nt for a Train Service require a weight for the relevant Train or any Rollingstock comprised in that Train, weights may be nominal or actual weights, or a combination of nominal and actual weights provided that, unless otherwise agreed by Aurizon Network:
 - (i) any nominal weights will be as set out or calculated in the relevant Access Agreement or, otherwise, as agreed or approved by Aurizon Network, in relation to the calculation of gtk or nt, as applicable; and
 - (ii) actual weight will only be used where:
 - (A) the gross weight (in tonnes) of loaded or partly loaded wagons needs to be determined;
 - (B) there is a functioning weighbridge or weightometer (verified under the *National Measurement Act 1960* (Cth)) located en route between the origin and destination for the Train Service;
 - (C) Aurizon Network has agreed that the weighbridge or weightometer can be used to weigh wagons for the purpose of calculating Access Charges; and
 - (D) the relevant wagons can actually be weighed by that weighbridge or weightometer.
- (e) When Aurizon Network publishes the EC, it must separately identify the level of the Environment Compliance Charge within the EC.

2.3 Calculations for a Cross System Train Service

- (a) For a Cross System Train Service, the Reference Train Service description for each applicable Reference Tariff for each relevant Coal System will be applied to the extent that the Train Service is using that Coal System and the calculation under **clause 2.2** will be adjusted by applying the following:
 - (i) AT_1 will be the AT_1 component of the Reference Tariff for:

⁶ An amount for GST will be added to the total calculated Access Charge, in accordance with the provisions of the applicable Access Agreement, at invoicing.

- (A) the Origin Tariff, for the gtk attributable to the Origin System; and
- (B) the Destination Tariff, for the gtk attributable to the Destination System;
- (ii) AT_2 will be determined as follows:
 - (A) the AT_2 component of the Reference Tariff in the Origin System will be applicable to the Train Paths used in the Origin System, but only if the Train Service operates on capacity constrained corridors of the Origin System as identified in **clause 2.3(b)**; and
 - (B) the AT_2 component of the Reference Tariff in the Destination System will be applicable in accordance with **clause 2.2**;
- (iii) AT_3 will be the AT_3 input for the relevant Reference Tariffs for:
 - (A) the Origin Tariff, for the ntk attributable to the Origin System; and
 - (B) the Destination Tariff, for the ntk attributable to the Destination System; and
- (iv) AT_4 will be the AT_4 input for the Origin Tariff;
- (v) AT_5 and EC will be determined as the AT_5 and EC components of the Reference Tariff for:
 - (A) the Origin System, for the egtk attributable to the Origin System; and
 - (B) the Destination System, for the egtk attributable to the Destination System; and
- (vi) the QCA Levy component of the Reference Tariff in the Destination System will be applicable in accordance with clause 2.2, applied to the nt for the Train Service.
- (b) For the purposes of **clause 2.3(a)(ii)**, unless otherwise approved by the QCA, the Rail Infrastructure comprising railways between:
 - (i) Coppabella and the Hay Point Junction;
 - (ii) Newlands and Abbot Point; and
 - (iii) Burngrove and the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone),
 is regarded as capacity constrained Rail Infrastructure.
- (c) For the purpose of **clause 2.3(a)**, if a Cross System Train Service loads in the Blackwater System and unloads in the Newlands System,

then the Goonyella to Abbot Point System is deemed to be the Destination System for that Cross System Train Service.

3 Calculations for Take or Pay

3.1 Overview

- (a) The Take or Pay payable to Aurizon Network will be calculated in a manner consistent with this **clause 3**.

3.2 Application of historical Take or Pay arrangements

- (a) A different manner of calculation may apply to a Take or Pay depending on the Applicable Undertaking in force at the time that the relevant Access Agreement was entered into.
- (b) This **clause 3.2** describes the application of the Take or Pay obligations contained in Access Agreements that were originally entered into in accordance with the 2001 Undertaking, 2005 Undertaking and/or 2008 Undertaking, given that the Take or Pay obligations reference the undertaking in force at the time of their application.
- (c) Where the Access Holder has a Take or Pay with Aurizon Network under an Access Agreement named in Column 1 (**2001/05/08 Access Agreement**), the Take or Pay will be calculated in accordance with Column 2, subject to the adjustments made in Column 3 of the corresponding row in the following table:

Column 1	Column 2	Column 3
<p>An Access Agreement that was executed or renewed on or after 20 December 2001 but prior to 30 June 2006.</p> <p>A New Access Agreement where the relevant Old Access Agreement was executed or renewed on or after 20 December 2001 but</p>	<p>Clause 3.2, Part A, Schedule F of the 2001 Undertaking</p>	<p>Where the calculation refers to:</p> <ul style="list-style-type: none"> (a) the System Gtk; or (b) gtk in circumstances where that gtk relates to Train Services other than solely those under the relevant Access Agreement, <p>then exclude any gtk attributable to any Train Services where the Access Charges for those Train Services are set based on an Expansion Tariff.⁷</p> <p>The references to System Gtk, System Forecast, and gtk in this row have the meanings given to those terms under the 2001 Undertaking.</p>

⁷ Access Agreements for coal carrying Train Services executed or renewed on or after 20 December 2001 but prior to 30 June 2006 (**UT1 Access Agreements**) will have Access Charges for Train Services in a Coal System set based on the relevant System Reference Tariff for that Coal System. Train Services under a UT1 Access Agreements will not have Access Charges set based on any Expansion Tariff for that Coal System. The relevant System Gtk or gtk should be limited to those Train Services whose Access Charges are set based on the same System Reference Tariff as the relevant Train Services for which a Take or Pay is being calculated. In the same way, the Monthly System Forecasts for each Coal System only relate to Train Services whose Access Charges are set by based on the relevant System Reference Tariff.

Column 1	Column 2	Column 3
prior to 30 June 2006.		Where the calculation refers to the System Forecast, then that System Forecast is a reference to the Monthly System Forecast for the relevant Coal System set out in clause 12 of Schedule F .
An Access Agreement that was executed or renewed on or after 30 June 2006 but prior to 23 October 2008. A New Access Agreement where the relevant Old Access Agreement was executed on or after 30 June 2006 but prior to 23 October 2008.	Clause 2.2, Part B, Schedule F of the 2005 Undertaking	<ol style="list-style-type: none"> 1. A reference in that calculation to the "System Gtk", or to gtk in circumstances where that gtk relates to Train Services other than solely those under the relevant Access Agreement, excludes any gtk attributable to any Train Services where the Access Charges for those Train Services are set based on an Expansion Tariff⁸. 2. A reference in that calculation to the "System Forecast" is a reference to the Gtk Forecast for the relevant System Reference Tariff. 3. A reference to "Paragraph 7.4.4(f) of the Undertaking" is a reference to clause 12.4(f) of this Undertaking. 4. A reference to "Total Actual Revenue" is a reference to Total Actual Revenue as defined under this Undertaking.
An Access Agreement that was executed or renewed on or after 23 October 2008 but prior to 1 October 2010. A New Access Agreement where the relevant Old Access Agreement was executed on or 23 October 2008 but prior to 1 October 2010.	Clause 2.2, Part B, Schedule F of the 2008 Undertaking	<ol style="list-style-type: none"> 5. A reference to "Individual Coal System Infrastructure" is a reference to the System Reference Tariff that is used to set the Access Charges for the relevant Train Services, subject to item 7 below. 6. A reference to "System Allowable Revenue" is a reference to Allowable Revenue as defined under this Undertaking. 7. A reference to "Access Agreements in relation to that Individual Coal System Infrastructure" is a reference to Tariff Based Access Agreements in relation to the relevant System Reference Tariff. 8. A reference to "the Total Revenue for that Individual Coal System Infrastructure" is a reference to "the Total Revenue" in relation to the relevant System Reference Tariff.

⁸ Access Agreements for coal carrying Train Services executed or renewed under the 2005 Undertaking or 2008 Undertaking (except for a Customer initiated transfers of UT1 Access Agreements) (**UT2 Access Agreements**) will have Access Charges for Train Services in a Coal System set based on the relevant System Reference Tariff for that Coal System. Train Services under UT2 Access Agreements will not have Access Charges set based on any Expansion Tariff for that Coal System. The relevant System Gtk or gtk should be limited to those Train Services whose Access Charges are set based on the same System Reference Tariff as the relevant Train Services for which a Take or Pay is being calculated.

3.3 Application of new Take or Pay arrangements

- (a) This **clause 3.3** describes the application of the Take or Pay obligations contained in Access Agreements that were originally entered into in accordance with the 2010 Undertaking, [the 2016 Undertaking](#) and this Undertaking. Nothing in this **clause 3.3** applies to a 2001/05/08 Access Agreement. (Note: Take or Pay in the context of new Expansions is addressed in **clause 3.3(n)** below.)
- (b) Subject to **clause 3.3(n)** which applies to Take or Pay in the context of Expansions, where the Access Holder has a Take or Pay with Aurizon Network under an Access Agreement that is not a 2001/05/08 Access Agreement, the Take or Pay will be calculated as follows:
- (i) first, the maximum potential Take or Pay will be calculated based on **clauses 3.3(d) to (f)**; and
 - (ii) second, **clause 3.3(h)** will be applied to determine whether any Take or Pay liability exists; and
 - (iii) third, if Take or Pay liability exists, for the purpose of calculating Tariff Take or Pay in relation to a System Reference Tariff and to that extent only, the maximum potential Take or Pay will be adjusted by applying each of:
 - (A) **clause 3.3(j) (Mine capping)**; and
 - (B) **clause 3.3(k) to (m) (Tariff capping)**,as applicable and in that order to determine the actual Take or Pay payable to Aurizon Network.
- (c) In relation to Take or Pay charges in the context of a Pre-Approval Date Coal Access Agreement where the Access Holder is not a Train Operator, Take or Pay charges will be payable under that Access Agreement (including in relation to the non-operation of Train Services under any relevant train operations agreement). Take or Pay charges will not be payable to Aurizon Network by a Train Operator under a train operations agreement relevant to that Access Holder.
- (d) Subject to **clauses 3.3(h) to (m)**, Take or Pay charges applicable to an Access Holder will be:
- (i) determined for each Year;
 - (ii) invoiced for each Year following completion of that Year; and
 - (iii) calculated as the amount which is 100% of the amount calculated as:

$$(AT_2 \times rtp \times NTS) + \left(AT_3 \times \frac{ntk}{1000} \right) + (AT_4 \times nt)$$

where:

- (A) each of AT_2 , AT_3 and AT_4 inputs for that Access Holder's Access Charges at the rate applicable in that Year;
- (B) the nt and ntk (as applicable) are calculated by:
 - (1) the aggregate nt and ntk (as applicable) that would have been achieved for the relevant Year had the full contracted entitlement been railed for the relevant Train Services; less
 - (2) the aggregate nt and ntk (as applicable) not railed for the relevant Year due to the non-operation of Train Services for an Aurizon Network Cause; less
 - (3) the aggregate nt and ntk (as applicable) railed for the relevant Year; and
- (C) NTS is calculated as:
 - (1) the number of Train Services that the Access Holder would have operated for the relevant Year had the full contracted entitlement been railed for the relevant Train Services; less
 - (2) the number of those Train Services that either:
 - were not able to be operated solely as a result of an Aurizon Network Cause; or
 - were operated (whether loaded or empty) during that Year,

provided always that the amount of Take or Pay for a relevant Year must not be less than zero.

- (e) To calculate nt and ntk for the purpose of **clause 3.3(d)(iii)(B)**, Aurizon Network must:
 - (i) identify from the Access Agreement the number of Train Services that would have operated had the full contracted entitlement been used; and
 - (ii) determine the number of Train Services that did not operate under that contracted entitlement due to an Aurizon Network Cause, provided that if an Access Holder has more than one Access Agreement for the same origin to destination pair, Aurizon Network must allocate those Train Services as between the relevant Access Agreements in the order in

which those Access Agreements were executed (unless the relevant Access Holder has nominated a different order, in which case that order must be applied),

and calculate the nnt and ntk by using the Nominal Train Payload applicable for the relevant Reference Tariff.

- (f) For the purpose of calculating Take or Pay charges, the calculation will be based on the origin and destination specified in the relevant Train Service Entitlement (provided that the Nominated Loading Facilities of RG Tanna Terminal and Barney Point will be treated as the same destination for the purposes of such a calculation).
- (g) For the purpose of calculating Take or Pay charges, an Access Holder's entitlement to operate Train Services is, without limitation, determined by reference to the Train Services that could have been operated in accordance with the Access Holder's Train Service Entitlement including even if:
 - (i) where the Access Holder is not a Train Operator:
 - (A) the Access Holder has not nominated a Train Operator to utilise Access Rights relevant to all or any of the Train Services;
 - (B) either:
 - (1) the Access Holder must ensure a Train Operator does not operate; or
 - (2) Aurizon Network suspends the right of the Access Holder to have a Train Operator operate,all or any of the Train Services; or
 - (C) under the relevant train operations deed, either:
 - (1) the relevant Train Operator must not operate; or
 - (2) Aurizon Network suspends the right of the relevant Train Operator to operate,all or any of the Train Services; or
 - (ii) where the Access Holder is a Train Operator, the Access Holder must not operate, or Aurizon Network suspends the right of the Access Holder to operate, all or any of the Train Services,

except to the extent of any express exceptions specified in the Access Holder's Access Agreement for the purpose of calculating Take or Pay charges where the Access Holder is taken to not have an entitlement to operate Train Services.

Take or Pay trigger

- (h) For the purpose of calculating Tariff Take or Pay in relation to a System Reference Tariff and to that extent only, the Tariff Take or Pay for a Year is not payable for that Year where the aggregate of the gtk for all coal carrying Train Services, to the extent that the Access Charges for those Train Services are set by reference to the relevant Reference Tariff, operated for that Year exceeds the amount calculated as:
- (i) 100% of the Gtk Forecast identified for that Year for that Reference Tariff; less
 - (ii) the gtk not achieved due to the non-operation of Train Services for an Aurizon Network Cause.
- (i) Where Tariff Take or Pay for a System Reference Tariff is being determined, **clauses 3.3(j)** and **(m)** only apply where Tariff Take or Pay is payable after **clause 3.3(h)** has been applied.

Mine capping

- (j) If:
- (i) Train Services operated in relation to an origin to destination in respect of a person (**End User**) who is either the Customer for those Train Services or the Access Holder for those Train Services (but who has no Customer) under an Access Agreement, exceed the Train Service Entitlement in that Access Agreement (**Exceeded Agreement**); and
 - (ii) there is another Access Agreement (excluding Access Agreements executed or renewed prior to 1 October 2010, and New Access Agreements where the relevant Old Access Agreement was executed or renewed within the same period) (**Other Agreement**) with Train Service Entitlements for that same origin to destination and that End User that have not been exceeded,

then the Take or Pay liability under the Other Agreement will be reduced by the amount of the additional revenue from Access Charges for AT₂₋₄ from those excess Train Services under the Exceeded Agreement but only to the extent that both that Take or Pay liability and those Access Charges are set by reference to the same Reference Tariff. For clarity:

- (iii) where the additional revenue is greater than the Take or Pay liability under one or more Other Agreements, that additional revenue may be used to reduce the Take or Pay liability under those Other Agreements (where there is more than one Other Agreement, the reduction will be pro-rated, on the basis of the total revenue from AT₂₋₄ that Aurizon Network is entitled to earn over the relevant Year under each of those

Other Agreements, assuming Train Services were operated with a Nominal Train Payload); and

- (iv) the additional revenue from an Exceeded Agreement can only be used for a reduction of Take or Pay liability under this **clause 3.3(j)** in respect of the Year in which that additional revenue arose and cannot be accrued, rolled over or otherwise used to reduce a Take or Pay liability for any other Year.

Tariff capping

- (k) **Clause 3.3(l)** must only be applied after **clause 3.3(j)** (if applicable) has been applied.
- (l) Subject to **clause 3.3(m)**, and to **clause 3.3(j)** (if applicable) having first been applied, where the Total Actual Revenue for AT₂₋₄ in relation to Access Charges set by reference to the relevant Reference Tariff less the aggregate amount of Tariff Take or Pay that Aurizon Network is entitled to earn from all Access Agreements executed or renewed on or after 30 June 2006 (other than any new or varied Access Agreement to the extent entered or varied as part of transferring Access Rights from existing Access Agreements in place on the day immediately prior to 30 June 2006 under a provision of the Access Agreement which permits the transfer of Access Rights) (**Total Revenue**) is:
 - (i) greater than or equal to the Allowable Revenue for AT₂₋₄ in relation to the relevant Reference Tariff, Tariff Take or Pay is not payable for that Year under those Access Agreements (**Full Take or Pay Agreements**); or
 - (ii) less than the Allowable Revenue for AT₂₋₄ in relation to that Reference Tariff:
 - (A) Aurizon Network must calculate the aggregate amount of Tariff Take or Pay that Aurizon Network is entitled to earn from all Full Take or Pay Agreements (**Total Actual Take or Pay**); and
 - (B) if the Total Actual Take or Pay exceeds the amount by which the Allowable Revenue for AT₂₋₄ in relation to the relevant Reference Tariff exceeds the Total Revenue from Access Charges set by reference to the relevant Reference Tariff (**Maximum Take or Pay Amount**), then:
 - (1) Aurizon Network must calculate for each relevant Access Holder, the proportion that the Access Holder's Tariff Take or Pay amount bears to the Total Actual Take or Pay (**Proportion**); and

- (2) each relevant Access Holder's Tariff Take or Pay amount will be reduced to equal that Access Holder's Proportion of the Maximum Take or Pay Amount.
- (m) In determining what Aurizon Network would be entitled to earn for the purposes of **clause 3.3(I)**, Aurizon Network is deemed to have contracted on the terms of the relevant Standard Access Agreement (as defined under the Applicable Undertaking) that applied on the date of execution or renewal of an Access Agreement, except for:
 - (i) those Access Agreements which have been altered by agreement from that form in a manner consistent with the terms of any Approved Undertaking or approval of the QCA, in which case Aurizon Network's entitlement will be calculated in accordance with the terms of such Access Agreements; and
 - (ii) a New Access Agreement to the extent entered into as part of transferring Access Rights from an Old Access Agreement executed under the 2001 Undertaking, under a provision of the Access Agreement which permits the transfer of Access Rights, in which case Aurizon Network's entitlement to Tariff Take or Pay amounts will be calculated on the basis that Aurizon Network has contracted on the terms of the relevant Standard Access Agreement (as defined under the 2001 Undertaking) that applied on the date of execution of that Old Access Agreement.

Take or Pay for Expansions

- (n) In relation to Take or Pay in the context of an Expansion Tariff:
 - (i) The Take or Pay amount for an Access Holder that is required to pay an Expansion Tariff will be calculated in accordance with:
 - (A) the formulae in **clause 3.3(d)(iii)**; plus
 - (B) $AT5 \times egtk / 1000$;
 where the egtk is calculated by:
 - (C) the aggregate egtk that would have been achieved for the relevant Year had the full contracted entitlement been railed for the relevant Train Services; less
 - (D) the aggregate egtk not railed for the relevant Year due to the non-operation of Train Services for an Aurizon Network Cause; less
 - (E) the aggregate egtk railed for the relevant Year;

provided always that the amount of Take or Pay for the Year must not be less than zero.

- (ii) In order to calculate egtk for the purposes of this clause, Aurizon Network will:
 - (A) identify from the Access Agreement the number of Train Services that would have operated had the full contracted entitlement been used;
 - (B) determine the number of Train Services that did not operate under that contracted entitlement due to an Aurizon Network Cause; and
 - (C) convert this to egtk by using the Nominal Train Payload for the relevant Reference Tariff as reasonably determined by Aurizon Network.
- (iii) For the avoidance of doubt:
 - (A) there is no Take or Pay trigger test – ie, **clause 3.3(h)** does not apply; and
 - (B) there are no capping mechanisms – ie, **clauses 3.3(j) to 3.3(m)** do not apply.

4 Annual review of Reference Tariffs

4.1 Requirement for annual review of Reference Tariffs

- (a) Prior to the beginning of each Year during the Term (except for the first Year) each Reference Tariff will be adjusted by Aurizon Network to reflect the variations to the applicable Allowable Revenue:
 - (i) for the relevant Year due to an adjustment to Second Year Allowable Revenue under **clause 4.4**; and
 - (ii) for the relevant Year and each subsequent Year during the Term in accordance with **clause 4.1(b)**.
- (b) Aurizon Network will submit to the QCA by 28 February of each Year during the Term:
 - (i) a revised Gtk Forecast for each Reference Tariff for the next Year;
 - (ii) details of the methodology, data and assumptions used to estimate the revised Gtk Forecast; and
 - (iii) the proposed adjustments, for each Reference Tariff, arising from any difference between the relevant revised Gtk Forecast and the Gtk Forecast used for the purpose of determining the Allowable Revenue for that Reference Tariff, to:

- (A) the Allowable Revenue for the Reference Tariff for each subsequent Year during the Term; and
 - (B) the Reference Tariff for the next Year.
- (c) If, after receiving a submission under **clause 4.1(b)**, the QCA considers that an error has been made in the proposed revised Gtk Forecast or adjustments to Allowable Revenue or Reference Tariffs, then:
 - (i) the QCA will endeavour to notify Aurizon Network within forty (40) Business Days, providing details of the error and how the proposal needs to be amended in order for the QCA to approve it; and
 - (ii) after receiving that notice, Aurizon Network must within ten (10) Business Days either:
 - (A) show why it does not consider that the error has been made; or
 - (B) resubmit a corrected version of the submission.
- (d) The QCA may approve the revised Gtk Forecast, Allowable Revenues and Reference Tariffs if it considers that the revised Gtk Forecast is reasonable and the consequential adjustments to Allowable Revenues and Reference Tariffs are calculated properly.
- (e) If Aurizon Network does not make a submission under **clause 4.1(b)** in respect of a Year by 28 February, then no adjustments to the Gtk Forecast, Allowable Revenues or Reference Tariffs for that Year will be made under this **clause 4.1**.

4.2 Allowable Revenue

- (a) Subject to **clause 4.2(b)**, the Allowable Revenue:
 - (i) for AT₂₋₄ in relation to a Reference Tariff for a Year, is the total revenue from AT₂₋₄ arising from all Tariff Based Access Agreements in relation to that Reference Tariff that Aurizon Network is entitled to earn over the relevant Year as specified in the Reference Tariff (for example, as specified in **clauses 7.3, 8.3, 9.3, 10.3 and 11.3 of Schedule F**, as applicable), as amended from time to time, and as adjusted or varied in accordance with this **Schedule F** (but, for clarity, excluding any Adjusted Allowable Revenue); and
 - (ii) for the AT₅ component of Access Charges in relation to a Reference Tariff for a Year, is the total revenue from the AT₅ component of Access Charges arising from all Tariff Based Access Agreements in relation to that Reference Tariff that Aurizon Network is entitled to earn over the relevant Year as specified in the Reference Tariff (for example, as specified in **clauses 7.3 and 8.3 of Schedule F**, as applicable) as

amended from time to time, and as adjusted or varied in accordance with this **Schedule F**.

- (b) Unless otherwise agreed with the QCA, when calculating Allowable Revenue in relation to the Origin Tariff and the Destination Tariff for a Cross System Train Service, regardless of when the Cross System Train Service commenced:
 - (i) for the Allowable Revenue for AT_{2-4} :
 - (A) the sum of the following components of Access Charges that Aurizon Network would be expected to earn in respect of a forecast Cross System Train Service:
 - (1) the AT_2 components calculated based on the relevant Destination Tariff and on **clause 2.3(a)(ii) of Schedule F**; and
 - (2) 50% of the AT_3 components calculated based on the relevant Destination Tariff, will be allocated to Allowable Revenue for the Destination Tariff; and
 - (B) all other Access Charges attributable to AT_{2-4} which Aurizon Network would be expected to earn in respect of a forecast Cross System Train Service calculated based on the Origin Tariff applicable to that Cross System Train Service, will be allocated to the Allowable Revenue of the Origin Tariff; and
 - (ii) for the Allowable Revenue for AT_5 , the AT_5 component of Access Charges that Aurizon Network would be expected to earn in respect of a forecast Cross System Train Service, calculated based on:
 - (A) the Origin Tariff and the egtk in the Origin System, will be allocated to the Allowable Revenue for the Origin Tariff; and
 - (B) the Destination Tariff and the egtk in the Destination System, will be allocated to the Allowable Revenue for the Destination Tariff.

4.3 Calculation of Revenue Adjustment Amounts

Obligation to calculate Revenue Adjustment Amounts

After the end of each Year, Aurizon Network will calculate for that Year for each Reference Tariff:

- (a) an AT_{2-4} Revenue Adjustment Amount for that Reference Tariff by subtracting:

- (i) the Adjusted Allowable Revenue for AT₂₋₄ (calculated under **clause 4.3(c)**) for that Reference Tariff; from
 - (ii) the Total Actual Revenue for AT₂₋₄ (calculated under **clause 4.3(d)**) in relation to that Reference Tariff,
- for that Year; and
- (b) an AT₅ Revenue Adjustment Amount for that Reference Tariff by subtracting:
 - (i) the Adjusted Allowable Revenue for AT₅ (calculated under **clause 4.3(c)**) for that Reference Tariff; from
 - (ii) the Total Actual Revenue for AT₅ (calculated under **clause 4.3(g)**) in relation to that Reference Tariff,
- for that Year.

Calculation of Adjusted Allowable Revenue

- (c) The Adjusted Allowable Revenue for AT₂₋₄ or the AT₅ component of Access Charges in relation to a Reference Tariff is the sum of the following components of the applicable Allowable Revenue (as relevant to the applicable Allowable Revenue):
 - (i) the component relating to the recovery of Aurizon Network's maintenance costs, adjusted to reflect the difference between:
 - (A) the actual MCI value for the relevant Year; and
 - (B) the forecast MCI value that was used for the purpose of determining the relevant Reference Tariff for the relevant Year;
 - (ii) the component relating to the recovery of Aurizon Network's operating costs, excluding those costs referred to in **clause 4.3(c)(i)**, adjusted to reflect the difference between:
 - (A) the actual CPI value for the relevant Year; and
 - (B) the forecast CPI value that was used for the purpose of determining the relevant Reference Tariff for the relevant Year;
 - (iii) the components relating to the recovery of Aurizon Network's costs associated with the connection of Aurizon Network's electrical traction system to an electricity transmission or distribution network, adjusted to reflect the difference between:
 - (A) the actual costs for the relevant Year; and
 - (B) the forecast costs used for the purpose of determining the relevant Reference Tariff for the relevant Year;

- (iv) the components relating to the recovery of Aurizon Network's costs for the cost of audits required under this Undertaking by the QCA for the relevant Year, but only to the extent that the QCA has approved in writing the relevant audit costs as efficiently incurred and such costs are not already recoverable by Aurizon Network elsewhere in this Undertaking;
- (v) the components relating to the recovery of Aurizon Network's costs for the cost of any Conditions Based Assessment required under this Undertaking by the QCA for the relevant Year, but only to the extent that the QCA has approved in writing the relevant Condition Based Assessment costs as efficiently incurred and such costs are not already recoverable by Aurizon Network elsewhere in this Undertaking;
- (vi) the component relating to the recovery of Aurizon Network's costs for ground penetrating radar measurement, but only to the extent that these costs have been prudently and efficiently incurred and are not already recoverable by Aurizon Network elsewhere in this Undertaking;
- (vii) the components relating to the payment by Aurizon Network of rebates relating to the capital components of Access Charges attributable to the use of all or part of specified assets relating to the relevant Reference Tariff (other than under a User Funding Agreement), adjusted to reflect the difference between:
 - (A) the actual payment of rebates made under those agreements for the applicable assets; and
 - (B) the forecast payments of those rebates used for the purpose of determining the relevant Reference Tariff for the relevant Year;
- (viii) the components relating to the recovery of Aurizon Network's costs relating to, or arising out of compliance with this Undertaking that were not allowed for in the determination of the relevant Reference Tariff, but only to the extent that the QCA has approved in writing the relevant costs as efficiently incurred and such costs are not already recoverable by Aurizon Network elsewhere in this Undertaking; and
- (ix) all components excluding those costs referred to in any of **clauses 4.3(c)(i) to (viii)**.

Calculation of Total Actual Revenue for AT₂₋₄

- (d) The Total Actual Revenue for AT₂₋₄ in relation to the relevant Reference Tariff is the sum of:

- (i) total revenue from AT₂₋₄, including all revenue from Overload Charges and any Ancillary Revenues relating to maintaining connections to Private Infrastructure (except to the extent that costs associated with maintaining connections to any Private Infrastructure are not specifically allowed for in the relevant Reference Tariff), for coal carrying Train Services, in relation to the relevant Reference Tariff that operated in the Year, that Aurizon Network would have earned (regardless of what it actually earned or collected), if that revenue were calculated consistent with the following:
- (A) for a Train Service that is:
 - (1) consistent with the relevant Reference Train Service; and
 - (2) is not a Cross System Train Service, the AT₂, AT₃ and AT₄ components of the relevant Reference Tariff;
 - (B) for a Cross System Train Service that is consistent with the relevant Reference Train Service (to the extent that the relevant Reference Tariff applies), that part of the AT₂, AT₃ and AT₄ components of the relevant Reference Tariff allocated consistently with the method used in the calculation of the relevant Allowable Revenue under **clause 4.2(b)**;
 - (C) for a Train Service that varies from the relevant Reference Train Service due to it not complying with:
 - (1) **clause 1.3(b)(v)**, the AT₂ component of the Access Charge (where the Access Charge varies from the Reference Tariff under **clause 6.2.3(c)** of this Undertaking) and the AT₃ and AT₄ components of the relevant Reference Tariff; or
 - (2) any other part of **clause 1.3(b), (d) or (e)** (other than **clause 1.3(b)(v)** – with which it complies), the AT₂, AT₃ and AT₄ components of the relevant Reference Tariff; or
 - (D) for a Train Service where the QCA has otherwise approved an Access Charge that differs from the relevant Reference Tariff, the amount of the AT₂, AT₃ and AT₄ components of the relevant Access Charge;
- (ii) the amount of all Take or Pay and, subject to **clause 4.3(e)**, Relinquishment Fees and Transfer Fees which Aurizon

Network would be entitled to be paid in the relevant Year under Tariff Based Access Agreements, for coal carrying Train Services, in relation to the relevant Reference Tariff (or, for a Cross System Train Service, to the extent the relevant Reference Tariff applies to the setting of Access Charges for that Cross System Train Service) calculated on the basis that Aurizon Network is deemed to have contracted on the terms of the relevant Standard Access Agreement (as defined under the Applicable Undertaking) that applied on the date of execution or renewal of an Access Agreement, except for:

- (A) those Access Agreements which have been altered from the relevant Standard Access Agreement in accordance with any Approved Undertaking or as approved by the QCA, for which Aurizon Network's entitlement to Take or Pay amounts, Relinquishment Fees or Transfer Fees will be calculated in accordance with the terms of those Access Agreements; and
 - (B) a New Access Agreement to the extent entered into as part of transferring Access Rights from an Old Access Agreement executed under the 2001 Undertaking, under provisions of the Access Agreement which permits the transfer of Access Rights, which has not been renewed after 30 June 2006, for which Aurizon Network's entitlement to Take or Pay amounts, Relinquishment Fees and Transfer Fees will be calculated on the basis that Aurizon Network has contracted on the terms of the relevant Standard Access Agreement (as defined under the 2001 Undertaking) that applied on the date of execution of that Old Access Agreement; and
- (iii) all revenue from AT₂₋₄ that Aurizon Network would have been entitled to earn under a Tariff Based Access Agreement in relation to the relevant Reference Tariff during the relevant Year but for Aurizon Network's breach of that Access Agreement or negligence in the provision of Below Rail Services to the extent that such events of breach or negligence resulted in the non-provision of 5% or more of the total number of Train Services for any single origin-destination pair during the relevant Year (provided that, where Access Rights are held by a party that is not a Train Operator, the 5% threshold is measured across the number of Train Services for each single origin to destination pair under that Access Agreement, not any relevant train operations deed),

less any interest comprised in those amounts representing interest paid or payable to Aurizon Network in relation to Access Charges (including any Adjustment Charges).

- (e) Subject to the QCA's approval, Aurizon Network may reduce the amount of any Relinquishment Fee or Transfer Fee used to calculate Total Actual Revenue for a Year if its inclusion will have a material effect on the AT₂₋₄ Revenue Adjustment Amount.
- (f) If Aurizon Network reduces the amount of any Relinquishment Fee or Transfer Fee under **clause 4.3(e)** of **Schedule F**, then the amount of the reduction must be carried forward to a following Year, including a return on capital amount, calculated by reference to the Discount Rate over the period starting on the first day of the Year in which the Relinquishment Fee or Transfer Fee is received and ending on the first day of the Year in which the Relinquishment Fee or Transfer Fee is included in the calculation of Total Actual Revenue.

Calculation of Total Actual Revenue for the AT₅ component of Access Charges

- (g) The Total Actual Revenue for the AT₅ component of Access Charges in relation to the relevant Reference Tariff is the sum of:
 - (i) total revenue from the AT₅ component of Access Charges arising from all Tariff Based Access Agreements, for coal carrying Train Services, in relation to the relevant Reference Tariff that Aurizon Network has actually earned over the relevant Year (whether or not actually collected by Aurizon Network), calculated using:
 - (A) for a Train Service for which **clause 6.9.1(b)** of this Undertaking applies, the amount of the AT₅ component of the relevant Access Charges; or
 - (B) if **paragraph (A)** does not apply:
 - (1) for a Cross System Train Service that is consistent with the relevant Reference Train Service, the AT₅ component of the relevant Reference Tariff allocated consistently with the method used in the calculation of the relevant Allowable Revenue under **clause 4.2(b)**; or
 - (2) where **paragraph (1)** does not apply, the AT₅ component of the relevant Reference Tariff; and
 - (ii) all revenue from the AT₅ component of Access Charges that Aurizon Network would have been entitled to earn under a Tariff Based Access Agreement in relation to the relevant Reference Tariff during the relevant Year but for Aurizon Network's breach of that Access Agreement or negligence in

the provision of Below Rail Services to the extent that such events of breach or negligence resulted in the non-provision of 5% or more of the total number of Train Services for any single origin-destination pair during the relevant Year (provided that, where Access Rights are held by a party that is not a Train Operator, the 5% threshold is measured across the number of Train Services for each single origin to destination pair under that Access Agreement, not any relevant train operations deed),

less any interest comprised in those amounts representing interest paid or payable to Aurizon Network in relation to Access Charges (including any Adjustment Charges).

Approval of Revenue Adjustment Amounts

- (h) Aurizon Network will submit to the QCA by 30 September after the end of each Year of the Term details of the methodology, data and assumptions used to calculate the Revenue Adjustment Amounts for that Year under this **clause 4.3** and **clause 4.4** provided that if, in that September, Adjustment Charges have not yet been approved relating to the relevant Year, then Aurizon Network is only required to submit the relevant information within thirty (30) days after those Adjustment Charges have been approved.
- (i) The QCA may give Aurizon Network a notice requiring Aurizon Network to submit the Revenue Adjustment Amounts, if Aurizon Network fails to do so under **clause 4.3(h)**.
- (j) The QCA may grant Aurizon Network an extension of the time for submitting, or resubmitting, the Revenue Adjustment Amounts if:
 - (i) Aurizon Network provides a written request to the QCA for an extension of time; and
 - (ii) the extension of time is reasonable or necessary.If an extension of time is granted, Aurizon Network will submit the Revenue Adjustment Amounts within the time specified by the QCA.
- (k) The QCA may calculate Revenue Adjustment Amounts that are consistent with the requirements specified in this **clause 4.3**:
 - (i) if Aurizon Network does not comply with a notice from the QCA under **clause 4.3(h)** or **4.3(n)(ii)**; or
 - (ii) if the QCA, under **clause 4.3(n)(ii)**, refuses to approve the Revenue Adjustment Amounts resubmitted by Aurizon Network.
- (l) Where Aurizon Network submits the Revenue Adjustment Amounts under **clause 4.3(h)**, the QCA may, to the extent it considers it appropriate to do so:
 - (i) publish details of the Revenue Adjustment Amounts; and

- (ii) invite and consider comments from stakeholders regarding the Revenue Adjustment Amounts.

To the extent that such comments are provided, the QCA must give Aurizon Network a reasonable period to respond to those comments.

- (m) The QCA will approve any Revenue Adjustment Amounts if the QCA is reasonably satisfied that they have been calculated in accordance with this **clause 4.3**.
- (n) If the QCA:
 - (i) approves the Revenue Adjustment Amounts, the QCA will give Aurizon Network a notice stating the reasons for the QCA's decision; or
 - (ii) refuses to approve the Revenue Adjustment Amounts, the QCA will give Aurizon Network a notice:
 - (A) stating the reasons for its refusal and the way in which it considers that the Revenue Adjustment Amounts should be amended; and
 - (B) requiring Aurizon Network to amend the Revenue Adjustment Amounts in that way and to resubmit the Revenue Adjustment Amounts to the QCA within thirty (30) days after Aurizon Network receives that notice.
- (o) Aurizon Network must comply with a notice under **clause 4.3(n)(ii)**.
- (p) The QCA may approve Revenue Adjustment Amounts resubmitted by Aurizon Network or developed by the QCA under **clause 4.3(j)**, if it is satisfied that they:
 - (i) are consistent with the matters specified under **clause 4.3(l)**; and
 - (ii) if a notice has been issued under **clause 4.3(n)(ii)**, have been amended or developed in accordance with that notice.
- (q) Despite any other provision of this Undertaking, to the extent that:
 - (i) Adjustment Charges have been approved for a Year;
 - (ii) Aurizon Network is entitled or obliged to recover or reimburse those Adjustment Charges from or to Access Holders;
 - (iii) Aurizon Network is obliged under this Undertaking to calculate Revenue Adjustment Amounts in respect of that Year; and
 - (iv) in recovering or reimbursing the Adjustment Charges, the Adjustment Charges are included in an invoice relating to a Billing Period in the Year in which the relevant Revenue Adjustment Amounts are required to be calculated,

then, the Total Actual Revenue for AT₂₋₄ or AT₅ for each relevant Coal System for that Year and the Year in which the relevant Revenue Adjustment Amounts are required to be calculated must be adjusted to take account of the Adjustment Charges (but excluding the interest component of those Adjustment Charges).

4.4 Revenue adjustment

- (a) Where a Revenue Adjustment Amount has been approved by the QCA under **clause 4.3**:
- (i) the equivalent Allowable Revenue to that used in the calculation of that Revenue Adjustment Amount for the relevant Reference Tariff for the Year after the Year in which that Revenue Adjustment Amount was calculated (that is, the **Second Year Allowable Revenue**) must be adjusted in accordance with this **clause 4.4**; and
 - (ii) the Allowable Revenue for all subsequent Years must also be adjusted to reflect the actual change in the MCI and CPI as used in the calculation of the approved Revenue Adjustment Amount.
- (b) A Second Year Allowable Revenue will be adjusted as follows:
- (i) for an AT₂₋₄ Revenue Adjustment Amount, by subtracting from the relevant Second Year Allowable Revenue:
 - (A) that AT₂₋₄ Revenue Adjustment Amount; and
 - (B) a return on capital amount, calculated by reference to the Discount Rate as applied to the AT₂₋₄ Revenue Adjustment Amount over the period starting on the first day of the Year in which the Revenue Adjustment Amount is calculated and ending on the last day of the Year following that Year; and
 - (ii) for an AT₅ Revenue Adjustment Amount, by subtracting from the relevant Second Year Allowable Revenue:
 - (A) that AT₅ Revenue Adjustment Amount; and
 - (B) a return on capital amount, calculated by reference to the Discount Rate as applied to the AT₅ Revenue Adjustment Amount over the period starting on the first day of the Year in which the Revenue Adjustment Amount is calculated and ending on the last day of the Year following that Year.
- (c) Where a Second Year Allowable Revenue is adjusted under this **clause 4.4**, Aurizon Network must vary the relevant Reference Tariff as part of the adjustment of the relevant Reference Tariff under **clause 4.1(a)**.

5 Reference Tariff variations

5.1 Obligation to submit Reference Tariff variations

- (a) Aurizon Network:
 - (i) may submit a Reference Tariff variation to the QCA, where Aurizon Network considers that the variation will promote efficient investment by either Aurizon Network or another person in the Supply Chain; or
 - (ii) must submit a Reference Tariff variation to the QCA, subject to **clause 5.6**:
 - (A) within sixty (60) days after:
 - (1) Aurizon Network becomes aware that an Endorsed Variation Event has occurred or a Review Event has occurred or will occur; or
 - (2) a notice being given to Aurizon Network by the QCA under **clause 5.1(b)**; or
 - (B) by 28 February prior to each Year of the Term, in accordance with **clause 4.1(a)** (if applicable).
- (b) The QCA may give Aurizon Network a notice requiring Aurizon Network to submit a Reference Tariff variation if Aurizon Network fails to submit a Reference Tariff variation within sixty (60) days, subject to **clause 5.6**, after the QCA determines, and notifies Aurizon Network, that an Endorsed Variation Event or a Review Event has occurred.
- (c) The QCA may develop a Reference Tariff variation that is consistent with the requirements specified in this **clause 5**:
 - (i) if Aurizon Network does not comply with a written notice given by the QCA under **clause 5.1(b)** or **clause 5.5(e)(ii)** for it to submit, or resubmit, a Reference Tariff variation; or
 - (ii) if the QCA refuses to approve a Reference Tariff variation resubmitted by Aurizon Network in accordance with a notice given by the QCA under **clause 5.5(e)(ii)**.
- (d) A Reference Tariff variation under this **clause 5** will include a revised GtK Forecasts and Allowable Revenues to the extent applicable to that Reference Tariff variation.

5.2 Endorsed Variation Events

The occurrence of any of the following events is an Endorsed Variation Event:

- (a) a Change in Law or a Change in Relevant Taxes occurs, that either alone or in combination with all other Changes in Law or Changes in Relevant Taxes that have occurred since the Commencing Date, would cause a change in the costs reflected in the AT₃, AT₄, and/or

AT₅ input of the relevant Reference Tariff of greater than 2.5% excluding the impact of any Change in Law or Change in Relevant Taxes that have previously resulted in a variation of the Reference Tariff;

- (b) a change in the pricing of one or more Distribution Entities and/or Transmission Entities that, either alone or in combination with all other changes in the pricing of relevant Distribution Entities and/or Transmission Entities that have occurred since the Commencing Date and that have not previously resulted in a variation of the Reference Tariff, would cause a change in the costs reflected in the AT₅ input of the relevant Reference Tariff of greater than 2.5%; or
- (c) the QCA Levy input of a relevant Reference Tariff is reviewed (taking into account any over or under recovery of fees via the QCA Levy component of Access Charges in the previous Year) following the QCA's announcement of its fees for the provision of regulatory services for the rail industry.

5.3 Review Event

The occurrence of a Force Majeure Event – of the type set out in either **paragraph (e), (l) or (m)** of the definition of that term – affecting Aurizon Network, to the extent that Aurizon Network has incurred or will incur additional Incremental Costs of greater than \$1 million that have not previously resulted in a variation of the relevant Reference Tariff, is a Review Event in respect of which Aurizon Network has given written notice to the QCA of Aurizon Network's intention to propose a variation to that Reference Tariff under this **clause 5**.

5.4 Requirements for submissions

Where Aurizon Network submits a Reference Tariff variation, the variation must:

- (a) nominate the Reference Tariff to be varied;
- (b) include details of the methodology, data and assumptions used to vary the Reference Tariff;
- (c) for a variation under **clause 5.1(a)(i)**, include information on:
 - (i) the matters set out in **clause 6.6** (Pricing limits) of this Undertaking; and
 - (ii) why Aurizon Network considers that the variation of the Reference Tariff will promote efficient investment by either Aurizon Network or another person in the Supply Chain; and
- (d) for a variation in respect of an Endorsed Variation Event or a Review Event, evidence that the Endorsed Variation Event or Review Event has occurred or will occur.

5.5 Approval process

- (a) The QCA may publish details of Aurizon Network's proposed Reference Tariff variation and invite and consider comments from stakeholders regarding the proposed variation.
- (b) The QCA must give Aurizon Network a reasonable opportunity to respond to any comments from stakeholders that the QCA considers regarding the proposed variation. The QCA must consider all such responses from Aurizon Network.
- (c) The QCA may approve Aurizon Network's proposed Reference Tariff variation if the QCA is satisfied that:
 - (i) for a variation in respect of an Endorsed Variation Event:
 - (A) the Endorsed Variation Event has occurred; and
 - (B) the variation of the Reference Tariff is consistent with the change in the forecast cost resulting from the Endorsed Variation Event (including incremental maintenance and incremental capital costs), calculated as if all other assumptions originally used for the determination of Reference Tariffs are held constant;
 - (ii) for a variation in respect of a Review Event:
 - (A) the Review Event has occurred or will occur; and
 - (B) the variation of the relevant Reference Tariff:
 - (1) is consistent with the change in the cost resulting from or that will result from the Review Event; and
 - (2) reflects the impact of the relevant Review Event on the financial position of Aurizon Network (including the impact of incremental maintenance and incremental capital costs); and
 - (iii) for a variation in respect of either an Endorsed Variation Event or a Review Event, whether the proposed variation has been calculated as if all other Reference Tariffs were also being recalculated due to the Endorsed Variation Event or Review Event (as applicable).
- (d) If the QCA approves a Reference Tariff variation:
 - (i) the QCA will give Aurizon Network a notice stating the reasons for the QCA's decision;
 - (ii) the Reference Tariff variation will apply, where the variation arose as a result of:

- (A) an Endorsed Variation Event:
 - (1) from the first day of the Month immediately following the date of the occurrence of the Endorsed Variation Event; or
 - (2) where the date of the occurrence of the Endorsed Variation Event is the first day of a Month, from that date;
 - (B) an adjustment of Reference Tariffs under **clause 4.1**, from 1 July of the Year following the Year in which the variation was submitted; or
 - (C) a Review Event, from the date approved by the QCA (being a date that may be before, on or after the date on which the QCA approved that Reference Tariff variation); and
- (iii) Aurizon Network must:
- (A) publish details of the Reference Tariff variation on the Website; and
 - (B) advise Access Holders and Access Seekers, in respect of the relevant Reference Train Service, of the Reference Tariff variation.
- (e) If the QCA refuses to approve a Reference Tariff variation, the QCA will give Aurizon Network a notice:
- (i) stating the reasons for its refusal and the way in which the QCA considers that the variation should be amended; and
 - (ii) if that variation was required to be submitted by Aurizon Network under this **clause 5** in respect of an Endorsed Variation Event or a Review Event, requiring Aurizon Network to vary the Reference Tariff in the way the QCA considers it appropriate and to resubmit the variation to the QCA within twenty (20) Business Days after Aurizon Network receiving the notice, subject to **clause 5.6**.
- (f) Aurizon Network must comply with a notice given under **clause 5.5(e)**.
- (g) When considering whether to approve a resubmitted Reference Tariff variation or a Reference Tariff variation developed by the QCA under **clause 5.1(c)**, the QCA must take into account:
- (i) the matters specified under **clause 5.5(c)** (as applicable); and
 - (ii) if applicable, whether the variation has been amended or developed in accordance with the QCA's prior decision (if

any) to refuse to approve the relevant Reference Tariff variation.

- (h) For the purposes of **clause 5.1**:
 - (i) a Reference Tariff variation submitted by Aurizon Network or developed by the QCA under **clause 5.1** must include a review of Allowable Revenue and GtK Forecast to the extent applicable to that variation; and
 - (ii) the QCA in approving a variation of a Reference Tariff must also approve the corresponding variation of the applicable Allowable Revenue and GtK Forecast.

5.6 Extensions of time

- (a) The QCA may grant Aurizon Network an extension of the time for submitting, or resubmitting, a Reference Tariff variation if:
 - (i) Aurizon Network provides a written request to the QCA for an extension of time which includes the reasons why Aurizon Network requires the extension of time; and
 - (ii) the extension of time is reasonable or necessary.
- (b) If the QCA grants Aurizon Network an extension of time under **clause 5.6(a)**, Aurizon Network must submit or resubmit the Reference Tariff variation within the time specified by the QCA.

6 Adjustment Charges

6.1 Calculation of Adjustment Charges

- (a) Subject to **clause 6.3**, if:
 - (i) this Undertaking specifies that a Reference Tariff is applicable or effective from a date prior to the date on which that Reference Tariff was approved by the QCA; or
 - (ii) a variation of a Reference Tariff (including a variation approved under **clause 5**) is applicable or effective from a date prior to the date on which the variation was approved by the QCA,

Aurizon Network is entitled to recover from or will reimburse to, as applicable, each relevant Access Holder (or, if applicable, Train Operator if it pays a component of the Access Charges the amount (**Adjustment Amount**) which is the sum of:

- (iii) the aggregate of the differences, for each relevant Access Holder (or, if applicable, Train Operator) for each calendar Month (or part thereof) since the date on which the Reference Tariff or the variation of the Reference Tariff was to apply or take effect (**Effective Date**) until the date on which that Reference Tariff was approved by the QCA or the

variation of the Reference Tariff was made, as applicable, between:

- (A) the Access Charges paid or payable by that Access Holder (or, if applicable, Train Operator) in respect of the Train Services operated by or for that Access Holder (or, if applicable, Train Operator) during that calendar Month (or part thereof); and
 - (B) the Access Charges that would have been paid or payable by that Access Holder (or, if applicable, Train Operator) in respect of those Train Services if the Access Charges were calculated in accordance with the Reference Tariff or the variation of the Reference Tariff referred to in **clause 6.1(a)(i)** or **(ii)** on and from the Effective Date; and
- (iv) the aggregate of the interest calculated in accordance with **clause 6.1(b)** in respect of the amount of each difference comprising the amount calculated in accordance with **clause 6.1(a)(iii)**,

by making adjustments to the Access Charges (**Adjustment Charge**) payable by Access Holders (or, if applicable, Train Operator if it pays a component of the Access Charges so as to recover or reimburse, as applicable, the Adjustment Amount (subject to the provisions of this Undertaking). To the extent that the Access Holder (or, if applicable, Train Operator) has not paid the original Access Charge to which an Adjustment Charge relates, then the Adjustment Charge may be set off against the amount payable by the Access Holder (or, if applicable, Train Operator).

- (b) The interest referred to in **clause 6.1(a)(iv)** must be calculated:
- (i) in respect of the amount of each difference comprising the amount calculated under **clause 6.1(a)(iii)**;
 - (ii) on the basis that the interest:
 - (A) accrues and is charged from day to day; and
 - (B) is capitalised at the end of each Month and will thereafter itself bear interest;
 - (iii) at the rate equal to, for interest accruing in a Month:
 - (A) the mid-point of the one Month Bank Bill Swap Rate as published by the Australian Financial Markets Association (or its successor) for the Business Day immediately prior to the 21st day of the previous Month; or
 - (B) if that rate is no longer published, the rate will be an appropriate equivalent rate determined by Aurizon Network, acting reasonably; and

- (iv) for the period commencing on the date when the Access Charges used to calculate the applicable difference in accordance with **clause 6.1(a)(iii)(A)** were due and payable and ending on the date when the Adjustment Charge is to be due and payable,

provided that if Aurizon Network is required to reimburse an Adjustment Charge, then no interest will be calculated to the extent that the Access Holder (or, if applicable, Train Operator) has not paid the original Access Charge to which the Adjustment Charge relates.

6.2 Approval of Adjustment Charges

- (a) Aurizon Network:
 - (i) may, if it submits a Reference Tariff variation under **clause 5.1** and that variation is proposed to apply or take effect on a date prior to the date on which the QCA will approve the variation; or
 - (ii) must, if:
 - (A) the QCA approves a Reference Tariff variation under **clause 5.1** and that variation applies or takes effect on a date prior to the date on which the QCA approves the variation (and subject to **clause 6.2(a)(i)**); or
 - (B) this Undertaking specifies that a Reference Tariff is applicable or effective from a date prior to the date on which that Reference Tariff was approved by the QCA,submit to the QCA proposed Adjustment Charges.
- (b) Where Aurizon Network submits proposed Adjustment Charges to the QCA under **clause 6.2(a)**:
 - (i) Aurizon Network's submission must, without limitation:
 - (A) identify, subject to **clause 6.3(a)**, the Access Holders (or, if applicable, Train Operator) in respect of whom the proposed Adjustment Charges are to be applied;
 - (B) set out the proposed Adjustment Charges for each Access Holder (or, if applicable, Train Operator) including details of how those proposed Adjustment Charges were calculated;
 - (C) indicate the Billing Period(s) in respect of which the proposed Adjustment Charges are to be applied; and

- (D) if applicable, how the proposed Adjustment Charges are to be allocated for the purposes of calculations under **clause 4.3**;
- (ii) if the QCA considers it appropriate, the QCA may publish details of Aurizon Network's submission of proposed Adjustment Charges and invite and consider comments from stakeholders regarding the proposed Adjustment Charges; and
- (iii) the QCA must approve:
 - (A) the Access Holders (and, if applicable, Train Operators) in respect of whom the Adjustment Charges are to apply;
 - (B) the Adjustment Charges that are to apply to each Access Holder (and, if applicable, Train Operator);
 - (C) the Billing Period(s) in respect of which the Adjustment Charges will be applied; and
 - (D) if applicable, how the Adjustment Charges must be allocated for the purposes of calculations under **clause 4.3**,

if the proposed Adjustment Charges submitted by Aurizon Network (excluding any interest component) constitute no more of a recovery or no less of a reimbursement of any under or over recovery of Access Charges by Aurizon Network that relate to each Access Holder (or, if applicable, Train Operator), and any interest component was calculated under **clause 6.1(b)(iii)(B)**.
- (c) Aurizon Network must comply with an approval of the QCA given under **clause 6.2(b)(iii)** or **6.2(f)** including in applying the Adjustment Charge approved for each Access Holder to the calculation of Access Charges payable by that Access Holder (or, if applicable, Train Operator).
- (d) If the QCA refuses to approve Aurizon Network's submission for an Adjustment Charge, the QCA must give Aurizon Network a notice:
 - (i) stating the reasons for its refusal and the way in which the QCA considers the proposed Adjustment Charge should be amended so as to constitute (excluding any interest component) no more of a recovery or no less of a reimbursement of any under or over recovery of Access Charges by Aurizon Network that relate to each Access Holder (or, if applicable, Train Operator); and
 - (ii) requiring Aurizon Network to vary the proposed Adjustment Charge in the way the QCA considers it appropriate and

resubmit the amended proposal to the QCA within thirty (30) days of Aurizon Network receiving the notice.

- (e) Aurizon Network must comply with a notice given under **clause 6.2(d)**.
- (f) The QCA must approve a resubmitted proposal for Adjustment Charges, if the resubmitted proposal has been amended or developed in accordance with the QCA's notice given under **clause 6.2(d)** and the QCA is satisfied that the proposed Adjustment Charges resubmitted by Aurizon Network (excluding any interest component) constitute no more of a recovery or no less of a reimbursement of any under or over recovery of Access Charges by Aurizon Network that relate to each Access Holder (or, if applicable, Train Operator).

6.3 Application to Access Holders and Train Operators

- (a) An Adjustment Charge may only apply to:
 - (i) an Access Holder (**New Access Holder**) that did not run, or cause a Train Operator to run; or
 - (ii) a Train Operator (**New Train Operator**) that did not operate, the Train Services to which that Adjustment Charge relates (**Past Train Services**) if:
 - (iii) the Access Holder who ran (or caused a Train Operator to run) or the Train Operator who operated (as applicable), the Past Train Services no longer has (or, at the time when the Adjustment Charges are to be applied, will have ceased to have) a rail haulage agreement with the Customer relating to the Past Train Services or in respect of Train Services with the same origin and destination as the Past Train Services;
 - (iv) either:
 - (A) the New Access Holder or New Train Operator (as applicable) has a rail haulage agreement with the person who was the Customer referred to in **clause 6.3(a)(iii)** (including that Customer's successors and assigns) in respect of Train Services with the same origin and destination as the Past Train Services; or
 - (B) the New Access Holder was that Customer (or is that Customer's successor or assign); and
 - (v) either:
 - (A) for a New Access Holder, the New Access Holder has been granted Access Rights with the same origin and destination as the Past Train Services; or
 - (B) for a New Train Operator, the New Train Operator's Train Operations Deed includes right to operate

Train Services with the same origin and destination as the Past Train Services.

- (b) No Adjustment Charge will apply to an Access Holder who ran the Past Train Services if that Access Holder has, at the time when the Adjustment Charges are to be applied, ceased to have a rail haulage agreement with the Customer for the Past Train Services (including that person's successors and assigns) in respect of Train Services with the same origin and destination as the Past Train Services provided that with the cessation of that rail haulage agreement, the applicable Access Rights were either relinquished or expired.
- (c) For clarity:
- (i) where:
- (A) an Access Holder does not have a Train Operator; and
- (B) if that Access Holder had a Train Operator, Adjustment Charges would be applied to that Train Operator in accordance with **clause 6.2(a)**,
- any such Adjustment Charge will apply to the Access Holder; or
- (ii) where:
- (A) a Past Train Service was or was entitled to be operated under an Access Agreement by a relevant Train Operator (**Past Train Operator**);
- (B) there is no New Access Holder; and
- (C) either the Access Holder, at the time when the Adjustment Charges are to be applied:
- (1) does not have a Train Operator under that Access Agreement; or
- (2) has a Train Operator but that person is not the Past Train Operator,
- any such Adjustment Charge will:
- (D) if there is no Train Operator, apply to the Access Holder; or
- (E) otherwise, apply to the relevant Train Operator.
- (d) The calculation of Access Charges under an Access Agreement must be reviewed and varied to provide for the payment of Adjustment Charges in respect of the relevant Access Holder (or, if applicable, Train Operator) including:
- (i) that the Access Charges payable by the Access Holder (or, if applicable, Train Operator) must include any applicable

Adjustment Charge from time to time in relation to or in connection with any variation of a Reference Tariff that applies or takes effect on a past date or any Reference Tariff that this Undertaking states is applicable or effective from a past date; and

- (ii) that an Adjustment Charge must be applied to the calculation of the amount of the invoice for charges payable by the Access Holder (or, if applicable, Train Operator) under the Access Agreement for the relevant Billing Period.

7 Blackwater System – System Reference Tariff

7.1 Additional Reference Train Service criteria

In addition to **clause 1.3**, the Reference Train Service to which this **clause 7** applies must also satisfy the following criteria:

- (a) **(Coal System)** operates in the Blackwater System;
- (b) **(Operational characteristics)** meets the following criteria:
 - (i) a maximum Comparative Length of 1709 metres, unless operating from Minerva where it will be 1240 metres;
 - (ii) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220⁹ loading, or otherwise generates a loading equivalent to M220, except that Train Services operating from Minerva will have a maximum axle load of 20 tonne – with loading in excess of this maximum axle load dealt with in accordance with the relevant Load Variation Table; and
 - (iii) uses diesel or electric traction, except operating from Minerva where it will only use diesel traction.
- (c) **(Conditions of Access)** where its Access Agreement has an “Average Below Rail Transit Time Threshold” (as defined under the relevant Standard Access Agreement) or another equivalent threshold or performance level relating to Aurizon Network (**Threshold**) and that Threshold is no less than 127%;

⁹ As specified in the ANZRC Railway Bridge Design Manual 1974.

- (d) **(Loading Facilities)** uses the following Nominated Loading Facilities and does not exceed the following Loading Times:

Nominated Loading Facilities¹⁰	Loading Time (hours) per return trip
Yarrabee (Boonal)	3.8
Jellinbah (Boonal)	4.6
Boorgoon	3.8
Curragh	3.3
Ensham	3.2
German Creek	3.0
Gregory	3.0
Kestrel (Gordonstone)	3.3
Kinrola	3.15
Koorilgah	5.0
Minerva	2.3
Oaky Creek	2.6
Rolleston	4.3
Yongala	3.2
Lake Vermont	3.0

- (e) **(Unloading Facilities)** uses the following Nominated Unloading Facilities and does not exceed the following Unloading Times:

Nominated Unloading Facilities¹¹	Unloading Time (hours) per return trip
Barney Point	5.0
Cement Australia	6.0

¹⁰ Diagrams showing the location of the Nominated Loading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

¹¹ Diagrams showing the location of the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

Nominated Unloading Facilities ¹¹	Unloading Time (hours) per return trip
Comalco Refinery	6.0
Gladstone Power Station	4.3
Golding/RG Tanna Terminal	2.6
Queensland Alumina Ltd (QAL) ¹²	8.9
Stanwell Power Station	2.3
Wiggins Island Coal Export Terminal	1.5 ¹³

(f) **(Dwell Period)** has Dwell periods not exceeding the following:

	Dwell period (hours) per return trip
Inclusive of Train examination	9.2
Excluding Train examination	3.2

7.2 Reference Tariff inputs

(a) Subject to **clause 7.2(c)**, the Reference Tariff inputs ~~inclusive of revenue cap adjustments for 2011/12, 2012/13, 2013/14 and 2014/15~~ are:

Reference Tariff input	2013/14 ²⁰¹ <u>7/18[^]</u> (\$)	2014/15 ²⁰¹ <u>8/19</u> (\$)	2015/16 ²⁰¹ <u>9/20</u> (\$)	2016/17 ²⁰ <u>20/21</u> (\$)
AT ₁	0.86 <u>93</u>	0.88 <u>95</u>	0.89 <u>97</u>	0.92 <u>99</u>
AT ₂	2,019.37 <u>187</u> <u>.59</u>	2,069.85 <u>214</u> <u>.28</u>	2,108.51 <u>241</u> <u>.29</u>	2,161.22 <u>268</u> <u>.64</u>
AT ₃	4.36 <u>7.71</u> *	5.72 <u>7.53</u> *	6.27 <u>7.48</u> *	8.13 <u>7.43</u> *
AT ₄	1.52 <u>2.62</u>	1.90 <u>2.57</u>	2.14 <u>2.55</u>	2.88 <u>2.61</u>
AT ₅	3.49 <u>3.26</u>	4.04 <u>3.26</u>	3.40 <u>2.26</u>	3.31 <u>2.26</u>
EC	0.83 <u>77</u>	0.86 <u>79</u>	0.68 <u>80</u>	0.74 <u>81</u>

¹² The Unloading Time for the QAL refinery represents the time the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

¹³ For services from the North Coast Line 0.7 hours.

Reference Tariff input	2013/14 ²⁰¹ <u>7/18[^]</u> (\$)	2014/15 ²⁰¹ <u>8/19</u> (\$)	2015/16 ²⁰¹ <u>9/20</u> (\$)	2016/17 ²⁰ <u>20/21</u> (\$)
QCA Levy	0. 02992 ⁰²⁹ <u>29</u>	0. 03416 ⁰²⁹ <u>65</u>	0. 03143 ⁰³⁰ <u>01</u>	0. 03222 ⁰³⁰ <u>38</u>

* This amount must be adjusted by subtracting the System Discount under **clause 7.2(b)** where the System Discount, applies to the relevant Train Service.

~~^The difference between approved allowable and transitional revenues for 2013-14, 2014-15 and 2015-16 is recovered in 2016-17.~~

^ To be updated upon QCA approval of 2015-16 revenue cap.

- (b) The System Discounts for Train Services to or from Nominated Loading Facilities or Nominated Unloading Facilities are:

Nominated Unloading Facilities	System Discount (\$/ntk)			
	2013/14 <u>2017/18</u>	2014/15 <u>2018/19</u>	2015/16 <u>2019/20</u>	2016/17 <u>2020/21</u>
Stanwell Power Station	1.46 ^{2.7} <u>0</u>	1.49 ^{2.6} <u>4</u>	2.12 ⁶²	2.28 ⁶⁰

- (c) The Reference Tariff inputs referred to below in relation to a Nominated Loading Facility replace the equivalent Reference Tariff inputs in **clause 7.2(a)** for any Train Service using that Nominated Loading Facility:

Nominated Loading Facility	Reference Tariff input	2013/14 <u>2017/18</u> (\$)	2014/15 <u>2018/19</u> (\$)	2015/16 <u>2019/20</u> (\$)	2016/17 <u>2020/21</u> (\$)
Rolleston	AT ₃	6.70 ^{9.0} <u>0</u>	8.02 ^{7.8} <u>2</u>	7.22 ⁷³	8.13 ^{7.4} <u>3</u>
Minerva	AT₃	6.42	7.89	6.27	8.13

- (d) For clarity, where a Train Service operating in the Blackwater System is a Cross System Train Service, the Reference Tariff inputs set out above relating to that Train Service are subject to **clause 2.3**.

- (e) The Nominal Train Payload for:
- (i) a Train Service (other than a Cross System Train Service or a Train Service referred to in **clause 7.2(e)(iii)**) to which the Reference Tariff in this **clause 7** applies, is a nominal nt of 8,211 tonnes;
 - (ii) a Cross System Train Service where the Destination System is the Blackwater System, is a nominal nt of 8,211 tonnes;
or
 - (iii) a Train Service (other than a Cross System Train Service) that has Minerva as a Nominated Loading Facility, is a nominal nt of 5,831 tonnes.

7.3 Gtk Forecast and Allowable Revenues

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT ₂₋₄ (\$)	Allowable Revenue – AT ₅ (\$)
2013/14¹ <u>17/18¹</u>	35,927,690 <u>38,500,357</u>	215,153,796 <u>411,018,335</u>	72,572,784 <u>96,614,424</u>
2014/15² <u>18/19</u>	35,800,470 <u>39,384,679</u>	247,161,235 <u>405,287,283</u>	94,184,512 <u>97,428,007</u>
2015/16³ <u>19/20</u>	37,274,346 <u>39,603,874</u>	322,358,256 <u>403,033,865</u>	99,468,345 <u>98,113,879</u>
2016/17^{4,5} <u>20/21</u>	38,721,726 <u>39,675,500</u>	421,516,050 <u>404,497,734</u>	97,770,934 <u>98,429,832</u>

(1) ~~Includes the impact~~To be updated upon QCA approval of the 2011/12~~2015-16~~ revenue cap ~~adjustment.~~

~~(2) Includes the impact of the 2012/13 revenue cap adjustment.~~

~~(3) Includes the impact of the 2013/14 revenue cap adjustment.~~

~~(4) The difference between approved allowable and transitional revenues for 2013-14, 2014-15 and 2015-16 is recovered in 2016-17.~~

~~(5) Includes the impact of the 2014/15 revenue cap adjustment.~~

8 Goonyella System – System Reference Tariff

8.1 Additional Reference Train Service criteria

In addition to **clause 1.3**, the Reference Train Service to which this **clause 8** applies must also satisfy the following criteria:

- (a) **(Coal System)** operates in the Goonyella System;

- (b) **(Operational characteristics)** meets the following criteria:
- (i) a maximum Comparative Length of 2082 metres;
 - (ii) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220¹⁴ loading, or otherwise generates a loading equivalent to M220 – with loading in excess of this maximum axle load dealt with in accordance with the relevant Load Variation Table; and
 - (iii) uses diesel or electric traction.
- (c) **(Conditions of Access)** where its Access Agreement has an “Average Below Rail Transit Time Threshold” (as defined under the relevant Standard Access Agreement) or another equivalent threshold or performance level relating to Aurizon Network (**Threshold**) and that Threshold is no less than 123%;
- (d) **(Loading Facilities)** uses the following Loading Facilities and does not exceed the following Loading Times:

Nominated Loading Facilities ¹⁵	Loading Time (hours) per return trip
Blair Athol (Clermont)	3.1
Burton	3.8
Carborough Downs	3.5
Caval Ridge*	2.5
German Creek	2.9
Goonyella	3.9
Gregory	3.6
Hail Creek	2.6
Isaac Plains	3.9
Lake Vermont	3.0
Macarthur (Coppabella)	3.9
Millennium	3.0

¹⁴ As specified in the ANZRC Railway Bridge Design Manual 1974.

¹⁵ Diagrams showing the location of the Nominated Loading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

Nominated Loading Facilities¹⁵	Loading Time (hours) per return trip
Middlemount*	3.5
Moorvale	3.6
Moranbah North	3.6
North Goonyella	4.3
Norwich Park	3.9
Oaky Creek	3.2
Peak Downs	4.2
Riverside	4.6
Saraji	4.4
South Walker Creek	3.8

* Balloon loops for these loading facilities are Private Infrastructure

(e) **(Unloading Facilities)** uses the following Nominated Unloading Facilities and does not exceed the following Unloading Times:

Nominated Unloading Facilities¹⁶	Unloading Time (hours) per return trip
Dalrymple Bay	Pit 1 – 2.5 Pit 2 – 2.5 Pit 3 – 2.0
Hay Point	2.8

(f) **(Dwell Period)** has Dwell periods not exceeding the following:

	Dwell period (hours) per return trip
Inclusive of Train examination	8.8
Excluding Train examination	1.8

¹⁶ Diagrams showing the location of the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

8.2 Reference Tariff inputs

- (a) Subject to **clause 8.2(b)**, the Reference Tariff inputs ~~inclusive of revenue cap adjustments for 2011/12, 2012/13 2013/14 and 2014/15~~ are:

Reference Tariff input	2013/14 ^{2017/18} (\$)	2014/15 ^{2018/19} (\$)	2015/16 ^{2019/20} (\$)	2016/17 ^{2020/21} (\$)
AT ₁	0. 60 ⁶⁵	0. 64 ⁶⁶	0. 62 ⁶⁷	0. 63 ⁶⁸
AT ₂	1, 279.38 ^{385.97}	1, 311.37 ^{402.88}	1, 335.86 ^{419.99}	1, 369.26 ^{437.31}
AT ₃	4.75 ^{5.92}	4.59 ^{5.97}	5.43 ^{6.34}	6. 17 ¹⁹
AT ₄	1. 00 ²⁴	0.95 ^{1.25}	1. 13 ³²	1. 27 ²⁹
AT ₅	2. 84 ⁰¹	2. 44 ⁰¹	2. 02 ⁰⁵	1.78 ^{2.08}
EC	0. 83 ⁷⁷	0. 86 ⁷⁹	0. 68 ⁸⁰	0. 74 ⁸¹
QCA Levy	0. 0299 ²⁰²⁹²⁹	0. 0341 ⁶⁰²⁹⁶⁵	0. 0344 ³⁰³⁰⁰¹	0. 0322 ²⁰³⁰³⁸

~~△ The difference between approved allowable and transitional revenues for 2013-14, 2014-15 and 2015-16 is recovered in 2016-17.~~

△ To be updated upon QCA approval of 2015-16 revenue cap.

- (b) The Reference Tariff inputs referred to below in relation to a Nominated Loading Facility replace the equivalent Reference Tariff inputs in **clause 8.2(a)** for any Train Service using that Nominated Loading Facility:

Nominated Loading Facility	Reference Tariff input	2013/14 ^{2017/18} (\$)	2014/15 ^{2018/19} (\$)	2015/16 ^{2019/20} (\$)	2016/17 ^{2020/21} (\$)
Middlemount	AT ₃	1.36 ^{3.86}	1.46 ^{3.86}	1.42 ^{3.93}	2.10 ^{3.88}
	AT ₄	1.03 ^{0.37}	0.39 ^{1.03}	0.37 ^{1.05}	0.51 ^{1.04}
	AT ₅	0.99 ^{1.02}	0.00 ^{1.03}	0.36 ^{1.07}	0.12 ^{1.10}
Caval Ridge	AT ₃	4. 75 ⁰⁴	4.11 ^{4.03}	2.71 ^{4.47}	3.44 ^{4.31}
	AT ₄	1.00 ^{0.84}	0. 20 ⁸⁶	0. 56 ⁹³	0. 71 ⁹⁰

Nominated Loading Facility	Reference Tariff input	<u>2013/14</u> <u>2017/18</u> (\$)	<u>2014/15</u> <u>2018/19</u> (\$)	<u>2015/16</u> <u>2019/20</u> (\$)	<u>2016/17</u> <u>2020/21</u> (\$)
	AT ₅	2.81 <u>1.58</u>	1.26 <u>64</u>	1.45 <u>67</u>	1.21 <u>70</u>

- (c) For clarity, where a Train Service operating in the Goonyella System is a Cross System Train Service, the Reference Tariff inputs set out above relating to that Train Service are subject to **clause 2.3**.
- (d) The Nominal Train Payload for:
- (i) a Train Service (other than a Cross System Train Service) to which the Reference Tariff in this **clause 8** applies; or
 - (ii) a Cross System Train Service where the Destination System is the Goonyella System,
- is a nominal nt of 10,055 tonnes.

8.3 Gtk Forecast and Allowable Revenues

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT ₂₋₄ (\$)	Allowable Revenue – AT ₅ (\$)
2013/14 ¹ <u>2017/18</u>	37,595,372 <u>39,617,676</u>	229,808,441 <u>326,651,609</u>	92,246,430 <u>77,937,299</u>
2014/15 ² <u>2018/19</u>	39,218,665 <u>617,676</u>	234,836,041 <u>329,304,209</u>	74,958,168 <u>78,266,524</u>
2015/16 ³ <u>2019/20</u>	36,708,958 <u>39,528,336</u>	277,730,951 <u>347,912,440</u>	72,663,045 <u>79,517,035</u>
2016/17 ^{4,5} <u>2020/21</u>	37,598,102 <u>39,491,463</u>	322,143,947 <u>340,841,164</u>	65,329,042 <u>80,723,521</u>

- (1) ~~Includes the impact~~To be updated upon QCA approval of the 2011/12~~2015-16 revenue cap adjustment.~~
- (2) ~~Includes the impact of the 2012/13 revenue cap adjustment.~~
- (3) ~~Includes the impact of the 2013/14 revenue cap adjustment.~~
- (4) ~~The difference between approved allowable and transitional revenues for 2013-14, 2014-15 and 2015-16 is recovered in 2016-17.~~
- (5) ~~Includes the impact of the 2014/15 revenue cap adjustment.~~

9 Moura System – System Reference Tariff

9.1 Additional Reference Train Service criteria

In addition to **clause 1.3**, the Reference Train Service to which this **clause 9** applies must also satisfy the following criteria:

- (a) **(Coal System)** operates in the Moura System;
- (b) **(Operational characteristics)** meets the following criteria:
 - (i) a maximum Comparative Length of 1000 metres;
 - (ii) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220¹⁷ loading, or otherwise generates a loading equivalent to M220 – with loading in excess of this maximum axle load dealt with in accordance with the relevant Load Variation Table; and
 - (iii) uses diesel traction;
- (c) **(Conditions of Access)** where its Access Agreement has an “Average Below Rail Transit Time Threshold” (as defined under the relevant Standard Access Agreement) or another equivalent threshold or performance level relating to Aurizon Network (**Threshold**) and that Threshold is no less than 130%;
- (d) **(Loading Facilities)** uses the following Nominated Loading Facilities and does not exceed the following Loading Times:

Nominated Loading Facilities ¹⁸	Loading Time (hours) per return trip
Baralaba	4.9
Boundary Hill	3.4
Dunn Creek (Callide)	4.2
Moura	3.6

- (e) **(Unloading Facilities)** uses the following Nominated Unloading Facilities and does not exceed the following Unloading Times:

¹⁷ As specified in the ANZRC Railway Bridge Design Manual 1974.

¹⁸ Diagrams showing the location of the Nominated Loading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

Nominated Unloading Facilities ¹⁹	Unloading Time (hours) per return trip
Barney Point	5.0
Cement Australia	4.3
Comalco Refinery	6.0
Gladstone Power Station	4.3
Golding/RG Tanna Terminal	2.6
Queensland Alumina Ltd (QAL) ²⁰	8.9
Wiggins Island Coal Export Terminal	1.5 ²¹

(f) **(Dwell Period)** has Dwell periods not exceeding the following:

	Dwell period (hours)per return trip
Inclusive of Train examination	6.2
Excluding Train examination	3.2

9.2 Reference Tariff inputs

(a) The Reference Tariff inputs ~~inclusive of revenue cap adjustments for 2011/12, 2012/13, 2013/14 and 2014/15 are:~~ are:

Reference Tariff input	2013/14 ²⁰ <u>17/18[^]</u> (\$)	2014/15 ²⁰ <u>18/19</u> (\$)	2015/16 ²⁰ <u>19/20</u> (\$)	2016/17 ² <u>20/21</u> (\$)
AT ₁	1.60 <u>73</u>	1.64 <u>77</u>	1.66 <u>80</u>	1.70 <u>83</u>
AT ₂	604.88 <u>655.</u> <u>26</u>	620.00 <u>663.</u> <u>26</u>	631.58 <u>671.</u> <u>35</u>	647.37 <u>679.</u> <u>54</u>
AT ₃	6.12 <u>11.57</u>	9.54 <u>11.81</u>	8.90 <u>12.13</u>	8.28 <u>12.29</u>
AT ₄	1.03 <u>88</u>	1.57 <u>92</u>	1.44 <u>97</u>	1.34 <u>2.00</u>

¹⁹ Diagrams showing the location of the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

²⁰ The Unloading Time for the QAL refinery represents the time the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

²¹ For services from the North Coast Line 0.7 hours.

Reference Tariff input	2013/14 ²⁰ <u>17/18</u> [^] (\$)	2014/15 ²⁰ <u>18/19</u> (\$)	2015/16 ²⁰ <u>19/20</u> (\$)	2016/17 ²⁰ <u>20/21</u> (\$)
QCA Levy	0. 02992 ⁰² <u>929</u>	0. 03416 ⁰² <u>965</u>	0. 03143 ⁰³ <u>001</u>	0. 03222 ⁰³ <u>038</u>

~~△ The difference between approved allowable and transitional revenues for 2013-14, 2014-15 and 2015-16 is recovered in 2016-17.~~

△ To be updated upon QCA approval of 2015-16 revenue cap.

- (b) The Reference Tariff inputs referred to below in relation to a Nominated Loading Facility replace the equivalent Reference Tariff inputs in **clause 9.2(a)** for any Train Service using that Nominated Loading Facility:

Nominated Loading Facility	Reference Tariff input	2013/14 ² <u>017/18</u> (\$)	2014/15 ² <u>018/19</u> (\$)	2015/16 ² <u>019/20</u> (\$)	2016/17 ² <u>020/21</u> (\$)
Baralaba ¹	AT ₃	-	-	13.25 ₋	-

(1) Only those Train Services from this loading facility that terminate at Wiggins Island Coal Export Terminal are subject to this Reference Tariff input.

- (c) For clarity, where a Train Service operating in the Moura System is a Cross System Train Service, the Reference Tariff inputs set out above relating to that Train Service are subject to **clause 2.3**.
- (d) The Nominal Train Payload for:
- a Train Service to which the Reference Tariff in this **clause 9** applies; or
 - a Cross System Train Service where the Destination System is the Moura System,
is a nominal nt of 6,269 tonnes.

9.3 Gtk Forecast and Allowable Revenues

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT ₂₋₄ (\$)
2013/14 ¹ 2017/18 ¹	3,326,341 ² , 796,252	31,409,238 ⁴¹ , 501,336
2014/15 ² 2018/19	3,260,974 ² , 796,252	40,570,237 ⁴² , 327,201

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT ₂₋₄ (\$)
2015/16 ³ <u>2019/20</u>	3,454,019 <u>2,796,252</u>	40,126,553 <u>43,447,347</u>
2016/17 ^{4,5} <u>2020/21</u>	3,229,725 <u>2,796,252</u>	34,951,746 <u>44,022,880</u>

(1) ~~Includes the impact~~ To be updated upon QCA approval of the ~~2011/12~~ 2015-16 revenue cap ~~adjustment.~~

~~(2) Includes the impact of the 2012/13 revenue cap adjustment.~~

~~(3) Includes the impact of the 2013/14 revenue cap adjustment.~~

~~(4) The difference between approved allowable and transitional revenues for 2013-14, 2014-15 and 2015-16 is recovered in 2016-17.~~

~~(5) Includes the impact of the 2014/15 revenue cap adjustment.~~

10 -Newlands System – System Reference Tariff

10.1 Additional Reference Train Service criteria

In addition to **clause 1.3**, the Reference Train Service to which this **clause 10** applies must also satisfy the following criteria:

- (a) **(Coal System)** operates in the Newlands System;
- (b) **(Operational characteristics)** meets the following criteria:
 - (i) a maximum Comparative Length of 1402 metres;
 - (ii) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220²² loading, or otherwise generates a loading equivalent to M220 – with loading in excess of this maximum axle load dealt with in accordance with the relevant Load Variation Table; and
 - (iii) uses diesel traction;
- (c) **(Conditions of Access)** where its Access Agreement has an “Average Below Rail Transit Time Threshold” (as defined under the relevant Standard Access Agreement) or another equivalent threshold or performance level relating to Aurizon Network (**Threshold**) and that Threshold is no less than 160%;
- (d) **(Loading Facilities)** uses the following Nominated Loading Facilities and does not exceed the following Loading Times:

²² As specified in the ANZRC Railway Bridge Design Manual 1974.

Nominated Loading Facilities ²³	Loading Time (hours) per return trip
McNaughton	1.85
Newlands	2.05
Sonoma	2.4

(e) **(Unloading Facilities)** uses the following Nominated Unloading Facilities and does not exceed the following Unloading Times:

Nominated Unloading Facilities ²⁴	Unloading Time (hours) per return trip
Abbot Point	2.05

(f) **(Dwell Period)** has Dwell periods not exceeding the following:

	Dwell period (hours)per return trip
Inclusive of Train examination	6.4
Excluding Train examination	2.4

10.2 Reference Tariff inputs

(a) The Reference Tariff inputs ~~inclusive of revenue cap adjustments for 2011/12, 2012/13, 2013/14 and 2014/15 are:~~ are:

Reference Tariff input	2013/14 [^] <u>2017/18</u> (\$)	2014/15 ₉ <u>2018/1</u> (\$)	2015/16 ₀ <u>2019/2</u> (\$)	2016/17 [^] <u>2020/2</u> (\$)
AT ₁	1.67 <u>80</u>	1.71 <u>84</u>	1.73 <u>87</u>	1.77 <u>91</u>
AT ₂	270.45 <u>292.98</u>	277.21 <u>296.55</u>	282.39 <u>300.17</u>	289.45 <u>303.83</u>
AT ₃	8.20 <u>11.31</u>	8.68 <u>12.15</u>	8.83 <u>12.84</u>	5.35 <u>13.74</u>
AT ₄	1.44 <u>62</u>	1.24 <u>74</u>	1.27 <u>83</u>	0.80 <u>1.96</u>
QCA Levy	0.0299 <u>202929</u>	0.0341 <u>602965</u>	0.0314 <u>303001</u>	0.0322 <u>203038</u>

²³ Diagrams showing the location of the Nominated Loading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

²⁴ Diagrams showing the location of the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

~~△ The difference between approved allowable and transitional revenues for 2013-14, 2014-15 and 2015-16 is recovered in 2016-17.~~

△ To be updated upon QCA approval of 2015-16 revenue cap.

- (b) For clarity, where a Train Service operating in the Newlands System is a Cross System Train Service, the Reference Tariff inputs set out above relating to that Train Service are subject to **clause 2.3**.
- (c) The Nominal Train Payload for:
- (i) a Train Service (other than a Cross System Train Service) to which the Reference Tariff in this **clause 10** applies; or
 - (ii) a Cross System Train Service where the Destination System is the Newlands System,
- is a nominal nt of 6,871 tonnes.

10.3 GtK Forecast and Allowable Revenues

Year	GtK Forecast (,000 gtk)	Allowable Revenue – AT ₂₋₄ (\$)
2013/14 ¹ <u>2017/18</u>	2,605,762 <u>105,250</u>	37,755,329 <u>30,502,827</u>
2014/15 ² <u>2018/19</u>	3,062,661 <u>2,105,250</u>	35,433,700 <u>32,727,070</u>
2015/16 ³ <u>2019/20</u>	2,468,866 <u>105,250</u>	28,091,572 <u>34,533,118</u>
2016/17 ^{4,5} <u>2020/21</u>	2,468,826 <u>105,250</u>	15,225,192 <u>36,925,763</u>

(1) ~~Includes the impact~~To be updated upon QCA approval of ~~the 2011/12~~2015-16 revenue cap ~~adjustment~~.

~~(2) Includes the impact of the 2012/13 revenue cap adjustment.~~

~~(3) Includes the impact of the 2013/14 revenue cap adjustment.~~

~~(4) The difference between approved allowable and transitional revenues for 2013-14, 2014-15 and 2015-16 is recovered in 2016-17.~~

~~(5) Includes the impact of the 2014/15 revenue cap adjustment.~~

11 Goonyella to Abbot Point System – System Reference Tariff

11.1 Additional Reference Train Service criteria

In addition to **clause 1.3**, the Reference Train Service to which this **clause 11** applies must also satisfy the following criteria:

- (a) **(Coal System)** operates in the Goonyella to Abbot Point System;
- (b) **(Operational characteristics)** meets the following criteria:
 - (i) a maximum Comparative Length of 1402 metres;
 - (ii) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220²⁵ loading, or otherwise generates a loading equivalent to M220 – with loading in excess of this maximum axle load dealt with in accordance with the relevant Load Variation Table; and
 - (iii) uses diesel traction.
- (c) **(Conditions of Access)** where its Access Agreement has an “Average Below Rail Transit Time Threshold” (as defined under the relevant Standard Access Agreement) or another equivalent threshold or performance level relating to Aurizon Network (**Threshold**) and that Threshold is no less than 160%;
- (d) **(Loading Facilities)** uses the following Nominated Loading Facilities and does not exceed the following Loading Times:

Nominated Loading Facilities ²⁶	Loading Time (hours) per return trip
Riverside	3.0
Peak Downs	3.0
Lake Vermont	2.05 (estimate) ²⁷
Blair Athol (Clermont)	2.04 (estimate) ²⁸
Middlemount*	2.75

²⁵ As specified in the ANZRC Railway Bridge Design Manual 1974.

²⁶ Diagrams showing the location of the Nominated Loading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

²⁸ This is an estimate of loading time for this Loading Facility. Aurizon will review this loading time in accordance with the relevant Access Agreement. A variation from the loading time will not result in the Train Service being considered not to be a Reference Train Service until after the loading time is reviewed in accordance to the relevant Access Agreement.

Nominated Loading Facilities ²⁶	Loading Time (hours) per return trip
Caval Ridge*	1.85

* Balloon loops for these loading facilities are Private Infrastructure.

(e) **(Unloading Facilities)** uses the following Nominated Unloading Facilities and does not exceed the following Unloading Times:

Nominated Unloading Facilities ²⁹	Unloading Time (hours) per return trip
Abbot Point	2.05

(f) **(Dwell Period)** has Dwell periods not exceeding the following:

	Dwell period (hours) per return trip
Inclusive of Train examination	7.35 per consist every 20 days
Excluding Train examination	1.35

11.2 Reference Tariff inputs

(a) The Reference Tariff inputs ~~inclusive of revenue cap adjustments for 2011/12, 2012/13, 2013/14 and 2014/15 are:~~ are:

Reference Tariff input	2013/14 ^{18^} 2017/ (\$)	2014/15 ¹⁹ 2018/ (\$)	2015/16 ²⁰ 2019/ (\$)	2016/17 ²⁰² 202 (\$)
AT ₁	1.36 ⁴⁵	1.39 ⁴⁸	1.39 ⁵¹	1.43 ⁵⁴
AT ₂	12,554.78 ^{13,} 600.69	12,868.65 ^{13,} 766.62	13,409.03 934.57	13,436.76 14,104.57
AT ₃	1.80 ⁹³	1.54 ⁹¹	1.50 ⁷⁶	1.24 ⁷⁷
AT ₄	1.80 ^{4.59}	1.17 ^{3.86}	3.23 ⁶⁴	3.39 ⁵⁰
QCA Levy	0.0299 ²⁰²⁹² 9	0.0341 ⁶⁰²⁹⁶ 5	0.0344 ³⁰³⁰⁰ 1	0.0322 ²⁰³⁰³ 8

~~△ The difference between approved allowable and transitional revenues for 2013-14, 2014-15 and 2015-16 is recovered in 2016-17.~~

²⁹ Diagrams showing the location of the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

[^ To be updated upon QCA approval of 2015-16 revenue cap.](#)

- (b) The Nominal Train Payload for:
- (i) a Train Service to which the Reference Tariff in this **clause 11** applies; or
 - (ii) a Cross System Train Service where the Destination System is the Goonyella to Abbot Point System,
- is a nominal nt of 6,871 tonnes.

11.3 Gtk Forecast and Allowable Revenues

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT ₂₋₄ (\$)
2013/14 ¹ <u>2017/18</u> ¹	7,285,163 <u>9,673,950</u>	124,194,917 <u>143,042,517</u>
2014/15 ² <u>2018/19</u>	8,586,624 <u>10,078,367</u>	114,622,918 <u>141,915,514</u>
2015/16 ³ <u>2019/20</u>	9,163,405 <u>10,078,367</u>	116,570,057 <u>137,907,936</u>
2016/17 ^{4,5} <u>2020/21</u>	9,937,885 <u>10,078,367</u>	131,812,450 <u>136,324,202</u>

(1) ~~Includes the impact~~To be updated upon QCA approval of ~~the 2011/12~~2015-16 revenue cap ~~adjustment.~~

~~(2) Includes the impact of the 2012/13 revenue cap adjustment.~~

~~(3) Includes the impact of the 2013/14 revenue cap adjustment.~~

~~(4) The difference between approved allowable and transitional revenues for 2013-14, 2014-15 and 2015-16 is recovered in 2016-17.~~

~~(5) Includes the impact of the 2014/15 revenue cap adjustment.~~

12 -Transitional provisions – Monthly System Forecasts for 2001 Undertaking Access Agreements

- (a) This **clause 12** sets out Monthly System Forecasts for the Blackwater ~~System, Goonyella~~ System and Newlands System³⁰ that are to be used as the 'System Forecasts' of gtk for the purposes of:
- (i) Access Agreements; and

³⁰ ~~Clause 11~~**12** does not apply in relation to the Goonyella System and the Moura System as there are no longer any Access Agreements, or New Access Agreements where the relevant Old Access Agreement was, executed or renewed during the term of the 2001 Undertaking.

(ii) New Access Agreements where the relevant Old Access Agreement was,

executed or renewed during the term of the 2001 Undertaking including in relation to the calculation of “VTP” and “IATP” for Take or Pay charges.

(b) For clarity:

(i) the Monthly System Forecasts for a Coal System are based on the GtK Forecast for the System Reference Tariff for that Coal System. Changes to the GtK Forecast for a System Reference Tariff will affect the Monthly System Forecast for that Coal System; and

(ii) any process, obligation or right to vary a GtK Forecast for a System Reference Tariff for a Coal System under this Undertaking must also include any consequential variation to the Monthly System Forecast for that Coal System under this **clause 12**.

Blackwater System

Month	System GtK (,000 gtk)	Month	System GtK (,000 gtk)
Jul- 13 <u>18</u>	3, 154,633 <u>349,644</u>	Jul- 15 <u>20</u>	2,871,999 <u>3,445,653</u>
Aug- 13 <u>18</u>	3, 188,926 <u>472,781</u>	Aug- 15 <u>20</u>	3, 020,000 <u>572,320</u>
Sep- 13 <u>18</u>	2,969,288 <u>3,275,179</u>	Sep- 15 <u>20</u>	2,828,260 <u>3,369,054</u>
Oct- 13 <u>18</u>	3, 126,639 <u>343,674</u>	Oct- 15 <u>20</u>	2,965,625 <u>3,439,512</u>
Nov- 13 <u>18</u>	2,899,878 <u>3,254,327</u>	Nov- 15 <u>20</u>	3, 000,322 <u>347,604</u>
Dec- 13 <u>18</u>	2,809,063 <u>3,241,758</u>	Dec- 15 <u>20</u>	2,921,044 <u>3,334,675</u>
Jan- 14 <u>19</u>	2, 809,964 <u>946,713</u>	Jan- 16 <u>21</u>	2,921,829 <u>3,031,173</u>
Feb- 14 <u>19</u>	2, 535,643 <u>431,710</u>	Feb- 16 <u>21</u>	2, 918,481 <u>501,408</u>
Mar- 14 <u>19</u>	2,932,915 <u>3,086,038</u>	Mar- 16 <u>21</u>	3, 265,292 <u>174,492</u>
Apr- 14 <u>19</u>	3, 008,599 <u>185,622</u>	Apr- 16 <u>21</u>	3, 331,363 <u>276,930</u>
May- 14 <u>19</u>	3, 176,570 <u>406,658</u>	May- 16 <u>21</u>	3, 554,393 <u>504,302</u>
Jun- 14 <u>19</u>	3, 315,571 <u>506,253</u>	Jun- 16 <u>21</u>	3, 675,738 <u>606,751</u>
Jul- 14 <u>19</u>	3, 143,463 <u>426,583</u>	Jul- 16 <u>21</u>	3, 362,756 <u>451,885</u>
Aug- 14 <u>19</u>	3, 177,634 <u>552,548</u>	Aug- 16 <u>21</u>	3, 391,773 <u>578,780</u>

Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)
Sep-1419	2,958,773 3,350,407	Sep-1621	3,205,922375,147
Oct-1419	3,115,569420,475	Oct-1621	3,339,069445,732
Nov-1419	2,889,609 3,329,076	Nov-1621	3,147,189353,658
Dec-1419	2,799,118 3,316,219	Dec-1621	3,070,345340,706
Jan-1520	2,800,013 3,014,397	Jan-1722	3,071,105036,656
Feb-1520	2,526,664487,564	Feb-1722	2,838,983505,932
Mar-1520	2,315,6 922,529	Mar-1722	3,175,144180,233
Apr-1520	2,997,945 3,258,793	Apr-1722	3,239,186282,857
May-1520	3,165,322484,907	May-1722	3,381,318510,640
Jun-1520	3,303,831586,788	Jun-1722	3,498,937613,274

Goonyella System

Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)
Jul-13	3,314,808	Jul-15	3,236,653
Aug-13	3,337,688	Aug-15	3,258,993
Sep-13	3,350,345	Sep-15	3,271,352
Oct-13	3,369,899	Oct-15	3,290,444
Nov-13	3,192,987	Nov-15	3,117,703
Dec-13	3,014,808	Dec-15	2,943,726
Jan-14	3,000,901	Jan-16	2,930,147
Feb-14	2,472,815	Feb-16	2,414,512
Mar-14	2,719,197	Mar-16	2,655,084
Apr-14	3,177,964	Apr-16	3,103,035
May-14	3,351,993	May-16	3,272,960
Jun-14	3,291,967	Jun-16	3,214,349

Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)
Jul-14	3,457,935	Jul-16	3,315,049
Aug-14	3,481,802	Aug-16	3,337,930
Sep-14	3,495,007	Sep-16	3,350,588
Oct-14	3,515,405	Oct-16	3,370,144
Nov-14	3,330,853	Nov-16	3,193,219
Dec-14	3,144,982	Dec-16	3,015,027
Jan-15	3,130,474	Jan-17	3,001,119
Feb-15	2,579,586	Feb-17	2,472,995
Mar-15	2,836,606	Mar-17	2,719,395
Apr-15	3,315,183	Apr-17	3,178,195
May-15	3,496,725	May-17	3,352,236
Jun-15	3,434,107	Jun-17	3,292,206

Newlands System

Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)
Jul- 13 <u>18</u>	232,686 <u>199,278</u>	Jul- 15 <u>20</u>	220,462 <u>199,278</u>
Aug- 13 <u>18</u>	239,534 <u>186,054</u>	Aug- 15 <u>20</u>	226,948 <u>186,054</u>
Sep- 13 <u>18</u>	228,634 <u>184,934</u>	Sep- 15 <u>20</u>	216,619 <u>184,934</u>
Oct- 13 <u>18</u>	201,114 <u>183,435</u>	Oct- 15 <u>20</u>	190,546 <u>183,435</u>
Nov- 13 <u>18</u>	235,119 <u>186,169</u>	Nov- 15 <u>20</u>	222,767 <u>186,169</u>
Dec- 13 <u>18</u>	206,619 <u>163,855</u>	Dec- 15 <u>20</u>	195,765 <u>163,855</u>
Jan- 14 <u>19</u>	223,518 <u>179,664</u>	Jan- 16 <u>21</u>	211,775 <u>179,664</u>
Feb- 14 <u>19</u>	154,757 <u>158,807</u>	Feb- 16 <u>21</u>	146,627 <u>158,807</u>
Mar- 14 <u>19</u>	203,905 <u>160,405</u>	Mar- 16 <u>21</u>	193,193 <u>160,405</u>

Month	System GtK (,000 gtk)	Month	System GtK (,000 gtk)
Apr- 44 <u>19</u>	215,758 <u>152,725</u>	Apr- 16 <u>21</u>	204,423 <u>152,725</u>
May- 44 <u>19</u>	230,188 <u>177,286</u>	May- 16 <u>21</u>	218,094 <u>177,286</u>
Jun- 44 <u>19</u>	233,937 <u>172,637</u>	Jun- 16 <u>21</u>	221,647 <u>172,637</u>
Jul- 44 <u>19</u>	273,486 <u>199,278</u>	Jul- 16 <u>21</u>	193,669 <u>199,278</u>
Aug- 44 <u>19</u>	281,534 <u>186,054</u>	Aug- 16 <u>21</u>	199,367 <u>186,054</u>
Sep- 44 <u>19</u>	268,719 <u>184,934</u>	Sep- 16 <u>21</u>	190,294 <u>184,934</u>
Oct- 44 <u>19</u>	236,375 <u>183,435</u>	Oct- 16 <u>21</u>	167,389 <u>183,435</u>
Nov- 44 <u>19</u>	276,346 <u>186,169</u>	Nov- 16 <u>21</u>	195,695 <u>186,169</u>
Dec- 44 <u>19</u>	242,849 <u>163,855</u>	Dec- 16 <u>21</u>	171,973 <u>163,855</u>
Jan- 45 <u>20</u>	262,710 <u>179,664</u>	Jan- 17 <u>22</u>	186,038 <u>179,664</u>
Feb- 45 <u>20</u>	181,893 <u>158,807</u>	Feb- 17 <u>22</u>	128,808 <u>158,807</u>
Mar- 45 <u>20</u>	239,658 <u>160,405</u>	Mar- 17 <u>22</u>	169,714 <u>160,405</u>
Apr- 45 <u>20</u>	253,589 <u>152,725</u>	Apr- 17 <u>22</u>	179,580 <u>152,725</u>
May- 45 <u>20</u>	270,548 <u>177,286</u>	May- 17 <u>22</u>	191,589 <u>177,286</u>
Jun- 45 <u>20</u>	274,956 <u>172,637</u>	Jun- 17 <u>22</u>	194,710 <u>172,637</u>

Schedule G

Network Management Principles

1 Train Service Entitlements

1.1 Train Service Entitlements:

- (a) for the same types of traffics, will be defined using consistent terminology;³¹ and
- (b) will be expressed in terms that can be interpreted for the development of a Strategic Train Plan (**STP**), a Master Train Plan (**MTP**), an Intermediate Train Plan (**ITP**), where necessary, and a Daily Train Plan (**DTP**).

2 Strategic Train Plan principles

- (a) The purpose of the STP for each Coal System is to demonstrate that Aurizon Network has sufficient capacity to deliver existing Train Services Entitlements in:
 - (i) the relevant Coal System; and
 - (ii) the Customer Specific Branch Lines in each Coal System.
- (b) The STP must be developed for and be considered as part of the Baseline Capacity Assessment and Capacity Assessment that Aurizon Network must undertake under **clause 7A.4.1** and **clause 7A.4.2** respectively of this Undertaking.
- (c) Aurizon Network will make the STP available to the QCA:
 - (i) at the same time it makes the outcomes of the Baseline Capacity Assessment available to the QCA in accordance with **clause 7A.4.1** of this Undertaking; and
 - (ii) in respect of each subsequent STP, at the same time it makes the outcomes of the Capacity Assessment available to the QCA in accordance with **clause 7A.4.2** of the Undertaking and to each Access Holder (or its Customer) and each Access Seeker that requests the relevant STP.
- (d) Aurizon Network must comply with the obligations in **clause 7.6(l)** when providing the STP to the QCA, Access Holders and Access Seekers.

³¹ For example, Timetabled Traffics may be defined in terms of a path between certain locations, on particular days, and at particular times. Cyclic Traffics may be defined in terms of a number of train paths per specified period of time.

- (e) An STP must provide:
 - (i) an estimate of the Existing Capacity that is anticipated by Aurizon Network:
 - (A) to be necessary to meet its obligations in relation to Train Service Entitlements for a subsequent period of at least one year (but not more than two years) commencing on 1 July; and
 - (B) in each individual Coal System STP and in aggregate for all Coal System STPs on a Monthly and Yearly basis and in million tonnes per annum, indicating on a system, mainline and branch line basis:
 - (1) for information purposes only, statement of Capacity on a Train Service Entitlement basis, assuming the relevant Nominal Train Payload outlined in **Schedule F**;
 - (2) the number of Train Service Entitlements that can be provided;
 - (3) the number of Train Service Entitlements that cannot be provided; and
 - (4) available Capacity by Train Paths;
 - (ii) validation of total contracted Train Service Entitlements on a System by System basis;
 - (iii) identification of Operational Constraints (including a quantification of, and any qualifications applicable to, such constraints); and
 - (iv) if different measures of Capacity are agreed under **clause 7A.4.1(b)(iv)(C)**, an estimate of the Existing Capacity that is anticipated by Aurizon Network using those measures.
- (f) Aurizon Network must prepare:
 - (i) an STP in relation to all Train Service Entitlements in all Coal Systems in aggregate;
 - (ii) a separate STP for each Coal System; and
 - (iii) if requested by the QCA (acting reasonably), a separate STP for groups of Coal Systems or a combination of individual and groups of Coal Systems.
- (g) In preparing an STP, Aurizon Network will consider:
 - (i) only the Train Paths that are System Paths;
 - (ii) the known and reasonably anticipated:
 - (A) track maintenance requirements; and

- (B) impacts of the construction of Expansions, for the period of the STP;
 - (iii) the relevant System Operating Parameters; and
 - (iv) any other factors that may materially impact on the Existing Capacity necessary for Aurizon Network to meet its obligations in relation to Train Service Entitlements for the period of the STP.
- (h) The STP must specify the material assumptions that Aurizon Network has made during its preparation.
 - (i) Any review by the QCA of the STP prepared by Aurizon Network must be conducted in accordance with the relevant provisions of **clause 7A.4.1** and **clause 7A.1.1**, insofar as those clauses refer to the STP.

3 Master Train Plan principles

3.1 Purpose and form of the MTP

- (a) The purpose of the MTP is to demonstrate how Aurizon Network plans to deliver Train Service Entitlements in each Coal System, having regard to Planned Possessions, Existing Capacity, the System Operating Parameters and other relevant characteristics of each Coal System.
- (b) The MTP must be published in a tabular timetable form that is readily convertible to an ITP and DTP (with additional time/distance (location) formats if deemed necessary by Aurizon Network) and must specify the capability of Aurizon Network to deliver Train Service Entitlements in each Coal System for a period of at least one (1) Month up to three (3) Months given other activities on the relevant Rail Infrastructure.
- (c) In preparing the MTP, Aurizon Network must consider:
 - (i) any Planned Possessions;
 - (ii) the construction of any Expansions that may impact on the Existing Capacity;
 - (iii) the System Operating Parameters for each Coal System; and
 - (iv) any other factors that may materially impact on the Existing Capacity necessary for Aurizon Network to meet its obligations in relation to Train Service Entitlements.
- (d) Subject to **clause 3.1(f)(ii)** of this Schedule G, the MTP will separately identify where applicable:
 - (i) for Cyclic Traffics:
 - (A) the System Paths allocated to Cyclic Traffics; and

- (B) the Train Paths allocated to non-coal traffic;
 - (ii) for Timetabled Traffics, the particular Train Paths allocated in accordance with the Train Service Entitlements;
 - (iii) each Access Holder's Train Service Entitlements for each Coal System;
 - (iv) contracted Cross System Train Service traffic;
 - (v) each Access Holder's Train Paths;
 - (vi) Cross System Train Service traffic paths;
 - (vii) time allocated for Planned Possessions; and
 - (viii) any other factors known to or anticipated by Aurizon Network that may materially impact on the Existing Capacity necessary for Aurizon Network to meet its obligations in relation to Train Service Entitlements.
- (e) The MTP must specify the material assumptions that Aurizon Network made during its preparation.
- (f) Aurizon Network must, on a Monthly basis, provide the MTP for each Coal System as a complete and transparent document:
- (i) if requested, to the QCA on an unredacted basis; and
 - (ii) on its Website;
 - (A) in respect of agreements entered into after the Approval Date [of the 2016 Undertaking](#) and to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the MTP (and if those obligations permit disclosure if required by the Undertaking then for the avoidance of doubt Aurizon Network is required to disclose the information contained in the MTP), on an unredacted basis; and
 - (B) in respect of agreements entered into prior to the Approval Date [of the 2016 Undertaking](#) or if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
 - (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the MTP on an unredacted basis;
 - (2) in respect of the information referred to in **paragraph (A)** or for which consent is obtained under **paragraph (B)(1)**, on an unredacted basis; and

- (3) in respect of the information that does not satisfy **paragraph (A)** or for which consent is not obtained under **paragraph (B)(1)**:
 - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed;
 - to the extent not possible, on a redacted basis.
- (g) Aurizon Network must use reasonable endeavours to agree to confidentiality obligations that:
 - (i) do not prevent the disclosure of the information contained in the MTP; and
 - (ii) permit disclosure of information required by this Undertaking,
 But:
 - (iii) in any event, must not agree to any confidentiality obligations that prevent disclosure of the information contained in the MTP to the QCA,

provided that Aurizon Network will be deemed to have complied with its obligations under this **clause 3.1(g)** of **Schedule G** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with **clause 3.1(g)(i)** and **clause 3.1(g)(ii)**, whether or not the Access Seeker actually agrees to the inclusion of such obligations in the Access Agreement.

3.2 Modifying the MTP

- (a) Unless otherwise expressly provided in an Access Holder's Access Agreement or a Train Operations Deed (as applicable), Aurizon Network may make modifications to the MTP on a case-by-case basis only where:
 - (i) an Access Holder notifies Aurizon Network that it wishes to make a long-term Train Service Change, provided:
 - (A) that change:
 - (1) is within the scope of its Train Service Entitlement; and
 - (2) does not result in any other Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met; and

- (B) the Access Holder has given Aurizon Network reasonable prior notice of that change having regard to the necessary process to be complied with, and factors to be considered, by Aurizon Network;
- (ii) a Planned Possession is cancelled;
- (iii) a new, varied or additional Train Service Entitlement has been created, through the signing of an Access Agreement or the negotiation of a variation to an Access Agreement (including where that new or amended Access Agreement arises as a result of a Transfer), provided that the new or varied Train Service Entitlement does not result in any other Access Holder's Train Service/s or a Planned Possession, set out in the MTP, not being met;
- (iv) an Access Holder's Access Agreement allows Aurizon Network to alter the Access Holder's Train Service Entitlement – for example, by resuming Access Rights through a capacity resumption process; or
- (v) after consulting with any Access Holders (or their Train Operators, if applicable) whose Train Service/s or Train Service Entitlements are affected by the proposed modification to the MTP, and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession, where:
- (A) Aurizon Network notifies all affected Access Holders that it wishes to make a long-term Train Service Change, provided that change:
- (1) is within the scope of the relevant Access Holders' Train Service Entitlement/s; and
 - (2) is intended to accommodate:
 - the creation of a new or varied Train Service Entitlement, through the signing of an Access Agreement or the negotiation of a variation to an Access Agreement (including where that new or amended Access Agreement arises as a result of a Transfer), where that new or varied Train Service Entitlement cannot otherwise be reasonably accommodated on the MTP;
 - the creation of new Planned Possessions or the modification

- of existing Planned Possessions; or
 - any other Operational Constraint affecting the MTP; and
 - (3) where it results in any existing Access Holder's Train Service Entitlement not being met, is only made with the agreement of that existing Access Holder (such agreement not to be unreasonably withheld); or
 - (B) Aurizon Network notifies all affected Access Holders, within the time period specified in the relevant System Rules, of a long-term Train Service Change for the purpose of carrying out Major Periodic Maintenance provided that, where that change is not within the scope of an Access Holder's Train Service Entitlement, Aurizon Network has used reasonable endeavours to mitigate the impact on that Access Holder. Any limitations (if any) on Aurizon Network's ability to exercise this right will be specified in individual Access Agreements.
- (b) Aurizon Network may make modifications to the MTP where Aurizon Network and all affected Access Holders, agree in writing. Aurizon Network will invite all Access Holders (and their Train Operators, if applicable) whose Train Service Entitlements are affected by the proposed modification to the MTP to consider the modification in an appropriate forum (which may include a face to face meeting, a telephone conference or any other forum that provides the affected Access Holders with a reasonable opportunity to participate). Aurizon Network must use reasonable endeavours to provide to each affected Access Holder a copy of the proposed changes five (5) Business Days prior to the scheduled consideration of the modification in the forum.
- (c) Aurizon Network must consult with any Infrastructure Service Providers, and any Railway Manager for Private Infrastructure that is directly connected to the Rail Infrastructure, who would reasonably be determined to be affected by any modification to the MTP that is proposed to be agreed under **clause 3.2(a)(v)** or **3.2(b)** and must take into account comments it receives in preparing the MTP.
- (d) Aurizon Network must notify any person who is a Railway Manager for Private Infrastructure that is directly connected to the Rail Infrastructure who (in that capacity as a Railway Manager) would reasonably be determined to be affected by any modification to the MTP that is made under this **clause 3.2** within five (5) Business Days

of becoming aware that that person may be affected by a modification to the MTP.

- (e) Notwithstanding:
 - (i) any aspect of this **clause 3.2**, Aurizon Network must not make unilateral amendments to the MTP if there is any possibility that those amendments will materially disadvantage any Access Holder (or its Customer); and
 - (ii) any other provision of this **Schedule G**, the Undertaking or an Access Agreement, any affected Access Holder (or its Customer) may refer a change or amendment to the MTP to the QCA for determination in accordance with **clause 11.1.5**.

4 Intermediate Train Plan principles

- (a) An ITP is an intermediate scheduling step in progressing from the MTP to the DTP. Aurizon Network will consider Planned Possessions, the Train Paths and the System Paths detailed in the MTP, Train Service Entitlements, Short Term Transfers and Train Orders when developing an ITP for the Relevant Period.
- (b) The scheduling horizon of an ITP will be consistent with the period specified in the relevant System Rules for an ITP.
- (c) Train Orders for an ITP must, unless otherwise advised by Aurizon Network, be submitted to Aurizon Network:
 - (i) in the manner and timeframe specified within the relevant System Rules; or
 - (ii) if there are no relevant System Rules, before 1200 hours on the Wednesday immediately prior to the period for which an ITP is to be prepared.
- (d) Aurizon Network will plan Cyclic Traffics in the ITP in accordance with the relevant System Rules. If the process of planning Cyclic Traffics in the ITP involves the allocation of a Contested Train Path among Access Holders for Cyclic Traffic, Aurizon Network:
 - (i) may require a meeting of all affected Access Holders; and
 - (ii) will use the decision making process in **clause 8** to allocate the Contested Train Path.
- (e) Subject to **clause 4** ~~(f)(iii)~~ **(f)(ii)** of this Schedule G, the ITP must identify all allocated Train Paths and all Train Paths allocated to known Possessions. Aurizon Network must also provide the following information to Access Holders, to the extent actually known by Aurizon Network, to enable Access Holders to make an informed assessment of the availability of System Paths:
 - (i) activities affecting the Rail Infrastructure that may:

- (A) affect the availability of the Rail Infrastructure for the operation of Train Services; and
- (B) adversely affect the operation of Train Services on the Rail Infrastructure; and
- (ii) the availability of mine load out and port unloading facilities.
- (f) Once it is finalised but in any event by 1600 hours on the Thursday immediately prior to the commencement of the period for the next ITP (unless otherwise stated in the System Rules), Aurizon Network must provide the ITP as a complete and transparent document to:
 - (i) all Access Holders and
 - (ii) each Customer,
 on the following basis:

- (A) in respect of agreements entered into after the Approval Date [of the 2016 Undertaking](#) and to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the ITP (and if those obligations permit disclosure if required by the Undertaking, then, for the avoidance of doubt Aurizon Network is required to disclose the information contained in the ITP), on an unredacted basis; and

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

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

- (2) in respect of the information ~~referred to in paragraph (iii) or~~ for which consent is obtained under **paragraph (iv)(A)(B)(1)**, on an unredacted basis; and

- (3) in respect of the information ~~that does not satisfy paragraph (iii) or~~ for which consent is not obtained under **paragraph (iv)(A)(B)(1)**:

- to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed;

- to the extent not possible, on a redacted basis.

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

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

provided that Aurizon Network will be deemed to have complied with its obligations under this **clause 4.2(g)** of **Schedule G** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with **clause 4.2(g)(i)** and **clause 4.2(g)(ii)**, whether or not the Access Seeker actually agrees to the inclusion of such obligations in the Access Agreement.

- (h) Aurizon Network will notify relevant Infrastructure Service Providers and the operator of any relevant unloading facilities of the ITP in accordance with any process in the relevant System Rules for such notification.

5 Daily Train Plan principles

5.1 Purpose and form of a DTP

A DTP indicates all scheduled Train Services and Planned Possessions, Urgent Possessions and Emergency Possessions (to the extent known) for a particular day, in a form that indicates the time/distance (location) relationship of all activities on that part of the Rail Infrastructure to which the DTP relates.

5.2 Scheduling and notification of a DTP

Aurizon Network:

- (a) will schedule a DTP at least 24 hours (or such other time required under the relevant System Rules) prior to the day (commencing at 0000 hours and ending at 2359 hours) to which the DTP relates (**Day of Operation**);
- (b) will provide all Access Holders and Infrastructure Service Providers with an extract of the DTP which is relevant to their Train Paths (specifying the Train Services for the relevant Train Operators) by 1400 hours on the day prior to the Day of Operation; and
- (c) will provide each DTP as a complete and transparent document to:
 - (i) all Access Holders and
 - (ii) each Customer,

on the following basis:

- (iii) in respect of agreements entered into after the Approval Date [of the 2016 Undertaking](#) and to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the DTP (and if those obligations permit disclosure if required by the Undertaking, then, for the avoidance of doubt, Aurizon Network is required to disclose the information contained in the DTP), on an unredacted basis; and
- (iv) in respect of agreements entered into prior to the Approval Date [of the 2016 Undertaking](#) or if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
 - (A) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the DTP on an unredacted basis;
 - (B) in respect of the information ~~referred to in paragraph (e)(i) or~~ for which consent is obtained under **paragraph (c)([ii](#))(A)**, on an unredacted basis; and
 - (C) in respect of the information ~~that does not satisfy paragraph (e)(i) or~~ for which consent is not obtained under **paragraph (c)([ii](#))(A)**:
 - (1) to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed;
 - (2) to the extent not possible, on a redacted basis;
- (d) must use reasonable endeavours to agree to confidentiality obligations that:
 - (i) do not prevent the disclosure of the information contained in the DTP; and
 - (ii) permit disclosure of information required by the Undertaking, but
 - (iii) in any event, must not agree to any confidentiality obligations that prevent disclosure of the information contained in the DTP to the QCA,

provided that Aurizon Network will be deemed to have complied with its obligations under this **clause 5.2(d)** of **Schedule G** if it has requested during the negotiation of an Access Agreement that the

Access Seeker agrees to confidentiality obligations in accordance with **clause 5.2(d)(i)** and **clause 5.2(d)(ii)**, whether or not the Access Seeker actually agrees to the inclusion of such obligations in the Access Agreement.

5.3 Application of a DTP to performance targets

The DTP will represent the expected train operation performance target over its period and will be used as base information for performance monitoring, including for the purposes of the quarterly reports under **clause 10.3.4** of this Undertaking (for example, in applying the Allotted Time Threshold).

5.4 Scheduling a DTP in variation to the ITP

- (a) A DTP may be scheduled in variation to the ITP in accordance with the timeframes specified in the System Rules.
- (b) A request or notice by an Access Holder to Aurizon Network in relation to scheduling the DTP in variation to the ITP must be in the form reasonably required by Aurizon Network, and provided in accordance with Aurizon Network's reasonable requirements, from time to time. For clarity, Aurizon Network will notify Access Holders of its requirements:
 - (i) as at the Approval Date, within two (2) Business Days after the Approval Date; and
 - (ii) after the Approval Date, from time to time in advance (provided the notice provides reasonable time for the Access Holder to comply).
- (c) The DTP may be scheduled in variation to the ITP where at least 48 hours (or such other time required under the relevant System Rules) prior to the Day of Operation:
 - (i) an Access Holder notifies Aurizon Network that it wishes to make a short-term Train Service Change at which its Train Services, as scheduled in the ITP, operate, whether or not within the scope of its Train Service Entitlement, provided that change does not result in any other Access Holder's scheduled Train Services, or a Planned Possession, not being met;
 - (ii) Aurizon Network receives a request from an Access Holder to run an additional Train Service which is within the scope of its Train Service Entitlement or an Ad Hoc Train Service, provided that the additional Train Service or Ad Hoc Train Service, as applicable, would not result in any Access Holder's scheduled Train Services, or a Planned Possession, not being met;
 - (iii) a Planned Possession is cancelled;

- (iv) Aurizon Network notifies all affected Access Holders that it wishes to make a short-term Train Service Change at which any scheduled Train Service/s operate, provided that:
 - (A) the change is intended to accommodate:
 - (1) the modification of an existing Planned Possession;
 - (2) the creation of an Urgent Possession; or
 - (3) any other Operational Constraint affecting the DTP; and
 - (B) either:
 - (1) the change is within the scope of the relevant Access Holders' Train Service Entitlements; or
 - (2) where the change results in an Access Holder's Train Service Entitlement not being met, that Access Holder has consented to the change (which consent must not to be unreasonably withheld or delayed);
 - (v) Aurizon Network requests a short-term Train Service Change at which any scheduled Train Services operate, whether or not within the scope of the applicable Access Holders' Train Service Entitlements, for the purpose of accommodating an Emergency Possession; or
 - (vi) Aurizon Network and all affected Access Holders agree.
- (d) Aurizon Network may schedule the DTP in variation to the ITP:
- (i) under any of **clauses 5.4(c)(i) to (iii)**, without the need for consultation;
 - (ii) under **clauses 5.4(c)(iv) or (v)**, after consulting with any affected Access Holders; or
 - (iii) under **clause 5.4(c)(vi)**, after:
 - (A) inviting relevant affected Access Holders to consider the modification in an appropriate forum (which may include a face to face meeting, a telephone conference or any other forum that provides the affected Access Holders with a reasonable opportunity to participate), that occurs prior to the Day of Operation; and
 - (B) providing those affected Access Holders with a copy of the proposed modification as soon as practicable prior to the forum.

- (e) Where the DTP is scheduled in variation from the ITP under this **clause 5.4**, Aurizon Network will notify any Railway Manager for Private Infrastructure that is directly connected to the Rail Infrastructure and who may be affected by those variations. The notification will be given to the Railway Manager in that person's capacity as a Railway Manager.

5.5 Variations to a DTP after it is scheduled

- (a) Variations to the DTP, either prior to or during the Day of Operation, may occur:
 - (i) without consultation with Access Holders, if the variation does not result in:
 - (A) those Access Holders' scheduled Train Services not being provided; or
 - (B) any Possession not being met; and
 - (ii) if **clause 5.5(a)(i)(A)** does not apply, as agreed among Aurizon Network and the affected Access Holders.
- (b) Once the DTP is scheduled, variations to the DTP may only be made where:
 - (i) in the case of an Access Holder requesting or notifying Aurizon Network seeking a variation to the DTP, the request or notice is in the form and provided in accordance with Aurizon Network's reasonable requirements from time to time (which requirements Aurizon Network will notify Access Holders in advance); and
 - (ii) any one or more of the following apply:
 - (A) each of the following is satisfied:
 - (1) before the Day of Operation, Aurizon Network receives a request from an Access Holder to run an additional Train Service which is within the scope of its Train Service Entitlement or an Ad Hoc Train Service; and
 - (2) the additional Train Service or Ad Hoc Train Service, as applicable, would not result in any existing Access Holder's scheduled Train Services not being met, or a Possession (whether a Planned Possession, Emergency Possession or Urgent Possession) not being met;
 - (B) each of the following is satisfied:
 - (1) before the relevant Train Service commences, an Access Holder notifies

- Aurizon Network that wishes to make a change to the times at which its Train Service operates;
- (2) that change is within the scope of the Access Holder's Train Service Entitlement; and
 - (3) that change does not result in any other Access Holder's scheduled Train Service not being met or a Possession (whether a Planned Possession, Emergency Possession or Urgent Possession) not being met; or
- (C) before the relevant Train Service commences, Aurizon Network notifies the Access Holder that an Emergency Possession is required.
- (c) Other than as detailed in this **clause 5.5**, once the DTP is scheduled, any changes to the plan will be reflected as deviations from the DTP, not variations to the scheduled DTP. Deviations to the DTP may occur on the Day of Operation under **clause 7** including in the event of Out-Of-Course Running. Those deviations will occur according to the Network Control principles in **clause 7**.
 - (d) For clarity, if:
 - (i) a variation is requested or notified to Aurizon Network under **clause 5.5(b)(ii)(A)** or **(B)** and Aurizon Network (acting reasonably) refuses to make that variation; and
 - (ii) despite that refusal the relevant Access Holder seeks to operate the Train Service in accordance with that proposed variation,

then any such operation of the Train Service will be treated as a deviation from the DTP caused by the relevant Access Holder.
 - (e) Where a variation to the DTP occurs under this **clause 5.5**, Aurizon Network will notify any Railway Manager and Infrastructure Service Providers for Private Infrastructure that is directly connected to the Rail Infrastructure who may be affected by those variations.

6 Effect of cancellations on other Access Agreement obligations

The cancellation of a Train Service or Train Services in accordance with the Network Management Principles does not necessarily excuse either Aurizon Network or an Access Holder from other Access Agreement obligations relating to the conduct in question.

7 Network Control principles

7.1 Objective of Network Control

A fundamental objective of Network Control is to facilitate the safe running of Train Services, and the commencement and completion of Planned Possessions, Emergency Possessions and Urgent Possessions, as scheduled in the DTP.

7.2 Effect of deviations from DTP on Day of Operation

The ability of Aurizon Network or an Access Holder to deviate from the DTP on the Day of Operation, as specified below, does not necessarily excuse either Aurizon Network or the Access Holder from any other Access Agreement obligations relating to that deviation.

7.3 General principles

- (a) The following general principles apply to Train Operators, Network Controllers and Aurizon Network (as applicable):
 - (i) the Train Operators and Network Controllers will ensure that operational safety is maintained through compliance with the Safeworking Procedures, the Safety Standards, Rollingstock Interface Standards and applicable IRMPs;
 - (ii) Train Operators will ensure that Above Rail issues, including Train crewing, locomotive and wagon availability and loading and unloading requirements, are appropriately managed to ensure that such issues do not prevent the DTP from being met;
 - (iii) Aurizon Network will manage the Rail Infrastructure based on agreed entry/exit times as specified in the DTP with the objective of managing Trains according to their schedule for on time exit, not contributing to late running and, if a Train is running late, making up time and holding the gain where reasonably possible;
 - (iv) train control and traffic management processes must consider the System Rules and Train Service Entitlements of Access Holders, with the objective of an equitable outcome maximising the ability of each Coal System to meet contractual entitlements;
 - (v) decisions involving reordering the sequence of a train's arrival at an unloader must be referred to the unloading terminal to assist with the determination of priority; and
 - (vi) at all times, the exercise of Network Controller discretion must be transparent and equitable.
- (b) The handling of Out-Of-Course Running is dependent on the particular circumstances of a rail corridor, including the traffic type

using the corridor. The management of Out-Of-Course Running will be conducted so as not to unfairly disadvantage one Access Holder over another, and as a result, the identity of an Access Holder will not of itself be a legitimate basis for Network Controllers to alter a scheduled Train Service.

7.4 Application of traffic management decision making matrix

- (a) The traffic management decision making matrix in **clause 9** will be provided to assist Network Controllers in the resolution of disputes in accordance with the general Network Control principles under **clause 7.3**.
- (b) Subject to **clause 7.4(c)**, where the operation of a Train Service differs from the DTP, Network Controllers will apply the traffic management decision making matrix in **clause 9** for the purposes of Network Control.
- (c) Aurizon Network may depart from the traffic management decision making matrix in **clause 9** in the period following a Network Incident, or a Force Majeure Event which materially affects Aurizon Network's ability to achieve the DTP, for any of the following purposes:
 - (i) ensuring Aurizon Network complies with its duties and obligations under any Law relating to safety or health including the Rail Safety Act;
 - (ii) maximising the throughput of Trains on the Rail Infrastructure; and
 - (iii) restoring normal operations on the Rail Infrastructure, provided that Aurizon Network:
 - (iv) only departs from the traffic management decision making matrix in **clause 9** where:
 - (A) it has no other options available to restore the Rail Infrastructure to normal operations; or
 - (B) the departure is required for safety reasons, and Aurizon Network uses all reasonable endeavours to minimise the length of its departure from the traffic management decision making matrix in **clause 9**, acting reasonably and having due regard to the traffic management decision making matrix in **clause 9**;
 - (v) complies with this **clause 7**; and
 - (vi) uses reasonable endeavours to return to normal Network Control procedures for resolving conflicts that arise from Out-Of-Course Running as soon as reasonably practicable after the occurrence of the Network Incident or Force Majeure Event (as applicable).

- (d) Where **clause 7.4(c)** applies, Aurizon Network will keep affected Access Holders reasonably informed of the status of the Network Incident or Force Majeure Event (as applicable) including progress towards returning to normal Network Control procedures for resolving conflicts that arise from Out-Of-Course Running.

7.5 Provision of information to Access Holders

Aurizon Network will provide Access Holders with:

- (a) real time Network Control information that indicates actual running of that Access Holder's Train Services against the relevant DTP;
- (b) upon request and subject to reasonable terms and conditions, access to Network Control diagrams that indicate actual running of that Access Holder's Train Services against the relevant DTP; and
- (c) information about the type of Train Services (for example, non-coal freight, passenger or coal Train Services) operated by other Access Holders on the same network to assist Access Holders to determine whether the Network Controller is applying the principles in this **Schedule G** in a consistent manner between Access Holders.

7.6 Monthly Train Service Entitlement notice

After the end of each Month, Aurizon Network must:

- (a) provide a notice to each Access Holder and its Customer or Train Operator, as applicable, which identifies for each origin to destination pair:
 - (i) the number of Train Paths (or, if appropriate, System Paths) that the Access Holder was entitled to under the Access Holder's Train Service Entitlement;
 - (ii) the number of Train Paths (or, if appropriate, System Paths):
 - (A) planned in the MTP, the ITP and the DTP; and
 - (B) cancelled in the ITP and the DTP,in relation to that Train Service Entitlement;
 - (iii) the number of Train Paths (or, if appropriate, System Paths) in respect of which Train Services were operated for the Access Holder under the relevant Train Service Entitlement;
 - (iv) the number of Train Paths (or, if appropriate, System Paths) cancelled in that Month and the reasons for those cancellations;
 - (v) the extent to which the Access Holder's Train Service Entitlement was used, disregarding cancelled Train Paths (or, if appropriate, System Paths); and
 - (vi) the Year-to-date Train Service Entitlement position, both for the Access Holder and for each Coal System,

for that Month; and

- (b) publish on its Website the aggregated Train Service Entitlement reconciliation reports for each Coal System.

8 Contested Train Path decision making process

8.1 Purpose

The purpose of this **clause 8** is to outline the principles that Aurizon Network will have regard to when allocating a Contested Train Path to an Access Holder for the purpose of developing the ITP (under **clause 4**) with the objective of (in the following order of precedence):

- (a) ensuring Aurizon Network meets its contractual obligations with Access Holders; then
- (b) ensuring Access Holders are not unfairly differentiated between in respect of the use of their Train Service Entitlement; then
- (c) maximising the throughput of Trains on the Rail Infrastructure subject to:
 - (i) Operational Constraints; and
 - (ii) other restrictions or constraints affecting the whole, or partial unavailability of, the Supply Chain.

8.2 TSE Reconciliation Report

- (a) For the purpose of the planning and scheduling of Train Orders³², after the end of each Relevant Period, Aurizon Network will provide a report (**TSE Reconciliation Report**) to each Access Holder and its Customers which identifies as at the end of that Relevant Period, in respect of that Access Holder's Train Service Entitlement under which Train Services were entitled to operate during that Relevant Period:
 - (i) the extent to which the Train Service Entitlement:
 - (A) was used in the Relevant Period;
 - (B) has been used in the relevant Access Provision Period to date; and
 - (C) has been used in the relevant Year to date, for each origin to destination pair of the Train Service Entitlement; and
 - (ii) the remaining balance of the Train Service Entitlement for:
 - (A) the relevant Access Provision Period; and

³² For clarity, the TSE Reconciliation Report and the calculations made for the purposes of that report do not affect or apply in relation to the calculation of Take or Pay.

- (B) the relevant Year,
for each origin to destination pair of the Train Service Entitlement.
- (b) For the purpose of **clause 8.2(a)(i)**, the extent to which a Train Service Entitlement was or has been used in respect of a particular origin to destination pair will be calculated as the greater of:
 - (i) the number of the Train Services operated in accordance with the Train Service Entitlement for that origin to destination pair for the Relevant Period; and
 - (ii) the number of System Paths scheduled for Train Services in accordance with Train Service Entitlement for that origin to destination pair for the Relevant Period.
- (c) The principles used to determine the number of System Paths scheduled or operated for the purpose of **clause 8.2(b)** include the following:
 - (i) the point at which a schedule for Train Services is considered final will be:
 - (A) as specified in the System Rules; or
 - (B) if the System Rules do not specify that point or there are no applicable System Rules, System Paths are taken to be scheduled 48 hours prior to the Day of Operation subject to **clause 8.2(c)(i)**; and
 - (ii) the number of System Paths scheduled will be reduced by the number of scheduled System Paths not provided due to Aurizon Network Cause or a Force Majeure Event affecting Aurizon Network in the period to which the schedule applies as per **clause 8.2(c)(i)**.
 - (iii) Where the scheduled time of the Train Path (or, if appropriate, System Path) is varied in accordance with **clause 5**, that variation is not taken to involve the scheduling of more than one Train Path (or, if appropriate, System Path) unless, for clarity, that variation is a cancellation of the Train Path (or, if appropriate, System Path) in which case (subject to **clause 8.2(c)(ii)**) the Train Service Entitlement is taken to be operated in respect of that cancelled Train Path.
 - (iv) To the extent an Access Agreement requires Aurizon Network to provide to an Access Holder a reasonable alternative Train Path (or, if appropriate, System Path) or to determine whether infrastructure has not been made available due to Aurizon Network Cause or a Force Majeure Event affecting Aurizon Network, a Train Path (or, if

appropriate, System Path) will be deemed to be a reasonable alternative Train Path (or, if appropriate, System Path) where it is within the same period to which the schedule applies and it is practical for the Access Holder to use it (acting reasonably).

- (d) The remaining balance of a Train Service Entitlement, as amended from time to time, for a particular origin to destination pair for an Access Provision Period under **clause 8.2(a)(ii)(A)** is calculated as:
 - (i) the number of System Paths for that Access Provision Period that Aurizon Network is obliged to make available during that Access Provision Period in accordance with the Train Service Entitlement (including as amended from time to time); less
 - (ii) the Train Service Entitlement used in the Access Provision Period to date (determined in accordance with **clause 8.2(a)(i)(B)**).
- (e) The remaining balance of a Train Service Entitlement, as amended from time to time, for a particular origin to destination pair for the relevant Year under **clause 8.2(a)(ii)(B)** is calculated as:
 - (i) the number of System Paths for that origin to destination pair for that Year that Aurizon Network is obliged to make available during that Year in accordance with the Train Service Entitlement (including as amended from time to time); less
 - (ii) the Train Service Entitlement for a particular origin to destination pair used in the Year to date (determined in accordance with **clause 8.2(a)(i)(C)**).

8.3 Contested Train Path principles

- (a) Aurizon Network will determine which Access Holder is allocated a Train Path that is a Contested Train Path, using the following principles in order of precedence:
 - (i) Firstly, the Access Holder whose request for the Contested Train Path is within the scope of its individual Train Service Entitlement for an origin to destination pair (including any Short Term Transfers which have been effected in accordance with **clause 7.4.2(i)**).
 - (ii) If a Contested Train Path is not allocated in accordance with **clause 8.3(a)(i)**, where the relevant Access Holders agree amongst themselves who should be allocated the Contested Train Path, the Contested Train Path will be allocated as agreed by the Access Holders.
 - (iii) If there is no agreement between the relevant Access Holders under **clause 8.3(a)(ii)**:

- (A) an Access Holder submits Train Orders for less than its Train Service Entitlement for a particular origin to destination pair for a Relevant Period (**First Entitlement**); and
- (B) that Access Holder also submits Train Orders for a different Train Service Entitlement for a particular origin to destination pair for a Relevant Period in excess of its Train Service Entitlement for that origin destination pair (**Second Entitlement**),

then the path will be allocated to the Second Entitlement in the manner requested by the Access Holder, and that allocation will be deemed to be scheduled and operated against the First Entitlement.

- (iv) If there is no allocation of paths under **clause 8.3(iii)**, the Access Holder whose request for the Contested Train Path is within the scope of its relevant Train Service Entitlement adjusted for Aurizon Network Cause or a Force Majeure Event affecting Aurizon Network as follows:
 - (A) the Train Paths finally scheduled, in accordance with **clause 8.2(c)(i)**, for which Train Services did not operate due to Aurizon Network Cause or a Force Majeure Event affecting Aurizon Network Year to date; less
 - (B) the greater of:
 - (1) zero; and
 - (2) the relevant Train Service Entitlement used for Year to date less Train Service Entitlement to date.
- (v) If a Contested Train Path remains unallocated after the application of **clause 8.3(a)(iii)**, the Access Holder who is most behind for the relevant Access Provision Period, by calculating as a percentage the Train Service Entitlement for the relevant origin to destination pair used in the Access Provision Period to date as per **clause 8.2(a)(i)(B)** plus the remaining balance of the Train Service Entitlement for that origin to destination pair for the Access Provision Period compared against the Train Service Entitlement for that origin to destination pair for that Access Provision Period at the commencement of the Access Provision Period or as amended from time to time.
- (vi) If a Contested Train Path remains unallocated after the application of **clause 8.3(a)(v)**, the Access Holder who is most behind for the relevant Year, by calculating as a percentage the Train Service Entitlement for the relevant

origin to destination pair used in the Year to date as per **clause 8.2(a)(i)(C)** plus the remaining balance of the Train Service Entitlement for that origin to destination pair for the Year compared against the Train Service Entitlement for that origin to destination pair for that Year at the commencement of the Year or as amended from time to time.

- (vii) If a Contested Train Path remains unallocated after the application of **clause 8.3(a)(vi)** and a Supply Chain Group has been established to manage or oversee Supply Chain logistics for multiple Access Holders, in accordance with the direction of that body.
- (viii) If a Contested Train Path remains unallocated after the application of **clause 8.3(a)(vii)**, Aurizon Network may unilaterally determine which Train Service is scheduled, and will keep a record of that decision and the reasoning behind that decision. Aurizon Network will seek to ensure that, over time, no Access Holder is favoured over another and, where possible, if one Access Holder is favoured this time, taking into account the Train Service Entitlement held by an Access Holder, next time they are not favoured. In other words, if one Access Holder has an entitlement to ten (10) Train Services per week, and another Access Holder has an entitlement to twenty (20) Train Services per week, then it could not be said that favouritism was shown to the second Access Holder if they received priority over the first Access Holder on two out of three consecutive occasions.
- (ix) Aurizon Network will advise each Access Holder (and its Customers) of the Contested Train Path decision, including details of the contest and the principle that determined the result.

9 Traffic management decision making matrix

For the purposes of the traffic management decision making matrix below the meaning of **On Time**, **Ahead** and **Late** are determined by the scheduling of Train Paths in the DTP. For example, if a Train is travelling in accordance with the DTP path allocated to it, it is running **On Time**.

		Train A – Current Status			
		Train A	Train Running “On Time”	Train Running “Ahead”	Train Running “Late”
	Train B	Objective	On Time Exit	On Time Exit	<ol style="list-style-type: none"> 1. Lose no more time 2. Make up time 3. Hold the gain
Train B – Current Status	Train Running “On Time”	On Time Exit	Scheduled Cross	B Rule 2	B Rule 3
	Train Running “Ahead”	On Time Exit	A Rule 2	A or B Rule 2	B Rule 3
	Train Running “Late”	<ol style="list-style-type: none"> 1. Lose no more time 2. Make up time 3. Hold the gain 	A Rule 1	A Rule 1	A or B Rule 4

Rule 1: Train B may be given priority on condition Train A will still meet its “On Time” objective, or as permitted by rules 5, 6, 7 and 8.

Rule 2: Both Trains must meet their “On Time” objective.

Rule 3: Train A may be given priority on condition Train B will still meet its “On Time” objective, or as permitted by rules 5, 6, 7 and 8.

Rule 4: Priority may be given to the Train where performance indicates it will lose least or no more time and even make up time and hold the gain, or as permitted by rules 5, 6, 7 and 8.

Rule 5: Passenger and livestock Trains may be given priority over other Trains if the Network Controller reasonably believes that this is consistent with the objectives of the Trains in question, as specified in the Train Service

Entitlement/s for those Trains and/or the requirements of a Passenger Priority Obligation.

- Rule 6:** Where a Train is running “Late” due to a Below Rail Delay, it may be given preference over other Trains if the Network Controller reasonably believes that this is consistent with the critical objectives of the Trains in question, and that it will result in less aggregated consequential delays to other Trains than otherwise would be the case.
- Rule 7:** Where a Network Controller has to decide which of two Trains to give priority to, and both of those Trains are operated by the same Access Holder, the Network Controller may ask the Access Holder how it would prefer the Trains to be directed and, provided that taking the Access Holder’s preferred course of action does not adversely affect the Train Services of any other Access Holder, the Network Controller will follow the Access Holder’s request.
- Rule 8:** Where a Network Controller has to decide which of two Trains to give priority to, and those Trains are operated by different Access Holders, one may be given preference over the other if the Network Controller reasonably believes that this is consistent with meeting the coal supply objective(s) detailed in the System Rules.

Schedule H

Explanatory diagrams and flowcharts

The diagrams and flowcharts in this **Schedule H**:

- (a) are intended to assist users of this Undertaking to conceptualise specific processes set out in **Part 1 to Part 12** (inclusive) of this Undertaking; and
- (b) must not be used in substitution for the relevant provisions set out in **Part 1 to Part 12** (inclusive) of this Undertaking.

Negotiation process

[Drafting Note: Diagram that clearly and accurately reflects the **Part 4** processes (and showing relevant linkages to other parts of the Undertaking) to be included.]

Capacity allocation – no Extension

[Drafting Note: Diagram that clearly and accurately reflects the **Part 4** processes (and showing relevant linkages to other parts of the Undertaking) to be included.]

Schedule I

Confidentiality Agreement

[Insert Name of Discloser]

Aurizon Network Pty Ltd

Confidentiality Agreement

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Date

Parties

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

The person specified in **item 1 of schedule 1 (Counterparty)**

Background

- A The parties have agreed to enter into this agreement to facilitate the exchange of information between Aurizon Network and the Counterparty.
- B This agreement provides for the disclosure of Confidential Information between the Counterparty and Aurizon Network.
-

Agreed terms

1 Definitions

- (a) In this agreement the following terms have the following meanings:
- | | |
|---------------------|--|
| Business Day | A day which is not a Saturday, Sunday or bank or public holiday in Brisbane. |
| Purpose | The purpose for which the Confidential Information is to be used set out in item 2 of schedule 1 . |
| Transaction | The transaction for which the owner of the Confidential Information agrees to permit the Recipient with access to the Confidential Information, as set out in item 3 of schedule 1 . |
| Undertaking | The current access undertaking submitted by Aurizon Network to the Queensland Competition Authority and approved by the Queensland Competition Authority under the <i>Queensland Competition Authority Act 1997</i> (Qld) as at the date of this agreement and as amended or replaced from time to time. |
- (b) Unless the context otherwise requires, terms defined in the Undertaking have the same meanings in this agreement.

2 Consideration

2.1 Consideration

- (a) Each party enters into this agreement for valuable consideration from the other party and receipt of the consideration is acknowledged by each party.
- (b) Without limitation to **clause 2.1(a)**, each party agrees to pay to the other party \$1.00 on demand in consideration of that other party entering into this agreement.

2.2 No offer or acceptance for Transaction

This agreement and the disclosure of Confidential Information to the Recipient under this agreement is not an offer or acceptance of an offer to enter into the Transaction. Nothing in this agreement obliges any party to enter into the Transaction.

3 Confidentiality

Each party:

- (a) undertakes to keep confidential and not disclose any Confidential Information of the other party or permit any person employed or engaged by it to disclose any such Confidential Information to any person (including other individuals employed or engaged by that party) except in accordance with this agreement or the Undertaking;
- (b) undertakes to use the Confidential Information of the other party only for the Purpose;
- (c) must secure and protect the Confidential Information of the other party from unauthorised disclosure, access or use;
- (d) is responsible for any use or disclosure of Confidential Information of the other party which is contrary to the provisions of this agreement by persons to whom the Recipient discloses the Confidential Information;
- (e) must take all steps as may be necessary to prevent any improper use or disclosure (including enforcing any confidentiality deed or confidentiality provisions contained in another arrangement under which the Recipient disclosed that Confidential Information) of Confidential Information of the other party; and
- (f) must not copy or reduce into tangible, visible or recorded form or allow to be copied or reduced into tangible, visible or recorded form, any Confidential Information disclosed to it by the other party except to the extent necessary to carry out a Purpose.

4 Exceptions

- (a) **Clause 3(a)** does not apply to the Recipient under this agreement if the owner of the Confidential Information provides its prior written approval, which approval must not be unreasonably withheld.
- (b) **Clause 3(a)** does not apply to the Counterparty if the disclosure is:
 - (i) required or compelled by any Law;
 - (ii) required or compelled by any order of a court;
 - (iii) required or compelled by notice validly issued by any Authority;
 - (iv) necessary for the conduct of any legal proceedings, dispute resolution process or audit under the Undertaking, the Act or an agreement entered with Aurizon Network;
 - (v) if the process in **clause 4(e)** is observed, required under any stock exchange listing requirement or rule;
 - (vi) necessary for the effective response to an emergency or natural disaster or for clearing an incident or emergency that is preventing the operation of Train Services on the Rail Infrastructure; or
 - (vii) to the Safety Regulator.
- (c) **Clause 3(a)** does not apply to Aurizon Network if the disclosure is permitted by **clause 3.13** of the Undertaking and Aurizon Network complies with the process set out in that clause permitting disclosure of Confidential Information.
- (d) Prior to any disclosure under **clause 4(b)(v)**, the Counterparty must:
 - (i) consult with Aurizon Network as to the nature and extent of the disclosure of the Confidential Information;
 - (ii) accept any requests made by Aurizon Network (acting reasonably) to limit the disclosure of the Confidential Information; and
 - (iii) to the extent reasonably possible, coordinate the disclosure of the Confidential Information with any similar disclosure by Aurizon Network that is required under any stock exchange listing requirement or rule relating to Aurizon Network.
- (e) For the purposes of **clause 4(a)**, it is unreasonable for the owner of the Confidential Information to refuse to approve the disclosure of its Confidential Information by the Recipient to that Recipient's external consultants, independent advisers or, if the Recipient is an Access Seeker or Access Holder, to the Recipient's Customer or Train Operator, if the Recipient enters into a contract with the recipient of the Confidential Information which:

- (i) specifies:
 - (A) the persons employed by the recipient who may have access to any Confidential Information provided under the contract; and
 - (B) that those persons must not disclose any Confidential Information provided under the contract to any other person unless otherwise agreed by the Recipient and the owner of the Confidential Information; and
 - (ii) requires the recipient to execute a confidentiality deed in favour of the owner of the Confidential Information on terms and conditions substantially similar to this agreement;
 - (iii) advises the recipient that a conflict of interest may exist with respect to the recipient providing services on a related matter to a Related Operator or Related Competitor; and
 - (iv) requires that if the external consultant or independent advisor is also advising a Related Operator or Related Competitor in relation to the same or a related matter, the recipient to ensure that those individuals are not, and will not for as long as the information remains Confidential Information, be working for a Related Operator or Related Competitor on the same or a related matter.
- (f) If consent is sought by Aurizon Network under **clause 4(a)**:
- (i) during the process of responding to an Access Application or negotiating an Access Agreement:
 - (A) where such consent has been sought during the Negotiation Period and the owner of the Confidential Information fails to respond to Aurizon Network's request for consent within five Business Days of its receipt of Aurizon Network's written request (referred to as the **Consent Response Date**), then all relevant timeframes applicable to Aurizon Network under **Part 4** of the Undertaking will be extended by the same number of days as the day on which the response is given exceeds the Consent Response Date; or
 - (B) where such consent has been sought during the Negotiation Period and the owner of the Confidential Information unreasonably refuses its consent to the disclosure of that Confidential Information, or fails to respond to Aurizon Network's request for consent within 20 Business Days of its receipt of Aurizon Network's written request, then Aurizon Network may give a

Negotiation Cessation Notice to the Access Seeker,
in accordance with **clause 4.13** of the Undertaking;
or

- (ii) during the process of administering an Access Agreement or a Train Operations Deed, if the owner of the Confidential Information fails to respond to Aurizon Network's request for consent within twenty (20) Business Days of its receipt of Aurizon Network's written request, then consent is deemed to be given.

5 Counterparty's obligations

The Counterparty:

- (a) confirms it is aware of and understands the Aurizon Network's obligations regarding Confidential Information under the Undertaking;
- (b) acknowledges it may not provide the Confidential Information received from Aurizon Network to any other party, including any person employed or engaged by it, without the consent of Aurizon Network and then only on the terms and conditions required by Aurizon Network (acting reasonably);
- (c) confirms it must secure and protect the Confidential Information received from Aurizon Network from unauthorised disclosure, access or use;
- (d) consents to Aurizon Network recording in the Confidential Information Register all information required by the Undertaking in respect of its use of the Confidential Information;
- (e) agrees to provide any information requested by Aurizon Network to enable it to complete the Confidential Information Register; and
- (f) agrees to attend any training course required by Aurizon Network (acting reasonably) in respect of the Counterparty's use and management of the Confidential Information.

6 Aurizon Network obligations

Aurizon Network agrees to comply with all obligations of Aurizon Network under **Part 3** of the Undertaking relating to Confidential Information, subject to the exceptions, exclusions and permitted disclosures of Confidential Information in the Undertaking.

7 Breach of agreement

- (a) The owner of the Confidential Information may take legal proceedings against the Recipient and/or any third party if there is any actual, threatened or suspected breach of this agreement.

- (b) The parties acknowledge that damages may be inadequate compensation for breach of this agreement and, subject to the court's discretion, the owner of the Confidential Information may seek specific performance of this agreement and may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of this agreement.

8 Termination

- (a) This agreement terminates on:
 - (i) the execution by the parties of:
 - (A) the document containing the terms of the Transaction; or
 - (B) a subsequent confidentiality agreement imposing confidentiality obligations on Aurizon Network in respect of the Confidential Information; or
 - (ii) in the case of an Access Agreement or Train Operations Deed:
 - (A) the cessation of negotiations in respect of the Transaction, in accordance with the Undertaking; or
 - (B) the withdrawal by the Discloser of its Access Application relating to the Transaction.
- (b) Where termination occurs under **clause 8(a)(i)**, this agreement terminates immediately.
- (c) Where termination occurs under **clause 8(a)(ii)(A) or (B)**, this agreement terminates immediately on the date specified in **Item 5 of schedule 1**.
- (d) To the extent permitted by law and subject to the provisions of this agreement, neither party may terminate this agreement and in no other circumstance or event may this agreement be terminated.

9 Notices

9.1 Form of Notice

Any notice, demand, invoice, process or other communication relating to this agreement (**Notice**) must be in English and may be given by an agent of the sender and may, if agreed by Aurizon Network, be in electronic form.

9.2 Method of giving Notices

A Notice may be given by being:

- (a) personally delivered to a party;
- (b) left at the party's current delivery address for service;

- (c) sent to the party's current postal address for service by pre-paid ordinary mail;
- (d) sent by facsimile transmission to the party's current facsimile number for service; or
- (e) if agreed by Aurizon Network, sent by email to the party's current email address for service.

9.3 Particulars for giving of Notices

The particulars for giving of Notices are detailed in **item 4 of Schedule 1**, or as most recently notified to the party sending the Notice.

9.4 Notice by post

Subject to **clause 9.7**, a Notice is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten (10) Business Days after posting.

9.5 Notice by fax

Subject to **clause 9.7**, a Notice is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

9.6 Notice by email

Subject to **clause 9.7**, a Notice is given if sent by email, on the next Business Day after being sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

9.7 After hours Notice

If a Notice is given:

- (a) after 5:00pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9:00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

10 General

10.1 No licence

This agreement does not grant the Recipient any licence or other rights relating to any Confidential Information or other intellectual property rights owned by the owner of the Confidential Information.

10.2 Variation

No provision of this agreement may be varied other than in writing executed by the parties to this agreement.

10.3 No assignment

No party may assign, transfer, charge or deal in any other way with the benefit of any right (or agree to do so), or create or declare (or agree to do so), or allow to arise, any trust in respect of the benefit of any right conferred by or arising under this agreement without the prior consent in writing of the other party.

10.4 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this agreement.

10.5 Counterparts

This agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one agreement.

10.6 Effect of execution

This agreement is not binding on any party unless it or a counterpart has been duly executed by each person named as a party to this agreement.

10.7 Construction

In this agreement:

- (a) any schedule and annex to it is an integral part of it and any reference to this agreement includes a reference to that schedule and annex;
- (b) the headings in it are used for ease of reference only and are not to be taken into account for the purposes of construing it;
- (c) any reference to it or any other agreement, contract, document or instrument includes any variation or replacement of any of them;
- (d) any references to any clause, schedule, annex and provision are references to that clause, schedule, annex and provision contained in it;
- (e) the words 'including', 'include' and 'includes' are to be construed as if followed by the words 'without limitation';

- (f) a reference to a person includes any company, partnership, joint venture, unincorporated association, corporation or other body corporate and a government or statutory body or authority;
- (g) words in the singular include the plural and vice versa; and
- (h) if a word or phrase is defined its other grammatical forms have corresponding meanings.

11 Governing law and jurisdiction

This agreement is governed by the laws applicable in Queensland and each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any court competent to hear appeals from any of those courts.

Schedule 1

Reference Schedule

Item	Description	Details
1	Counterparty	Name: [insert] ABN: [insert] Address: [insert]
2	Purpose	[insert] [If for negotiation of an Access Agreement or Train Operations Deed, insert: "To facilitate the negotiations in respect of the potential granting of Access by Aurizon Network under an Access Agreement or the use of that Access under a Train Operations Deed (as applicable).]
3	Transaction	[insert] [If for negotiation of an Access Agreement or Train Operations Deed, insert: "The execution of an Access Agreement or Train Operations Deed (as applicable) under which Aurizon Network agrees to provide the Counterparty with Access (under an Access Agreement) or the right to use that Access (under a Train Operations Deed).]
4	Particulars for giving Notices	Aurizon Network Delivery address: [insert] Postal address: [if there is no PO box, insert 'Same as delivery address'] Facsimile: [insert] Email address: [insert] Attention: [insert]
5		Counterparty Delivery address: [insert] Postal address: [if there is no PO box, insert 'Same as delivery address'] Facsimile: [insert] Email address: [insert] Attention: [insert]

Item	Description	Details
6	Termination date	The date that is [insert] Months after an event in clause 8(a)(i) or (ii) occurs.

Execution

Executed as an agreement.

[Appropriate execution blocks to be inserted]

Schedule J

Coal loss mitigation provisions

1 Coal loss mitigation - general coal loading, unloading, profiling and veneering obligations

1.1 Background to Coal Loss Mitigation Provisions

- (a) Across the Central Queensland coal supply chain, participants:
- (i) are committed to implementing a range of effective dust mitigation strategies including operational procedures and the application of new techniques to improve awareness and reduce the risk of environmental harm, while ensuring this aspect of the coal supply chain network continues to have community support³³; and
 - (ii) recognise the need for industry 'best practice' to mitigate coal dust, and that a whole-of-supply chain approach should provide the most effective mitigation approach to coal dust³⁴.
- (b) The following actions have been identified as 'best practice' and have proven, through extensive research and testing, to be highly effective in minimising potential dust impacts³⁵:
- (i) **(Moisture content management)** Coal producers wash their coal or blend it to achieve an optimum moisture level which reduces dust and achieves market qualities.
 - (ii) **(Improved loading practices)** Improved loading practices can reduce coal deposits on coal wagon ledges and wheel surfaces that are prone to spillage during transport. It also supports the ability to create a consistent surface of coal in each wagon.
 - (iii) **(Load profiling of coal surface)** The profile of the loaded coal wagon refers to the shape of the exposed surface of coal on the top of in the wagon. A flat surface with gradually sloping sides is a tried and proven method of dust suppression.
 - (iv) **(Veneering)** Veneering is the application of a biodegradable polymer onto the surface of the loaded coal. The veneer

³³ CDMP, paragraph 2.

³⁴ CDMP, paragraph 1.3.

³⁵ Coal dust management plan for the South West System, released in November 2013.

forms a crust over the coal load, which along with the use of a modified loading chute suggests that a significant reduction in coal dust lift-off from wagons is achievable.

- (v) **(Ongoing dust monitoring)** Commitment to a program of ongoing dust monitoring to validate the effectiveness of mitigation measures and confirm that dust levels, particularly coal dust levels, continue to meet environmental standards.
- (c) The principal objective of the Coal Loss Mitigation Provisions is the Prevention of Coal Loss in an effort to achieve 'best practice'.
- (d) The significant strategies to achieve the Prevention of Coal Loss are the loading, profiling and veneering of wagons in accordance with the Standards, and implementation timeframes, provided under the Coal Loss Mitigation Provisions. This includes:
 - (i) meeting the Queensland Department of Environment and Heritage Protection's targets for coal dust emissions from wagons;
 - (ii) no parasitic or fugitive coal (other than coal dust to standard) falling from wagons; and
 - (iii) meeting height and weight requirements in relation to the loading of wagons to protect below rail assets.
- (e) The Private Infrastructure Owner as the loading practitioner has primary responsibility to ensure wagons are loaded, profiled and veneered in a manner that achieves the Prevention of Coal Loss, and this is reflected in the Coal Loss Mitigation Provisions.

1.2 Definitions

In this **Schedule J**:

CDMP means Aurizon Network's Coal Dust Management Plan dated 22 February 2010 as approved by the Department of Environment and Heritage Protection in May 2010;

Loading Breach means, in respect of a train, a breach of **clause 1** or **clause 2** of this **Schedule J** relating to the loading of coal into the train, the veneering and profiling of coal loaded into the train and the unloading of coal from the train at the Transfer Facilities;

Preventing Coal Loss has the meaning given to the term in **clause 1.3** of this **Schedule J**;

Private Land has the meaning given to the term in the Standard Rail Connection Agreement.

Quality Management System includes the system by which the Private Infrastructure Owner manages the quality of its coal loading operations at the Transfer Facilities;

Rectification Notice has the meaning given in **clause 1.7(a)** of this **Schedule J**;

Standards has the meaning given in **clause 1.3(a)** of this **Schedule J**;

Suspension Notice has the meaning given in **clause 1.7(d)** of this **Schedule J**;

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

1.3 Meaning of Preventing Coal Loss

(a) In the Coal Loss Mitigation Provisions, **Preventing Coal Loss** means taking all reasonable and practicable measures during the handling and loading of coal at the Transfer Facilities to prevent coal loss (including emissions of coal dust and spillage from wagons) during the transport of such coal by rail on the Connecting Infrastructure or the Rail Infrastructure to satisfy (subject to **clause 1.3(b)** of this **Schedule J**) the standards, targets, levels or other measures (**Standards**) set for coal loss:

- (i) in accordance with all applicable laws; and
- (ii) in accordance with all requirements, instructions, guidelines, standards or other directions whether now or at any time in the future in effect issued or published by an Authority responsible for the administration of ~~environmental~~[Environmental](#) Laws in Queensland,

and references to **Prevents Coal Loss**, **Prevent Coal Loss** and **Prevention of Coal Loss** must be interpreted in a corresponding way.

(b) If any one or more of the Standards referred to in **clause 1.3(a)** of this **Schedule J** cannot be complied with without failing to comply with another applicable Standard, then as between those mutually inconsistent Standards, Standards referred to in **clause 1.3(a)(i)** of this **Schedule J** prevail over Standards referred to in **clause 1.3(a)(ii)** of this **Schedule J**.

1.4 General obligation

- (a) Notwithstanding any other provision in the Coal Loss Mitigation Provisions, the Private Infrastructure Owner must, at all times, and without adversely affecting the capacity of the Supply Chain, use its reasonable endeavours to Prevent Coal Loss, taking into account factors which include (but are not limited to):
- (i) prevailing business conditions at the time any decision to implement a mitigation strategy is required;
 - (ii) the effectiveness of the particular mitigation approach given technology and cost constraints;

- (iii) the timeframes required to implement mitigation strategies;
- (iv) the overall strategy undertaken given the specific characteristics underlying the relevant owner's contribution to dust; and
- (v) consideration of the impact on other Supply Chain participants,

(collectively, the **Limiting Factors**).

- (b) For the avoidance of doubt, the Private Infrastructure Owner will not be taken to have failed to Prevent Coal Loss in respect of the spillage of coal from a wagon during the transport of the coal by rail if the spillage is caused by the malfunction of the wagon's kwik drop doors.
- (c) Without limiting any other obligation of the Private Infrastructure Owner under the Agreement, the Private Infrastructure Owner must comply with:
 - (i) all applicable Laws relating to coal loss (including the emission of coal dust);
 - (ii) all requirements, instructions, guidelines, standards or other directions relating to coal loss (including the emission of coal dust) whether now or at any time in the future in effect which would customarily be observed by a reasonable and prudent owner or operator of facilities such as the Transfer Facilities (including any such things issued or published by an Authority responsible for the administration of environmental Laws in Queensland); and
 - (iii) the Private Infrastructure Owner's obligations and the standards and requirements set out in this **Schedule J** (including the rail asset restrictions specified by Aurizon Network from time to time),

during the handling, loading and unloading of coal using the Transfer Facilities.

- (d) The Private Infrastructure Owner must supply any labour, materials, plant, equipment and facilities required to enable it to properly perform its obligations under the Coal Loss Mitigation Provisions.

1.5 Obligation to install and operate veneering equipment

- (a) Without limiting any other obligation of the Private Infrastructure Owner under this **clause 1** of **Schedule J**, the Private Infrastructure Owner must use reasonable endeavours to, at its cost:
 - (i) install (or procure the installation of) suitable veneering equipment as part of the Transfer Facilities; and
 - (ii) after the veneering equipment is installed:

- (A) operate (or procure the operation of) the veneering equipment; and
- (B) ensure an effective veneering agent is applied onto the exposed surface of coal loaded into wagons at the Transfer Facilities,

for the purpose of Preventing Coal Loss during transport except that it is reasonable for the Private Infrastructure Owner to not do some or all of the above as a result of the Limiting Factors.

- (b) Without limitation to **clause 1.5(a)(ii)(B)** of this **Schedule J**, the veneering agent applied in accordance with **clause 1.5(a)(ii)(B)** must:
 - (i) be applied to all loaded wagons;
 - (ii) achieve a nil dust lift off from loaded wagons regardless of coal type;
 - (iii) remain intact from the time the train enters the Rail Infrastructure until the time the train is unloaded;
 - (iv) meet the requirements of all relevant environmental Laws; and
 - (v) be accepted at the relevant unloading destination to permit unloading of wagons.
- (c) The Private Infrastructure Owner will not use or permit the use of any veneering agent, or a change in the properties of any veneering agent, without first providing to Aurizon Network the following documents and information, which must be acceptable to Aurizon Network:
 - (i) Material Data Safety Sheet;
 - (ii) toxicology reports detailing the physical and chemical makeup of the product, the effects and impact of the product and components on humans, fauna, flora, wildlife and whole ecosystems; and
 - (iii) a full list of constituents.

1.6 Monitoring

- (a) Without limiting any other provisions of the Agreement, and upon giving not less than two (2) Business Days' notice to the Private Infrastructure Owner, Aurizon Network is entitled:
 - (i) to enter and be upon Private Land:
 - (A) once every twelve (12) Months; and
 - (B) at any other time, upon receipt of consent from the relevant owner to enter and be upon Private Land, provided that Aurizon Network, acting reasonably,

has formed the opinion that the Private Infrastructure Owner is not complying with its obligations under this **clause 1** of **Schedule J**; and

- (ii) to access the Transfer Facilities (including the veneering equipment),

to enable Aurizon Network, from time to time:

- (iii) to verify compliance by the Private Infrastructure Owner with its obligations under this **clause 1** of this **Schedule J**; and
- (iv) to investigate the effectiveness of the veneering equipment (and its operation) or any other measures (including the veneering agent) used by the Private Infrastructure Owner in connection with any matters referred to in **clauses 1.4** or **1.5** of this **Schedule J**,

and the Private Infrastructure Owner must also provide any reasonable assistance requested by Aurizon Network in respect of such matters (including, if requested by Aurizon Network, providing evidence from the Private Infrastructure Owner's Quality Management System or other similar system verifying the Private Infrastructure Owner's compliance with the Coal Loss Mitigation Provisions).

- (b) For the avoidance of doubt, a reference to Aurizon Network in **clause 1.6(a)** of this **Schedule J** includes a reference to the employees, agents and contractors of Aurizon Network and any third party authorised by Aurizon Network.
- (c) If Aurizon Network accesses Private Land under **clause 1.6(a)** of this **Schedule J**, Aurizon Network must, and must procure that its representatives and contractors who access the Private Land:
 - (i) comply with:
 - (A) all site and safety rules applicable to the Private Land as notified by the Private Infrastructure Owner or the owner of the Private Land prior to such access;
 - (B) any reasonable direction given by any representative of the Private Infrastructure Owner or the owner of the Private Land; and
 - (C) any other reasonable conditions specified by the Private Infrastructure Owner or the owner of the Private Land; and
 - (ii) minimise interference with the Private Infrastructure Owner's activities to the extent possible.
- (d) Aurizon Network will monitor the Private Infrastructure Owner's compliance with its obligations under this **clause 1** of **Schedule J** through, without limitation:

- (i) the installation of coal dust monitoring equipment at various locations on the Rail Infrastructure;
- (ii) periodic assessment of the Private Infrastructure Owner's impact on coal fouling across the Rail Infrastructure; and
- (iii) the periodic observation of:
 - (A) the Private Infrastructure Owner's coal loading, profiling, veneering and other operations at the Transfer Facilities; and
 - (B) trains loaded at the Transfer Facilities during transport.
- (e) Aurizon Network must at its cost ensure that any coal dust monitoring equipment used by Aurizon Network to monitor the Private Infrastructure Owner's compliance with its obligations under this **clause 1 of Schedule J** are in proper working order and calibrated.
- (f) Within 10 Business Days after end of each Quarter, Aurizon Network will provide the Private Infrastructure Owner with a written report in respect of Aurizon Network's monitoring of Private Infrastructure Owner's compliance with its obligations under this **clause 1 of Schedule J** during that Month (together with supporting information in respect of any non-compliance detected by Aurizon Network).

1.7 Suspension of rights

- (a) If the Private Infrastructure Owner fails to carry out an obligation under the Coal Loss Mitigation Provisions, Aurizon Network may give the Private Infrastructure Owner a notice (**Rectification Notice**) requiring the Private Infrastructure Owner to:
 - (i) in the case of any default which is capable of remedy, remedy the default; and
 - (ii) in the case of a default which is not capable of remedy, take reasonable steps to prevent the reoccurrence of the event or circumstance that resulted in the default,

within the period (which must be at least 90 days) specified in the Rectification Notice.
- (b) If a Rectification Notice is given to the Private Infrastructure Owner under **clause 1.7(a)**, Aurizon Network and the Private Infrastructure Owner must meet to discuss and agree upon a reasonable program (having regard to the Limiting Factors) setting out the activities, and a timetable to undertake those activities, required to prevent the reoccurrence of the event or circumstance that resulted in default.
- (c) The Private Infrastructure Owner will keep Aurizon Network informed of the activities undertaken to comply with the Rectification Notice.
- (d) If the Private Infrastructure Owner does not comply with a Rectification Notice within the time required by the Rectification Notice

then Aurizon Network may give the Private Infrastructure Owner a notice (**Suspension Notice**), suspending the Private Infrastructure Owner's rights under the Agreement and any other agreement to utilise, and to authorise or allow others to utilise, the Connecting Infrastructure for the passage of loaded coal trains.

- (e) A Suspension Notice must specify that it is a notice given under **clause 1.7(d)** of this **Schedule J**.
- (f) A suspension of the Private Infrastructure Owner's rights in accordance with **clause 1.7(a)** of this **Schedule J** will continue until the earlier of the following dates:
 - (i) if the relevant default is capable of remedy, the date that the Private Infrastructure Owner does the things specified in **clause 1.7(a)(i)** of this **Schedule J**;
 - (ii) if the relevant default is not capable of remedy, the date that the Private Infrastructure Owner does the things specified in **clause 1.7(a)(ii)** of this **Schedule J**;
 - (iii) if Aurizon Network notifies the Private Infrastructure Owner of the cessation of the suspension, the date which Aurizon Network notifies the Private Infrastructure Owner as the date on which the suspension will cease.
- (g) If Aurizon Network exercises its right of suspension under **clause 1.7(a)** of this **Schedule J** and the Private Infrastructure Owner disputes the exercise of that right by Aurizon Network, the suspension will not take effect unless the Dispute is resolved in favour of Aurizon Network during the period of the Dispute resolution process under in accordance with **Part 11** (at which time, the suspension will take effect);
- (h) The exercise by Aurizon Network of its rights and remedies under this **clause 1.7** of **Schedule J** does not limit or restrict Aurizon Network from exercising, at any time, any other rights or remedies of Aurizon Network in respect of the relevant default (including its rights of termination under Clause 20 of the Standard Rail Connection Agreement).

1.8 Reporting

- (a) Within 15 Business Days after the end of each Quarter, the Private Infrastructure Owner must submit a written report (in the form reasonably required by Aurizon Network) to Aurizon Network in respect of any material non-compliance by the Private Infrastructure Owner with an obligation of Private Infrastructure Owner under the Coal Loss Mitigation Provisions, provided always that such reporting obligation only applies to the strategies the Private Infrastructure Owner is able to implement to Prevent Coal Loss as have been agreed between the parties.

- (b) Without limiting **clause 1.8(a)** of this **Schedule J**, within five Business Days after the occurrence of any of the following events, the Private Infrastructure Owner must submit a written report to Aurizon Network providing reasonable details in respect of the event:
- (i) the breakdown of, or the inability to operate, any veneering equipment;
 - (ii) any damage to the Rail Infrastructure in connection with any non-compliance by the Private Infrastructure Owner with its obligations under the Coal Loss Mitigation Provisions;
 - (iii) any event arising in connection with any non-compliance by the Private Infrastructure Owner with its obligations under the Coal Loss Mitigation Provisions which interferes, or may interfere, with the proper functioning or operation of the Rail Infrastructure; and
 - (iv) any event that results, or is likely to result, in the Private Infrastructure Owner being unable to perform a material obligation under the Coal Loss Mitigation Provisions.
- (c) The Private Infrastructure Owner must:
- (i) maintain a record of the operation of the veneering equipment, including the dates and times of operation (Veneering Log); and
 - (ii) provide a copy of the Veneering Log to Aurizon Network within 24 hours of receiving a request from Aurizon Network to view the Veneering Log.

1.9 Continuous improvement

The Parties must meet at least once each Quarter to discuss:

- (a) the effectiveness of the then current practices for preventing coal loss; and
- (b) new or modified practices which could be implemented to improve the prevention of coal loss,

and use their reasonable endeavours to achieve 'best practice' (subject to the Limiting Factors, cost constraints and the potential impact on other Supply Chain participants), including (but not limited to) giving due consideration to:

- (c) the "Coal Producers Dust Mitigation Activities" outlined in Table 3.1.2 and Annexure B of the CDMP; and
- (d) the actions that have been identified as 'best practice' specified in **clause 1.1(b)** of this **Schedule J**.

2 Coal loading, profiling and veneering

2.1 Coal Loss Management

- (a) The Private Infrastructure Owner must be able to demonstrate its compliance with its obligations under this **Schedule J** through its Quality Management System, but only to the extent it is able to implement strategies to Prevent Coal Loss.
- (b) The Private Infrastructure Owner must consider current best industry practice with respect to Preventing Coal Loss when choosing an appropriate loading methodology. Best industry practice at this date of this Agreement includes matters such as:
 - (i) operating procedure review and training to reduce the sources of coal loss;
 - (ii) Quality Management System procedures and reporting to enable a 'lessons learnt' approach;
 - (iii) inbound wagon identification system to determine class of wagon about to be loaded;
 - (iv) inbound overload detection devices to measure the tare weight of each incoming wagon;
 - (v) batch weighing system to load the correct amount of coal into each wagon;
 - (vi) telescopic loading chute to profile the load in each wagon or, as an interim measure until such a chute is operating effectively, a suitable profiling blade on the exit side of the load-out;
 - (vii) outbound overload detection devices to measure the gross and bogey weights of each outgoing wagon;
 - (viii) volumetric scanning to measure the profile of each outgoing wagon; and
 - (ix) veneering spray stations on exit side of load-out (after profiling has been achieved).

2.2 General Management of Coal Loading

- (a) The Private Infrastructure Owner, in loading wagons at the Transfer Facilities, must comply with:
 - (i) the wagon design maximum load and volume for wagons and the network asset restrictions including height and weight requirements specified by Aurizon Network from time to time; and
 - (ii) the rail asset restrictions specified by Aurizon Network from time to time.

- (b) The Private Infrastructure Owner must ensure the design of the Transfer Facilities and its adoption of suitable loading and unloading methodologies each achieve the following:
 - (i) loading to an appropriate profile and clearance to Prevent Coal Loss en route to the unloading facilities; and
 - (ii) Prevent Coal Loss from the wagons after entering the Rail Infrastructure.
- (c) The Private Infrastructure Owner must use reasonable endeavours to ensure that coal is loaded into wagons in a manner which ensures that the coal (including coal dust) cannot leave the wagon until it is unloaded from the wagon at an unloading facility.

2.3 Loading and profiling of wagons

- (a) The Private Infrastructure Owner must ensure the loading methodology (including the approach to coal profiling) chosen by the Private Infrastructure Owner Prevents Coal Loss. The Private Infrastructure Owner must demonstrate to Aurizon Network that its adopted loading methodology Prevents Coal Loss and complies with the rail asset restrictions specified by Aurizon Network from time to time.
- (b) Without limitation to the Private Infrastructure Owner's obligations regarding the loading methodology, the Private Infrastructure Owner and Aurizon Network must agree upon suitable profiling requirements having regard to the Limiting Factors, using the following requirements as 'best practice' that should be achieved (if possible):
 - (i) Prevent the loading of coal to the very edges and ends of the wagons leaving sufficient "freeboard" (i.e: - not loaded to top of wagon side) at the sides and ends of loaded wagons to Prevent Coal Loss. See **Figure 1** below.
 - (ii) The method of loading must ensure that loading is even over the length and width of each wagon up to the maximum allowable height as specified by Aurizon Network from time to time (currently 3950mm above rail level). However, achieving loading to this height and shape is ultimately dependant on the density of coal being transported, provided that the profile must have a flat surface and spillage over the sides must be avoided.

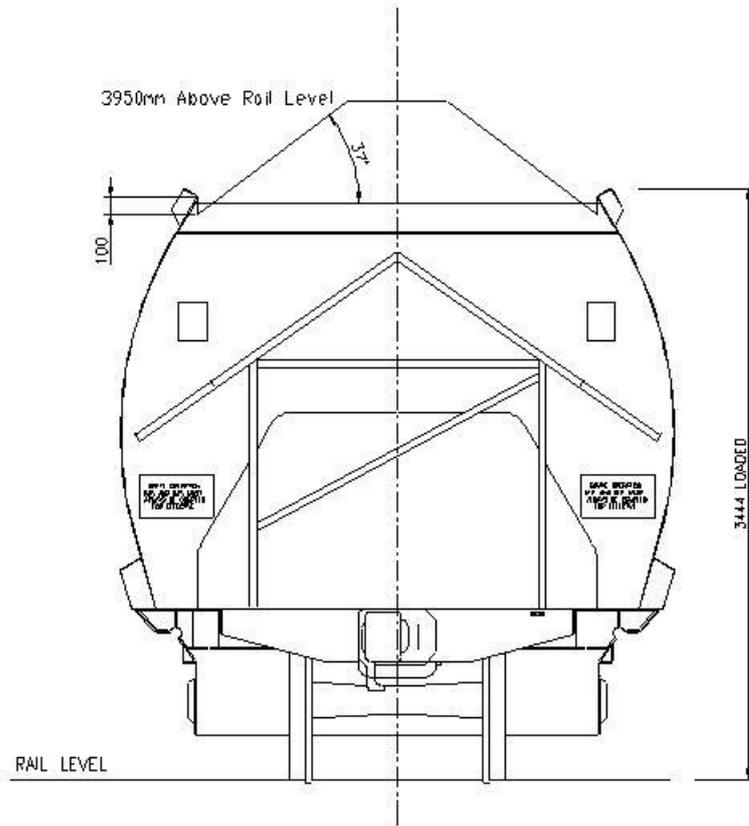


Figure 1 - End View of wagon showing maximum allowable loading profile requirements.

- (c) A suitable profiler must be used to profile the coal so as to result in a loaded wagon with a coal profile that optimises the effectiveness of veneering agents applied in order to Prevent Coal Loss. Without limiting the type of profile that the Private Infrastructure Owner may adopt, an appropriately designed and maintained telescopic loading chute can achieve a 'garden-bed' profile (standard loading profile as shown in **Figure 2** below) to mitigate the risk of coal lift-off and to optimise the effectiveness of veneering agents applied in order to Prevent Coal Loss.



Figure 2 - Top of loaded coal wagon showing 'Garden Bed' style profile.

- (d) The loading chute and associated skirts must achieve a slope on the side of the load less than the natural angle of repose of the coal and must ensure the product is not left on the wagon sills (side and end).
- (e) To the extent the Private Infrastructure Owner is able to implement strategies to Prevent Coal Loss that do not use the loading methods outlined in this **clause 2.3**, the Private Infrastructure Owner must not permit the loading of coal into wagons from:
 - (i) front-end loaders; or
 - (ii) Clam shell type loading facilities.

2.4 Parasitic and fugitive coal removed from wagons

Unless otherwise agreed by Aurizon Network, the Private Infrastructure Owner must use reasonable endeavours to remove any visible coal that has fallen onto wagon sills and surfaces or running gear immediately after the coal is loaded, in order to avoid the risk of coal falling off the wagon during transit.

2.5 Kwik Drop Doors (KDDs)

The Private Infrastructure Owner is responsible for the type of coal loaded into the wagons. The Private Infrastructure Owner must use reasonable endeavours to ensure that coal fineness and moisture content will not facilitate coal loss via the KDDs during transportation from the Transfer Facilities to the unloading facility.

Annexure 4 – Standard Access Agreement (mark-up)

Aurizon Network 2017 DAU Draft - 21 November 2016

Aurizon Network Pty Ltd

[Insert name of Access Holder]

Access Agreement – Coal

[QRC mark-up of provisions regarding changes to payload 17 February 2017](#)

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Date

Parties

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

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

Background

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

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

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

Access has the meaning given in the Access Undertaking.

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

Access Charges means:

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

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

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

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

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

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

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

Access Seeker has the meaning given in the Access Undertaking.

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

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

Ad Hoc Train Service for a Train Service Type means:

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

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

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

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

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

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

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

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

Authority has the meaning given in the Access Undertaking.

Available Capacity has the meaning given in the Access Undertaking.

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

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

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

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

Capacity has the meaning given in the Access Undertaking.

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

Capacity Shortfall has the meaning given in the Access Undertaking.

Change in Access Undertaking means:

- (a) any amendment to or replacement of the Access Undertaking or any successor undertaking to the Access Undertaking; or
- (b) any change in the interpretation or application, including by the exercise of delegated authority, of the Access Undertaking resulting from a decision of a court or other Authority.

Change in Control in relation to any entity (the first mentioned entity) means:

- (a) a change in the entity that Controls the first mentioned entity (other than if the Ultimate Holding Company of the first mentioned entity remains the same following the change);
- (b) an entity that Controls the first mentioned entity ceases to Control that entity (other than if the Ultimate Holding Company of the first mentioned entity remains the same following the change); or
- (c) if the first mentioned entity is not Controlled, another entity acquires Control of the first mentioned entity.

Change in Law has the meaning given in the Access Undertaking, except that the reference to “Commencing Date” is replaced with “Commencement Date” (as defined under this Agreement).

Change in Relevant Taxes has the meaning given in the Access Undertaking.

Charge means:

- (a) any mortgage, charge, a general or special notarial bond, pledge, hypothec or lien; or
- (b) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Claim means any action, proceeding, claim, demand, damage, loss, cost, liability or expense, including the costs and expenses of defending or settling any action, proceeding, claim or demand.

Coal System has the meaning given in the Access Undertaking.

Collateral has the meaning given in the PPS Act.

Commencement Date means the date of this Agreement.

Commitment Date means the earliest Train Service Commitment Date under this Agreement.

Compliant Nomination Requirements means:

- (a) subject to **paragraph (b)** of this definition, the Train Description for the Train Service Type which the Access Holder wishes to allocate to the nominee Operator in the nominee Operator’s new or existing Train Operations Deed (as applicable) must be the same as the Train Description for that Train Service Type in this Agreement;
- (b) in respect of each Train Service Type which is the subject of the nomination, the aggregate of:
 - (i) the “Nominated Monthly Operational Rights (for a 30 day Month)” in the Train Description for that Train Service Type in the nominee Operator’s Train Operations Deed; and
 - (ii) the “Nominated Monthly Operational Rights (for a 30 day Month)” in the Train Description for that Train Service Type in all other Train Operations Deeds (if any),

must not exceed the “Nominated Monthly Train Services (for a 30 day Month)” set out in the Train Description for that Train Service Type in this Agreement. For the avoidance of doubt, where the nomination is accompanied by the statement in **clause 4.3(b)(ii)(B), paragraph (b)(i)** of this definition is to be determined on the basis of the nominee Operator’s Train Operations Deed taking into account the additional Access Rights for the relevant Train Service Type which the Access Holder wishes to allocate to the nominee Operator.

Conditional Access Rights has the meaning given in **clause 9.2**.

Conditional Access Provisions means:

- (a) the provisions of the Access Undertaking which include the details of the Conditional Access Rights (which, as at the Commencement Date, is clause 8.9 of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the Conditional Access Rights.

Confidential Information means the terms of this Agreement and any information, data or other matter disclosed to a Recipient by or on behalf of the Discloser in relation to this Agreement where:

- (a) the disclosure of the information, data or other matter by the Recipient might reasonably be expected to affect the commercial affairs of the Discloser; or
- (b) the information, data or matter is marked confidential by the Discloser when disclosed,

but excluding any such information, data or other matter which:

- (c) is already in the public domain or becomes available to the public through means other than a breach of the confidentiality undertaking by the Parties under this Agreement;
- (d) was in the Recipient's lawful possession before the disclosure by the Discloser;
- (e) is received by the Recipient independently from a Third Party who is free to disclose such information, data or other matter to the Recipient; or
- (f) has ceased to retain its confidential nature, for example, where the disclosure of the information, data or other matter by the Recipient would no longer reasonably be expected to affect the commercial affairs of the Discloser.

Connecting Infrastructure has the meaning given in the Access Undertaking.

Consequential Loss means:

- (a) any loss of revenue, loss of profits or loss of production;
- (b) any loss of whatever nature concerning supply of product from a mine to any Third Party or to make product available to transport;
- (c) loss of business opportunities;
- (d) loss of or damage to reputation or goodwill;
- (e) any wasted overheads or demurrage;
- (f) loss of or damage to credit rating;
- (g) in respect of a breach of an agreement, loss or damage that does not naturally, according to the usual course of things, arise from the breach; and
- (h) loss or damage suffered or incurred by a Party arising out of a Claim against that Party by a Third Party, to the extent that the loss or damage would not be recoverable by the Third Party if the Party was not liable to the Third Party for "Consequential Loss" (as defined in this definition) in respect of the Claim by the Third Party,

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

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

Control has the meaning given in the Corporations Act.

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

Corresponding Suspension Event in respect of a Termination Event means the Suspension Event specified in the same row as that Termination Event in **Schedule 6**.

Customer has the meaning given in the Access Undertaking.

Daily Train Plan means a "Daily Train Plan" under the relevant Train Operations Deed.

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

- (a) 2%; and
- (b) the Commonwealth Bank of Australia's "Corporate Overdraft Reference Rate" (monthly charging cycle) quoted by the Commonwealth Bank of Australia on its public website for the last trading day of the previous Month (or in the event that such a rate is not so quoted at or in respect of any relevant date, such other similar rate as is quoted by a major commercial bank as agreed by the Parties or, failing agreement, as determined by an Expert under **clause 28.3**).

Defaulting Operator

- (a) in **clause 110**, has the meaning given in **clause 11.1(a)0**; and

(b) in **clause 18**, has the meaning given in **clause 18.1(a)**.

▪

Depot for a Train Service Type means a depot, as specified in the Train Description for that Train Service Type.

Destination for a Train Service Type means the destination specified as such in the Train Description for that Train Service Type.

Discloser means a Party that discloses Confidential Information to the other Party.

Dispute has the meaning given in **clause 28.1**.

Dispute Notice has the meaning given in **clause 28.1**.

~~**Effective Date** has the meaning given in **clause 12.3(e)(i)**.~~

Emergency Possession has the meaning given in the Access Undertaking.

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

Environmental Law has the meaning given in the Access Undertaking.

Environmental Management Plan means the environmental management plan developed, implemented and maintained by an Operator under a Train Operations Deed.

Environmental Regulator means, in respect of an Environmental Law, the Authority administering that Environmental Law.

Evaluation Period has the meaning given in the Access Undertaking.

Expansion has the meaning given in the Access Undertaking.

Expert has the meaning given in **clause 28.3**.

Expiry Date means the latest Train Service Expiry Date under this Agreement.

Financial Obligation means any obligation of the Access Holder to:

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

FM Access Rights means the Access Rights for each Train Service Type which cannot be made available by Aurizon Network for an Operator to operate Train Services for the Access Holder due to damage to, or the destruction of, a part of the Nominated Network referred to in **clause 29.5** (assuming that part of the Nominated Network will not be repaired or replaced).

Force Majeure Event means any cause, event or circumstance, or combination of causes, events or circumstances, which:

- (a) is beyond the reasonable control of the affected Party; and
- (b) by the exercise of due diligence the affected Party was not reasonably able to prevent or is not reasonably able to overcome,

and, provided that the requirements in **paragraphs (a)** and **(b)** of this definition are satisfied, includes:

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

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

GST has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Incident means any Network Incident involving the activities of an Operator.

Incident Commander means a member of Aurizon Network's Staff who has been delegated responsibility for the direction and coordination of Aurizon Network's, each relevant Operator's and the Access Holder's resources in the performance of their respective roles and tasks at the site of an Incident, recording events during the course of an Incident and liaison with Authorities.

Incorporated Provisions means each of the following provisions:

- (a) Interface Risk Provisions;
- (b) Transfer Provisions;
- (c) Relinquishment Provisions;

- (d) Reduction Factor Provisions;
- (e) Resumption Provisions;
- (f) Conditional Access Provisions; and
- (g) Reference Tariff Provisions.

Incremental Costs has the meaning given in the Access Undertaking.

Indicative Tonnage for a Train Service Type means the tonnage as specified as such in the Train Description for that Train Service Type.

Infrastructure has the meaning given to the term “Rail Infrastructure” in the Access Undertaking.

Infrastructure Enhancement has the meaning given in the Access Undertaking.

Infrastructure Lease means any lease or sublease to Aurizon Network of any Infrastructure which forms part of the Nominated Network.

Infrastructure Lessor means any lessor or sublessor under an Infrastructure Lease.

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

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) a meeting is convened to pass a resolution to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within 10 Business Days or the resolution fails to pass;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within 10 Business Days after it is made;
- (d) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets if that appointment is not revoked within 10 Business Days after it is made;
- (e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement; or
- (f) any similar event occurs in respect of the Party under the laws of any jurisdiction other than Australia.

Interface Risk Assessment has the meaning given in the Access Undertaking.

Interface Risk Management Plan or **IRMP** has the meaning given in the Access Undertaking.

Interface Risk Provisions means:

- (a) the provisions of the Access Undertaking which include the details of:
 - (i) the Interface Risks, the Interface Risk Assessment and the IRMP (which, as at the Commencement Date, is Schedule C of the Access Undertaking); and

- (ii) the Environmental Management Plan (which, as at the Commencement Date, is Schedule C of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the Interface Risks, the Interface Risk Assessment, the IRMP and the Environmental Management Plan.

Interface Risk has the meaning given in the Access Undertaking.

Intermediate Train Plan or **ITP** has the meaning given in the Access Undertaking.

Investigation means the investigation conducted in accordance with the Investigation Procedures.

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

- (a) specified in Aurizon Network's document entitled *Incident Report and Investigations* which is published on the Website (as amended and replaced from time to time); and
- (b) as far as practicable, applied consistently for all Access Holders and Train Operators in the same Coal System.

Joint Venture means the unincorporated joint venture (if any) between the JV Participants specified in **item 6** of **Schedule 1**.

JV Participants means the entities (if any) specified in **item 7** of **Schedule 1**.

Landowner has the meaning given in **clause 38.17**.

Law has the meaning given in the Access Undertaking.

Loading Facility for a Train Service Type means the loading facility located at the ultimate origin for that Train Service Type (whether located on the Nominated Network, an Adjoining Network or otherwise), as specified in the Train Description for that Train Service Type.

Maintenance Work has the meaning given in the Access Undertaking.

Major Periodic Maintenance has the meaning given in the Access Undertaking.

Material Change means a:

- (a) Change in Relevant Taxes;
- (b) Change in Law;
- (c) Change in Access Undertaking; or
- (d) matter deemed to be a Material Change under **clause 38.17(d)**.

Maximum Other Dwell Times for a Train Service Type means the maximum Other Dwell Times for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Payload for a Train Service Type means the maximum Payload for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Sectional Running Time for a Section for a Train Service Type means the maximum Sectional Running Times for Train Services for that Train Service Type operating on that Section as specified as such in the Train Description for that Train Service Type.

Maximum Time at Depot for a Train Service Type means the maximum Time at Depot for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Time at Loading Facility for a Train Service Type means the maximum Time at Loading Facility for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Time at Unloading Facility for a Train Service Type means the maximum Time at Unloading Facility for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Month means calendar month.

Net Financial Effect on a Party of an event or circumstance means the net effect in financial terms of the occurrence of the event or circumstance on the Party in relation to performing its obligations and exercising its rights under this Agreement and/or a Train Operations Deed including any increases in costs (whether capital or operating, fixed or variable) and other detriments incurred, or to be incurred, by the Party but deducting the amount of any savings or other benefits or advantages received, or to be received, by the Party, and on the basis that the Party uses reasonable endeavours to mitigate the net effect of the event or circumstance.

Network Customer means any person (including the Access Holder) that has been granted rights of access to operate Network Train Services on all or part of the Infrastructure.

Network Incident has the meaning given in the Access Undertaking.

Network Interface Point means a location at which the Infrastructure meets an Adjoining Network.

Network Management Principles has the meaning given in the Access Undertaking.

Network Train Service means the running of a Train between specified origins and destinations by a Railway Operator (including any Stowage) on the Infrastructure.

New Incorporated Provisions has the meaning given in **clause 3.2(b)(i)**.

New Train Service Type has the meaning given in **clause 11.2(a)(i)**.

Nominal Payload for a Train Service Type means the nominal Payload for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Nominated Access Rights has the meaning given in the Access Undertaking.

Nominated Monthly Train Services for a Train Service Type means the number of Train Services for that Train Service Type that the Access Holder is entitled to have operated during any Month:

- (a) in the case of a Month that is 30 days, as specified in the Train Description for that Train Service Type; and
- (b) in the case of a Month that is longer or shorter than 30 days, a pro rata portion of the number of Train Services referred to in **paragraph (a)** of this definition (rounded to the nearest even number of whole Train Services provided that where the pro rata portion of the number of Train Services is a whole odd number, the number of Train Services will be rounded up to the nearest even number) to reflect the longer or shorter period,

as varied in accordance with this Agreement.

Nominated Network means that part of the Infrastructure described in **item 1 of Schedule 3**.

Nominated Network FM Reduction Notice means a notice given under **clause 29.5(d)**.

Non-Defaulting Operator has the meaning given in **clause 11.2(a)0**.

Notice has the meaning given in **clause 37.1**.

Notice of Enquiry has the meaning given in **clause 10.1(a)**.

Obstruction means any circumstance relating to the whole or any part of the Infrastructure, including Rollingstock, debris or other objects on the Infrastructure, which has the potential to cause a disruption to or cancellation of Train Services or Train Movements, and includes any Network Incident but does not include an Operational Constraint imposed by Aurizon Network.

Operational Constraint has the meaning given in the Access Undertaking.

Operator means each Accredited Railway Operator that is nominated by the Access Holder in accordance with **clause 4.3(b)** who is contracted by the Access Holder to operate Train Services for the Access Holder in accordance with the relevant nomination – but only to the extent of the relevant nomination.

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

Origin for a Train Service Type means the origin specified as such in the Train Description for that Train Service Type.

Original Train Service Type has the meaning given in **clause 11.2(a)(ii)0**.

Other Dwell Times means, for any other permitted activity, the time period commencing when a Train Service arrives at the specified point for that activity and ending when it is ready to depart from that point and the relevant Train Controller has been advised accordingly.

Over-Allocation has the meaning given in **clause 4.7(b)**.

Overload Detector means a weighing mechanism other than a Weighbridge and specified in **item 5.2 of Schedule 3**.

Party means a party to this Agreement, and **Parties** means the parties to this Agreement. For the avoidance of doubt, an Operator is not a party to this Agreement.

Passenger Priority Obligations has the meaning given in the Access Undertaking.

Payload of a Train Service means the weight of product loaded onto any Train used in operating that Train Service.

Performance Levels has the meaning given in the relevant Train Operations Deed.

Planned Dwell Times means each of Time at Loading Facility, Time at Unloading Facility, Time at Depot and Other Dwell Times specified in the Train Schedule.

Planned Possession has the meaning given in the Access Undertaking.

Possession has the meaning given in the Access Undertaking.

PPS Act means the *Personal Property Securities Act 2009* (Cth).

Private Facilities means sidings, loading and unloading facilities and any other facilities of any kind:

- (a) which either:
 - (i) are required to be accessed or used by an Operator to operate any Train Services for the Access Holder in the manner contemplated by this Agreement; or
 - (ii) if no Operator has been nominated in respect of the relevant Train Services, would have been required to be accessed or used by an Operator, had one been nominated; and
- (b) which do not form part of the Nominated Network.

[Proposed Maximum Payload has the meaning given in clause 10.1\(b\)\(i\).](#)

Queensland Competition Authority or **QCA** means the authority established under the *Queensland Competition Authority Act 1997* (Qld).

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

Rail Safety Regulator means the chief executive of the department administering the Rail Safety Act.

Railway Manager has the meaning given in the Transport Infrastructure Act.

Railway Operator has the meaning given in the Access Undertaking.

Recipient means a Party that receives Confidential Information from the Discloser.

Reduction Factor has the meaning given in the Access Undertaking.

Reduction Factor Provisions means:

- (a) the provisions of the Access Undertaking which include the Reduction Factor and the details of the calculation and application of the Reduction

Factor (which, as at the Commencement Date, is clause 7.4.4 of the Access Undertaking); and

- (b) any other provisions of the Access Undertaking which affect or relate to the application or calculation of the Reduction Factor.

Reduction Notice has the meaning given in **clause 11.10**.

Reference Tariff has the meaning given in the Access Undertaking.

Reference Tariff Provisions means:

- (a) the schedule of the Access Undertaking which includes the Reference Tariffs and the details of the application of the Reference Tariffs for a particular Reference Train Service (which, as at the Commencement Date, is Schedule F of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the application or calculation of Reference Tariffs or access charges (including any TOP Charge).

Reference Train Service has the meaning given in the Access Undertaking.

Related Body Corporate has the meaning given in the Corporations Act.

Relevant Collateral means Collateral which is the subject of a Security Interest granted under this Agreement.

Relevant Rollingstock Configuration for a Train Service Type means an Authorised Rollingstock Configuration for that Train Service Type which has a maximum Payload which exceeds the Maximum Payload for that Train Service Type.

Relevant Tax means any tax, charge, levy, duty, impost, rate, royalty, or imposition which is imposed on Aurizon Network by, or payable by Aurizon Network to, any Authority but does not include any income tax, fringe benefits tax, capital gains tax or any tax that replaces any of those taxes.

Relinquishment Fee has the meaning given in the Access Undertaking.

Relinquishment Provisions means:

- (a) the provisions of the Access Undertaking which relate to the relinquishment of Access Rights (which, as at the Commencement Date, are clauses 7.4.3 and 7.4.4 of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the relinquishment of Access Rights.

[Response Notice has the meaning given in clause 10.2\(b\)](#).

Resumption Notice has the meaning given in the Access Undertaking.

Resumption Provisions means:

- (a) the provisions of the Access Undertaking which relate to capacity resumption (which, as at the Commencement Date, is clause 7.6 of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to capacity resumption.

[Revised Indicative Tonnage means the amount calculated in accordance with](#)

clause 13.4.

~~Revised Maximum Payload for a Train Service Type means:~~

~~in clause 0, the amount calculated for that Train Service Type in accordance with clause 00; and~~

~~in clause 11, the amount calculated for that Train Service Type in accordance with clause 1.1.~~

Revised Nominal Payload for a Train Service Type means:

~~in clause 0,~~ means the amount calculated for that Train Service Type in accordance with clause 13.1, clause 0;

~~in clause 10,~~ means the amount calculated for that Train Service Type in accordance with ~~clause 10.2(a); and~~

~~in clause 11,~~ has the meaning given in ~~clause (a).~~

Revised Nominated Monthly Train Services for a Train Service Type means:

~~in clause 0,~~ the amount calculated for that Train Service Type in accordance with ~~clause 13.20;~~

~~in clause 10,~~ the amount calculated for that Train Service Type in accordance with ~~clause 10.2(a); and~~

~~in clause 11,~~ the amount calculated for that Train Service Type in accordance with ~~clause 1.1.~~

Rollingstock means locomotives, carriages, Wagons, rail cars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicles which operate on or use a Track, and where used in respect of an Operator's Rollingstock includes Rollingstock which is owned, hired or leased by an Operator, supplied by a contractor of an Operator or is otherwise in the possession or control of an Operator.

Rollingstock Configuration has the meaning given in the Access Undertaking.

Safeworking Procedures means the procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of worksites on the Infrastructure specified in Aurizon Network's document entitled *Safeworking Procedures* as:

- (a) notified by Aurizon Network to the Access Holder; or
- (b) published on the Website,

(as amended and replaced from time to time).

Scheduled Time means the time of arrival or departure for a Train Movement at specified locations on the Nominated Network as set out in the Train Schedule or as amended by Aurizon Network from time to time on the day of operation in accordance with the Network Management Principles.

Section means a section of Track between two locations on the Nominated Network as shown in the diagram(s) in **Schedule 3**.

Sectional Running Times means the time period measured from the time a Train Service passes the signal controlling entry into a Section until the time the Train Service arrives at the signal controlling entry into the next adjoining

Section or the Adjoining Network (as applicable), and does not include an allowance for Planned Dwell Times.

Security means:

- (a) a parent company guarantee in a form reasonably acceptable to Aurizon Network and from an Australian incorporated holding company (as defined in the Corporations Act) of the Access Holder that has an Acceptable Credit Rating;
- (b) an unconditional and irrevocable bank guarantee in favour of Aurizon Network which:
 - (i) is issued by a trading bank holding a current Australian banking licence that has an Acceptable Credit Rating;
 - (ii) requires the issuing bank to pay on demand by Aurizon Network, without recourse to the Access Holder or any other person, an amount or amounts up to the amount specified in the bank guarantee;
 - (iii) has no expiry date (or, if it is not possible for the Access Holder to obtain a bank guarantee with no expiry date, has an expiry date no earlier than 12 Months after the date of issue of the bank guarantee);
 - (iv) states that it is assignable by Aurizon Network to an assignee from Aurizon Network under this Agreement (subject to the relevant bank and the Access Holder being given notice of the identity of the assignee); and
 - (v) is otherwise in a form and upon terms reasonably acceptable to Aurizon Network; or
- (c) any other form of security reasonably acceptable to Aurizon Network, in a form and upon terms reasonably acceptable to Aurizon Network,

as security for the due and proper performance by the Access Holder of its obligations under this Agreement.

Security Amount at a time means the amount determined in accordance with **item 4 of Schedule 1** at that time.

Security Interest has the meaning given in **clause 38.20(a)**.

Segment of an Expansion means each segment of the Expansion specified as such in the Train Description for the Conditional Access Rights which are conditional upon the completion and commissioning of the Expansion.

Split Train Service Type has the meaning given in **clause 11.2(a)**.

Staff means Aurizon Network's Staff or the Access Holder's Staff (as applicable).

State means the State of Queensland.

Stowage has the meaning given in the Access Undertaking.

Supply Chain Rights has the meaning given in the Access Undertaking.

Surplus Access Rights ~~has the meaning given in~~ means the amount calculated in accordance with clause 13.3 ~~clause 10.2(b)(iii)(C)~~.

Suspension Event means any event or circumstance specified as such in **Schedule 6**.

Suspension Notice has the meaning given under **clause 30.1**.

Term means the term of this Agreement in accordance with **clause 2.1**.

Termination Event means any event or circumstance specified as such in **Schedule 6**.

Third Party means a person other than the Access Holder or Aurizon Network.

Third Party Land has the meaning given in **clause 38.17(a)**.

Through-Running Train Service Type means a Train Service Type that has a Destination and/or Origin that is a Network Interface Point and is specified as such in the Train Description for that Train Service Type.

Time at Depot means the time period commencing when a Train Service arrives at the entry signal for a Depot and ending when it is ready to depart the Depot and the relevant Train Controller has been advised accordingly.

Time at Loading Facility means the time period commencing when a Train Service arrives at the entry signal for a Loading Facility and ending when it presents at the exit signal for the Loading Facility, is ready to depart the Loading Facility and the relevant Train Controller has been advised accordingly.

Time at Unloading Facility means the time period commencing when a Train Service arrives at the entry signal for an Unloading Facility and ending when it presents at the exit signal for the Unloading Facility, is ready to depart the Unloading Facility and the relevant Train Controller has been advised accordingly.

TOP Charge has the meaning given in **Schedule 4**.

Track has the meaning given in the Access Undertaking.

Train has the meaning given in the Access Undertaking.

Train Control means the management and monitoring of all Train Movements and of all other operation of Rollingstock on the Infrastructure and of any activities affecting or potentially affecting such Train Movements or Rollingstock operation including:

- (a) recording Train running times on Train diagrams and in Aurizon Network's information systems;
- (a) reporting of Incidents occurring on the Infrastructure;
- (b) managing Incidents occurring on the Infrastructure from within a Train Control centre;
- (c) field Incident management;
- (d) yard control services; and
- (e) exchanging information with Railway Operators.

Train Control Direction means any instruction or direction (whether given orally or in writing or by means of signal or other similar device) issued by or on behalf of Aurizon Network acting reasonably relating to Train Movements.

Train Controller means the person nominated by Aurizon Network from time to time as the supervisor of Train Movements on the relevant part of the Nominated Network.

Train Description for a Train Service Type means the description of, specifications for, and constraints on, the Access Rights for that Train Service Type specified in **Schedule 2**.

Train Movement has the meaning given in the Access Undertaking.

Train Operations Deed means a deed between Aurizon Network and an Operator in substantially the form of the Standard Train Operations Deed (as that term is defined in the Access Undertaking) (or such other form as agreed between the Operator and Aurizon Network) under which Aurizon Network agrees that the Operator may utilise Access Rights allocated to the Operator by the Access Holder, in accordance with this Agreement.

Train Schedule means the train diagrams, yard schedules, terminal schedules and any other form of train timetable prepared by Aurizon Network before the day of operation in accordance with the Network Management Principles showing the programmed times of arrival or departure for Train Movements at specified locations on the Infrastructure.

Train Service for a Train Service Type means the running, by an Operator for the Access Holder, of a Train in one direction from the Origin to the Destination, or from the Destination to the Origin, for that Train Service Type (including any Stowage) in accordance with the Train Description for that Train Service Type.

Train Service Commitment Date for a Train Service Type means the date specified as such in the Train Description for that Train Service Type.

Train Service Compliance Date for a Train Service Type means the date specified as such in the Train Description for that Train Service Type.

Train Service Expiry Date for a Train Service Type means the date specified as such in the Train Description for that Train Service Type.

Train Service Type means each type of train service specified as such in **Schedule 2**.

Transfer means the transfer of all or part of the Access Rights to a Third Party.

Transfer Fee has the meaning given in the Access Undertaking.

Transfer Provisions means:

- (a) the clauses of the Access Undertaking which relate to the transfer of Access Rights (which, as at the Commencement Date, are clauses 7.4.2 and 7.4.4 of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the transfer of Access Rights.

Transport Infrastructure Act means the *Transport Infrastructure Act 1994* (Qld).

Ultimate Holding Company has the meaning given in the Corporations Act.

Unloading Facility for a Train Service Type means the unloading facility located at the ultimate destination for that Train Service Type (whether located on the Nominated Network, an Adjoining Network or otherwise), as specified in the Train

Description for that Train Service Type.

Urgent Possession has the meaning given in the Access Undertaking.

Variation Request Notice has the meaning given in **clause 10.2(c)**.

[Variation Effective Date](#) has the meaning given in **clause 10.4(a)**.

Wagon means any rollingstock (including a wagon bogie) designed to carry any load other than passengers.

Website has the meaning given in the Access Undertaking.

Weighbridge means a weighbridge or weightometer verified under the *National Measurement Act 1960* (Cth), as specified in **item 5.1** of **Schedule 3**.

Year means each year commencing on 1 July and ending on 30 June during the Term and, if applicable, includes:

- (a) the shorter period commencing on the first day of the Month in which the Commitment Date occurs and ending on the next 30 June; and
- (b) the shorter period commencing on the 1 July occurring prior to the date of expiration or termination of this Agreement and ending on the date of expiration or termination of this Agreement.

1.2 Interpretation

In this Agreement, unless expressed to the contrary:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all other genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it; and
- (e) a reference to:
 - (i) a person includes a partnership, unincorporated association, corporation or other entity, government or statutory body;
 - (ii) a person includes its legal personal representative, successors and assigns;
 - (iii) conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
 - (iv) conduct includes a benefit, remedy, discretion, authority or power;
 - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vi) the words “include”, “includes” or “including” must be read as if they are followed by the words “without limitation”;
 - (vii) writing includes:
 - (A) any mode of representing or reproducing words in tangible and permanently visible form, including fax transmission; and

- (B) words created or stored in any electronic medium and retrievable in perceivable form;
- (viii) time is to local time in Brisbane, Queensland;
- (ix) “A\$”, “\$” or “dollars” is a reference to the lawful currency of Australia;
- (x) this or any other document or agreement includes the document or agreement as novated, amended or replaced from time to time and despite any changes in the identity of the parties;
- (xi) anything (including any amount) is a reference to the whole or part or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (xii) under a clause includes in accordance with that clause;
- (xiii) a clause or schedule is a reference to a clause or schedule (as applicable) in this Agreement;
- (xiv) any legislation or any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (xv) any code, guideline, recommendation or policy, or any provision of any code, guideline, recommendation or policy, includes any modification of it, or the substitution of it or any of its provisions for others, unless otherwise specified or directed by Aurizon Network;
- (xvi) any Authority, association or body whether statutory or otherwise (**first body**) is, if the first body ceases to exist or is re-constituted, re-named or replaced or the powers or functions of the first body is transferred to any other Authority, association or body (**replacement body**), deemed to refer to the replacement body established or constituted in lieu of the first body or as nearly as may be succeeding to the powers or functions of the first body;
- (xvii) access or access rights does not include rights granted by Aurizon Network to an Operator under a Train Operations Deed; and
- (xviii) the Access Holder, if the Access Holder is comprised of more than one entity (for example, if the Access Holder is comprised of the participants in an unincorporated joint venture), is a reference to each entity comprising the Access Holder.

1.3 References to Access Rights

For the avoidance of doubt, Access Rights that are entitled to be utilised for the Access Holder includes Access Rights that could have been utilised had the Access Holder, in accordance with this Agreement, nominated an Operator to use those Access Rights.

1.4 Material published on the Website

For the avoidance of doubt, material published on the Website includes material which is available to the Access Holder via secured, password-protected online access to the Website.

1.5 Headings

Headings do not affect the interpretation of this Agreement.

1.6 Words and expressions defined in Access Undertaking

- (a) Subject to **clause 1.6(b)**, if a word or expression is defined in this Agreement to have the meaning given in the Access Undertaking, then it has the meaning given in the Access Undertaking in force as at the date of this Agreement.
- (b) If a word or expression used in any Incorporated Provisions which form part of this Agreement under **clause 3** is defined in the Access Undertaking, then it has the meaning given in the Access Undertaking in force on the date the relevant Incorporated Provisions is incorporated into this Agreement under **clause 3.1** or **3.2** (as applicable).

1.7 Inconsistency

- (a) If there is any inconsistency between the substantive terms of this Agreement (comprising **clauses 1 to 40**) and the schedules of this Agreement, the substantive terms of this Agreement prevail to the extent of the inconsistency.
- (b) Subject to **clause 9.1(b)**, if there is any inconsistency between matters contained in the Access Undertaking (as amended by any Change in Access Undertaking) and this Agreement, the provisions of this Agreement prevail to the extent of the inconsistency unless expressly provided to the contrary.

2 Term

2.1 Term

This Agreement commences on the Commencement Date and, unless earlier terminated in accordance with its terms, continues until the Expiry Date.

2.2 Right to renewal

The Parties acknowledge and agree that any right which the Access Holder may have to renew this Agreement will be as provided in the Access Undertaking (as amended by any Change in Access Undertaking).

3 Access Undertaking

3.1 Incorporation

- (a) The parties agree that, for the purposes of the Access Undertaking, the Access Holder is considered an Access Seeker or an 'Access Holder' (as the term is defined under the Access Undertaking) (as applicable).
- (b) Subject to **clause 3.2**, the following provisions of the Access Undertaking (as in force as at the Commencement Date) form part of this Agreement as if they were set out in full under this Agreement:
 - (i) Interface Risk Provisions;
 - (ii) Transfer Provisions;
 - (iii) Relinquishment Provisions;

- (iv) Reduction Factor Provisions;
 - (v) Resumption Provisions; and
 - (vi) Conditional Access Provisions.
- (c) The Reference Tariff Provisions of the Access Undertaking (as changed by a Change in Access Undertaking from time to time) form part of this Agreement as if they were set out in full in this Agreement.
- (d) For the avoidance of doubt, despite any other provision in the Access Undertaking:
- (i) **clause 25** applies to any Claim in respect of a breach of any Incorporated Provisions which form part of this Agreement under this **clause 3**; and
 - (ii) **clause 28** applies in respect of any Dispute between the Parties in respect of any right or obligation (or in respect of the enforcement) of any Incorporated Provisions which form part of this Agreement under this **clause 3**.

3.2 Changes in Access Undertaking

- (a) If there is a Change in Access Undertaking at any time which changes any of the Incorporated Provisions set out in **clause 3.1(b)**, then this **clause 3.2** applies.
- (b) A Party (**Notifying Party**) may, within 20 Business Days from the date of the Change in the Access Undertaking (or such longer period as the Parties may agree), notify (**Amendment Notice**) the other Party (**Receiving Party**):
- (i) that it elects to amend this Agreement to replace the Incorporated Provisions which form part of this Agreement under **clause 3.1(b)** or this **clause 3.2 (Former Incorporated Provisions)** with the corresponding Incorporated Provisions as changed by the Change in Access Undertaking (**New Incorporated Provisions**); and
 - (ii) of any other changes to the other terms of this Agreement (if any) which the Notifying Party requires as a consequence of, or to give full effect to the replacement of the Former Incorporated Provisions with the New Incorporated Provisions under this **clause 3.2**; and
 - (iii) of the date from which the changes become effective (and if any changes become effective from different dates, the dates applicable to each change), which must be on or after the date on which the Change in Access Undertaking became effective (**Change Date(s)**).
- (c) An Amendment Notice must include an amended version of this Agreement, with the changes referred to in **clause 3.2(b)(i)** clearly identified.
- (d) Promptly following receipt of an Amendment Notice, the Receiving Party must notify the Notifying Party the extent to which the Receiving Party accepts or does not accept the drafting of the amendments to the terms of this Agreement proposed in the Amendment Notice in accordance with **clause 3.2(b)(ii)**.

- (e) If the Receiving Party does not accept the drafting of the amendments to the terms of this Agreement, then the Parties must promptly meet to negotiate and attempt to agree the changes to the terms of this Agreement (if any) which are necessary as a consequence of, or to give full effect to, the replacement of the Former Incorporated Provisions with the New Incorporated Provisions under this **clause 3.2**.
- (f) If the Parties do not agree the amendments in respect of the matters outstanding under **clause 3.2(e)** by the Change Date(s), the matter must be referred to the QCA for determination in accordance with the provisions of the Access Undertaking which provide for determination of disputes by the QCA.
- (g) On and from the Change Date(s) (or such other time as the QCA may determine):
 - (i) the New Incorporated Provisions will form part of this Agreement as if set out in full in this Agreement;
 - (ii) the Former Incorporated Provisions will cease to form part of this Agreement; and
 - (iii) amendments to the terms of this Agreement:
 - (A) accepted under **clause 3.2(d)**;
 - (B) agreed under **clause 3.2(e)**; or
 - (C) determined by the QCA under **clause 3.2(f)**,
become effective.
- (h) Within 10 Business Days from the date that amendments to the terms of this Agreement are accepted, agreed and/or determined (as applicable) under this **clause 3.2**, Aurizon Network must prepare and send to the Access Holder a copy of this Agreement as modified.

4 Access Rights

4.1 Grant of Access Rights

In consideration of the Access Holder paying the Access Charges, on and from each Train Service Commitment Date for each Train Service Type until the Train Service Expiry Date for that Train Service Type, Aurizon Network grants, and will provide, to the Access Holder the Access Rights for that Train Service Type in accordance with the Train Description for that Train Service.

4.2 Nature and scope of Access Rights

- (a) The Access Rights granted under **clause 4.1** are non-exclusive contractual rights and do not give the Access Holder any right, title or interest of any proprietary nature in the Nominated Network.
- (b) Aurizon Network must provide the Access Holder with certain benefits, rights and services in accordance with the Access Undertaking and, to the extent relevant to the Access Holder's Access Rights, it is intended that the terms on which these requirements are provided are detailed in this Agreement.

4.3 Exercise of Access Rights and Operator nomination

- (a) The Parties acknowledge and agree that:
 - (i) the grant of the Access Rights to the Access Holder does not entitle the Access Holder to itself operate Train Services on the Nominated Network (unless it is also an Accredited Railway Operator and is nominated as an Operator in accordance with this Agreement);
 - (ii) the Access Holder can only utilise the Access Rights by nominating an Operator from time to time, in accordance with this Agreement; and
 - (iii) the Access Holder may nominate more than one Operator.
- (b) Subject to **clause 4.6(a)**, the Access Holder may, from time to time, provided that it is not in material breach of any of its obligations under this Agreement, nominate an Operator to utilise all or part of the Access Rights upon giving at least 20 Business Days prior written notice to Aurizon Network. The notice must:
 - (i) specify:
 - (A) the name, ABN, address and contact details of the Operator;
 - (B) the Access Rights which the Access Holder wishes to allocate to the Operator for the Operator to use in providing Train Services for the Access Holder;
 - (C) the first day and the last day of the period for which the Access Rights are to be allocated to the Operator; and
 - (ii) be accompanied by either:
 - (A) two copies of a Train Operations Deed, executed by the Operator, which:
 - (1) reflects, in schedule 2 of that Train Operations Deed, the Access Rights which the Access Holder wishes to allocate to the Operator; and
 - (2) satisfies the Compliant Nomination Requirements; or
 - (B) a statement and evidence identifying the Operator's existing Train Operations Deed in respect of utilisation of the Access Rights under this Agreement and evidence that:
 - (1) the Operator agrees to the relevant nomination; and
 - (2) the Compliant Nomination Requirements are satisfied.
- (c) Access Rights allocated by the Access Holder to be used by any one or more Operators may not exceed, in aggregate, the Access Holder's Access Rights under this Agreement.
- (d) Despite any other provision in this Agreement and without limiting any of Aurizon Network's obligations under **clauses 4.3(e)** and **4.5(b)**, Aurizon Network must accept, or act on:
 - (i) any nomination of an Operator by the Access Holder under **clause 4.3(b)**; or

- (ii) any variation which increases the allocation of Access Rights (including an increase to the period for which the Access Rights are to be allocated) to an Operator under **clause 4.5**,

except where Aurizon Network (acting reasonably) determines either:

- (iii) in respect of a nominated Train Service Type the Access Holder does not hold, or have the benefit of, Supply Chain Rights for those Train Services; or

- (iv) the Operator:

- (A) is in material breach of any of its obligations under an existing Train Operations Deed with Aurizon Network (or Access Agreement if the Operator is also a Network Customer); or

- (B) is not Accredited.

- (e) Aurizon Network must:

- (i) within 10 Business Days of receiving the nomination under **clause 4.3(b)**, notify the Access Holder and the relevant Operator whether it accepts or rejects (providing its reasons) the nomination;

- (ii) if it rejects the nomination, facilitate the resolution of any matter the subject of its reasons for the rejection; and

- (iii) if it accepts the nomination, promptly do all things reasonably required (including compliance with **clause 4.6(a)** where applicable and amending the relevant Train Operations Deed to the extent required) to ensure that any delay to Train Services is minimised to the extent practicable including:

- (A) if the notice under **clause 4.3(b)** is accompanied by two copies of a Train Operations Deed under **clause 4.3(b)(ii)(A)**, execute both copies of the Train Operations Deed and return one copy to the Operator; or

- (B) if the notice under **clause 4.3(b)** is accompanied by a statement and evidence under **clause 4.3(b)(ii)(B)**, vary the relevant Train Operations Deed to include the right to operate Train Services utilising the Access Rights in respect of which the Operator was nominated, and provide notice of that variation to the Operator.

- (f) If Aurizon Network accepts the nomination of an Operator:

- (i) the Access Holder must promptly provide a copy of this Agreement to the Operator; and

- (ii) Aurizon Network must provide a copy of the IRMP to the Access Holder promptly after it has been agreed between the Parties and the Operator in accordance with the Interface Risk Provisions or determined under the Train Operations Deed.

4.4 Access Interface Deed

- (a) If the Access Holder is also a Railway Operator and the Access Rights are to be used for the purposes of a rail haulage agreement between the Access Holder (in its capacity as 'Operator') and a Customer (as that term

is defined in the Access Undertaking), prior to or on the date it exercises its rights under **clause 4.3(b)**, the Access Holder must procure the Customer executes and delivers the Access Interface Deed to Aurizon Network on or before the Commitment Date.

- (b) As soon as practicable after receiving the Access Interface Deed duly executed by the Customer, Aurizon Network must:
 - (i) execute the Access Interface Deed;
 - (ii) provide a copy of the fully executed Access Interface Deed to the Customer; and
 - (iii) notify the Access Holder that the Access Interface Deed has been executed by the Customer and Aurizon Network.

4.5 Changes to Operator nominations

- (a) The Access Holder may, from time to time, upon giving at least 2 Business Days prior written notice to Aurizon Network and each affected Operator:
 - (i) vary any nomination previously given by the Access Holder under this Agreement so as to vary either or both of the following:
 - (A) the Access Rights which the Access Holder has allocated to an Operator; or
 - (B) the period for which the Access Rights are to be allocated to an Operator (provided that the period does not extend beyond the Train Service Expiry Date for the relevant Train Service Type); or
 - (ii) withdraw any nomination previously given by the Access Holder under **clause 4.3(b)** or this **clause 4.5(a)**; and
 - (iii) if the variation or withdrawal of a nomination results from the operation of clause 10.2(d) or 10.3(c)(iv)(A)(2) under a Train Operations Deed, the Access Holder may nominate, in accordance with **clause 4.3**, an alternative Operator to utilise the “Category 1 Reduced Operational Rights” (as defined in the Train Operations Deed) and/or the “Category 2 Reduced Operational Rights” (as defined in the Train Operations Deed) (as applicable).
- (b) Aurizon Network must notify the Access Holder and the Operator if it accepts or rejects (providing its reasons) in accordance with **clauses 4.3(d)(ii) to 4.3(d)(iv)(B)** the variation within the lesser of 10 Business Days or the period remaining prior to the relevant Intermediate Train Plan being finalised.
- (c) Where an Operator receives an increased allocation of Access Rights following a varied nomination in accordance with this **clause 4.5**, and the date on which that variation commences is during the period covered by the then current Intermediate Train Plan, then Aurizon Network will schedule any additional Train Services ordered by the Operator to the extent permitted in accordance with the Network Management Principles.
- (d) If Aurizon Network rejects the nomination, it must facilitate the resolution of any matter the subject of its reasons for the rejection.

- (e) If Aurizon Network accepts the nomination, it must promptly do all things reasonably required to ensure that any delay to Train Services is minimised to the extent practicable including vary the relevant Train Operations Deed to include the right to operate Train Services utilising the Access Rights (or the “Category 1 Reduced Operational Rights” (as defined in the Train Operations Deed) and/or the “Category 2 Operational Rights” (as defined in the Train Operations Deed), as applicable) in respect of which the Operator was nominated.

4.6 Nominations with different Train Descriptions

- (a) If at any time:
 - (i) the Access Holder intends to:
 - (A) nominate an Operator to utilise all or part of the Access Rights; or
 - (B) vary a nomination previously given by the Access Holder; and the Train Services of the relevant Operator will have a Train Description different from that contemplated in **Schedule 2**; or
 - (ii) the Access Holder otherwise wishes to vary the Train Services from the Train Description nominated in **Schedule 2**,
then:
 - (iii) prior to nominating the Operator or varying the nomination, Aurizon Network and the Access Holder must negotiate and endeavour to agree any amendments to this Agreement (including any amendments to the Access Rights and, subject to **clause 4.6(b)**, the Access Charge Rates) that may be necessary to reflect the Train Description of the Train Services to be operated by the relevant Operator for that part of the Access Rights to be allocated to that Operator; and
 - (iv) no amendment to the Access Rights that results in the Access Holder being granted increased rights to access the Nominated Network has any effect unless and until the Access Holder and Aurizon Network have complied with Aurizon Network’s Access Undertaking (as amended by any Change in Access Undertaking) (including with respect to the allocation of those increased Access Rights).
- (b) Any variation to the Access Charge Rates under **clause 4.6(a)(iii)**:
 - (i) must be in accordance with the pricing principles set out in Part 6 of the Access Undertaking, in particular clause 6.2; and
 - (ii) must be reasonably justified (including calculations) by Aurizon Network to the Access Holder.

4.7 Reduction of rights resulting in an Over-Allocation

If at any time:

- (a) either:
 - (i) the Access Rights of the Access Holder are reduced, relinquished or transferred under this Agreement; or

- (ii) the Nominated Monthly Train Services in respect of a Train Service Type are reduced or varied under this Agreement ; and
- (b) as a result of such reduction, relinquishment or transfer of Access Rights or reduction or variation of Nominated Monthly Train Services in respect of a Train Service Type, the Access Rights allocated by the Access Holder to any one or more Operators under **clause 4.3** or **4.4** for a Train Service Type exceed, in aggregate, the Access Holder's Access Rights under this Agreement for that Train Service Type following the reduction, relinquishment or transfer (such excess being the **Over-Allocation**),

then, unless the Access Holder varies the nominations in accordance with **clause 4.5(a)** within 2 Business Days of such reduction, relinquishment, transfer or variation to eliminate the Over-Allocation, the Access Holder will be deemed to have varied the nominations in accordance with **clause 4.5(a)** as follows:

- (c) if the Access Holder has nominated only one Operator for that Train Service Type, reducing the Access Rights for that Train Service Type which the Access Holder has allocated to the Operator under its Train Operations Deed by the Over-Allocation; or
- (d) if the Access Holder has nominated multiple Operators in respect of an affected Train Service Type, reducing the Access Rights for that Train Service Type which the Access Holder has allocated to each Operator under this Agreement and each Operator's respective Train Operations Deed by a share of the Over-Allocation that is as closely as possible proportionate to the Train Services allocated to the Operator for the affected Train Service Type as a share of the total Train Services allocated to all Operators for that Train Service Type,

and such reduction will take effect on the date the reduction, variation, relinquishment or transfer takes effect, with Aurizon Network providing written notice of the reduction to each affected Operator as soon as practicable.

4.8 Operation of Ad Hoc Train Service

- (a) If:
 - (i) the Access Holder (or its Operator) notifies Aurizon Network that it wishes to have an Operator (which the Access Holder must identify when notifying Aurizon Network) operate an Ad Hoc Train Service (which the Access Holder (or its Operator) must identify having reference to the definition of Ad Hoc Train Service) for a Train Service Type; and
 - (ii) the relevant Operator has notified Aurizon Network that is able and willing to operate that Ad Hoc Train Service for a Train Service Type under its Train Operations Deed to the extent the Access Holder provided the notice under **clause 4.8(a)(i)**,

then, to the extent permitted by the Network Management Principles, Aurizon Network:

- (iii) must if required in accordance with clause 5.4(c) of Schedule G of the Access Undertaking; or
- (iv) otherwise must use reasonable endeavours to, schedule the Ad Hoc Train Service for the Train Service Type in the Daily

Train Plan.

- (b) On and from the time that the Ad Hoc Train Service is scheduled in the Daily Train Plan, the terms and conditions of this Agreement apply to the Ad Hoc Train Service as if the Ad Hoc Train Service is a Train Service for the Train Service Type the relevant Operator is entitled to operate utilising the Access Rights for that Train Service Type.
- (c) Despite **clause 4.8(b)**, if an Ad Hoc Train Service is of a type described in **paragraph (b)** of the definition of Ad Hoc Train Service and has a different Origin and Destination for that Train Service Type, then such Ad Hoc Train Service will not be taken into account for the purposes of the TOP Charge.

4.9 Supply Chain Rights

- (a) The Access Holder must demonstrate to the satisfaction of Aurizon Network (acting reasonably) that the Access Holder holds, or has the benefit of, or is reasonably likely to hold, or have the benefit of, Supply Chain Rights for the commencement of the operation of the first Train Service for each Train Service Type.
- (b) The Access Holder may not nominate an Operator under this Agreement in respect of a Train Service Type for which the Access Holder does not hold, or have the benefit of, Supply Chain Rights for those Train Services.
- (c) The Access Holder must, for each Train Service Type, use all reasonable endeavours to continue to hold, or have the benefit of, those Supply Chain Rights until at least the Train Service Expiry Date for the Train Service Type, provided that if the term of any Supply Chain Rights expires or terminates prior to the Train Service Expiry Date for that Train Service Type, the Access Holder must use reasonable endeavours to secure equivalent Supply Chain Rights for the period until the Train Service Expiry Date for that Train Service Type.
- (d) If, prior to the commencement of the operation of the Train Services for each Train Service Type, Aurizon Network:
 - (i) acting reasonably, considers the Access Holder's circumstances have changed; and
 - (ii) notifies the Access Holder that it requires details of the changed circumstances,

the Access Holder must, within 10 Business Days after its notice, provide Aurizon Network reasonable details of:

- (iii) the Supply Chain Rights for the Train Services for a Train Service Type that the Access Holder holds, or has the benefit of at the time; and
- (iv) if applicable, the steps which the Access Holder has taken, or intends to take to secure any additional, renewed, extended or replacement Supply Chain Rights for the Train Services for the Train Service Type and the status of any such steps.

5 Billing and payments

5.1 Charges

- (a) The Access Holder must pay to Aurizon Network the Access Charges and any other charges (if any) as calculated in accordance with this Agreement.
- (b) Where a Train Service is taken to be cancelled under a Train Operations Deed, despite the Train Service being cancelled and not operated, the Train Service will be taken to be one of the Nominated Monthly Train Services for the Train Service Type for the Month in which the Train Service was originally scheduled in the Daily Train Plan provided that:
 - (i) the reason for the cancellation is not (or is deemed under the relevant Train Operations Deed to not be) an Aurizon Network Cause; and
 - (ii) the relevant Operator notified Aurizon Network that it decided not to, or was unable to, operate that Train Service less than 48 hours (or failed to give any notification) before the time for commencement of the operation of that Train Service as originally scheduled in the Daily Train Plan.

5.2 Invoicing

- (a) As soon as reasonably practicable after the end of each Billing Period, Aurizon Network must give to the Access Holder an invoice for:
 - (i) the Access Charges for that Billing Period; plus
 - (ii) any amounts payable but unpaid by the Access Holder to Aurizon Network under this Agreement, and which have not previously been invoiced, as at the end of the Billing Period.
- (b) If **clause 5.6** applies, Aurizon Network must give the Access Holder an invoice under **clause 5.2(a)** after the end of a Billing Period even if no amount is required to be invoiced under **clause 5.2(a)** for that Billing Period.
- (c) If this Agreement terminates or expires on a date other than 30 June then, as soon as reasonably practicable after the first 30 June to occur after the termination or expiry of this Agreement, Aurizon Network must give to the Access Holder an invoice for the TOP Charge (if any) for the Year during which this Agreement terminated or expired.
- (d) Each invoice given under this **clause 5.2** must be accompanied by reasonable details of Aurizon Network's calculation of the amounts claimed in the invoice including a breakdown of the Access Charges and itemised description of any other amounts (for the amounts deducted under **clause 5.6**, particulars must include the amounts against which the deduction is applied).

5.3 Payment

- (a) Subject to **clause 5.4**, the Access Holder must:
 - (i) pay to Aurizon Network the amount claimed in an invoice given under **clause 5.2** within 10 Business Days after the invoice is given to the Access Holder; and

- (ii) pay all amounts payable to Aurizon Network under this Agreement:
 - (A) in Australian currency; and
 - (B) by:
 - (1) direct deposit into one or more bank accounts notified by Aurizon Network to the Access Holder in the invoice for this purpose (whether or not those bank accounts are in the name of Aurizon Network); or
 - (2) such other payment method as Aurizon Network specifies in the invoice (acting reasonably).
- (b) Any payment by the Access Holder of an amount payable under this Agreement in accordance with this **clause 5.3** is taken to be a payment of such amount to Aurizon Network for the purpose of this Agreement (whether or not such amount is paid into a bank account in the name of Aurizon Network).

5.4 Disputes

- (a) Any Disputes in connection with an amount claimed in an invoice:
 - (i) must be resolved in accordance with **clause 28**; and
 - (ii) which is not resolved in accordance with **clause 28.2**, may be referred by either Party to an Expert for determination in accordance with **clause 28.3**.
- (b) Despite **clause 5.4(a)**, if an amount claimed in an invoice given by Aurizon Network under **clause 5.2** is Disputed, then unless the total amount of the invoice is nil due to the operation of **clause 5.6**, the Access Holder must pay to Aurizon Network:
 - (i) the portion of the amount claimed in the invoice that is not in Dispute; and
 - (ii) 50% of the portion of the amount claimed in the invoice that is in Dispute,within the time specified in **clause 5.3(a)(i)**.
- (c) Upon resolution of any Dispute about an amount claimed in an invoice given by Aurizon Network, if the total amount which Aurizon Network was entitled to claim in the invoice (as resolved) is:
 - (i) more than the amount paid by the Access Holder, then the amount of the difference, together with interest on that amount calculated in accordance with **clause 5.5** (from the date when the amount in Dispute would have been due and payable under **clause 5.3(a)(i)** but for **clause 5.4(b)**, until the date on which the difference, together with any interest, has been paid in full), must be paid by the Access Holder to Aurizon Network within 20 Business Days after the resolution of the Dispute; or
 - (ii) less than the amount paid by the Access Holder, then the amount of the difference, together with interest on that amount calculated in accordance with **clause 5.5** (from the date when the amount in Dispute was paid by the Access Holder until the date on which the

credit is applied or the amount is paid (as applicable) under this **clause 5.4(c)(ii)**, must be:

- (A) applied by Aurizon Network as credit in favour of the Access Holder against the amount claimed in the next invoice to be issued by Aurizon Network to the Access Holder under **clause 5.2** after the resolution of the Dispute (and, if necessary, to subsequent invoices issued by Aurizon Network under **clause 5.2** until the amount of the difference (including any interest) has been fully credited in favour of the Access Holder against amounts payable under invoices issued by Aurizon Network to the Access Holder under **clause 5.2**); or
- (B) if there will be no further invoices issued by Aurizon Network to the Access Holder under **clause 5.2** after the resolution of the Dispute or the last credit referred to in **clause 5.4(c)(ii)(A)**, paid by Aurizon Network to the Access Holder within 20 Business Days after resolution of the Dispute or the last credit referred to in **clause 5.4(c)(ii)(A)** (as applicable).

5.5 Interest on overdue payments and Disputed amounts

- (a) Without prejudice to the rights, powers and remedies of a Party under this Agreement or otherwise at Law, if for any reason a Party does not pay an amount payable under or in connection with this Agreement on or before the due date for payment, then that Party must pay interest on the outstanding amount calculated in accordance with this **clause 5.5**.
- (b) Interest accrues on outstanding amounts from the due date for payment until that amount, together with the interest on that amount, has been paid in full.
- (c) Interest under **clauses 5.4(c)(i), 5.4(c)(ii) and 5.5(b)** is calculated at the Default Rate. Any interest accrued but unpaid at the end of each Month is capitalised and, once capitalised, will itself bear interest.

5.6 Right of set-off

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

5.7 Consequences of failure to comply with Performance Levels

- (a) If an Operator nominated by the Access Holder under this Agreement does not comply with the Performance Levels imposed on it under a Train Operations Deed, then, subject to **clause 5.4**, the Access Holder must pay to Aurizon Network the amount (if any) determined in accordance with the relevant Train Operations Deed as a result of that failure, as part of the invoice issued by Aurizon Network for Access Charges and other charges for the Billing Period immediately following Aurizon Network becoming entitled to that amount provided that, if there is no next Billing Period, the Access Holder must pay such amount to Aurizon Network within 10 Business Days after receipt of an invoice from Aurizon Network.
- (b) If Aurizon Network does not comply with the Performance Levels imposed on it under a Train Operations Deed, then Aurizon Network will credit to

the Access Holder the amount (if any) determined in accordance with the relevant Train Operations Deed as a result of that failure by way of a deduction from the invoice issued by Aurizon Network for Access Charges and other charges for the Billing Period immediately following the Access Holder becoming entitled to that amount in accordance with **clause 5.7(c)**.

- (c) If the total amount which Aurizon Network must credit to the Access Holder under **clause 5.7(b)** is more than the amount under the invoice issued by Aurizon Network for Access Charges and other charges (after application of any other set-off or other credit owed to the Access Holder) for the Billing Period immediately following the Access Holder becoming entitled to that amount, then:
 - (i) the amount of the difference must be applied by Aurizon Network as credit in favour of the Access Holder against the amount claimed in the next invoice to be issued by Aurizon Network under **clause 5.2** and to subsequent invoices issued by Aurizon Network under **clause 5.2** until the amount of the difference has been fully credited in favour of the Access Holder against amounts payable under invoices issued by Aurizon Network under **clause 5.2**); or
 - (ii) if there is no next Billing Period, then Aurizon Network must pay such amount to the Access Holder within 10 Business Days after receipt of an invoice from the Access Holder.

6 Security

6.1 Requirement to provide Security after Commencement Date

- (a) This **clause 6.1** only applies if **item 3** of **Schedule 1** states that it applies.
- (b) On or before the date 10 Business Days prior to the Commitment Date, the Access Holder must deliver Security to Aurizon Network which satisfies the requirements of this **clause 6** for an amount of not less than the Security Amount.

6.2 Requirement to provide Security on certain events occurring

- (a) If at any time during the Term when the Access Holder is not required to provide Security to Aurizon Network under this **clause 6**:
 - (i) the Access Holder does not pay any amount (together with any interest) payable under this Agreement and which is not the subject of a Dispute by the due date for payment or, where there is no due date for payment, within five Business Days after Aurizon Network gives written notice to the Access Holder requiring payment; or
 - (ii) Aurizon Network considers (acting reasonably) that the Access Holder may:
 - (A) no longer be financially sound;
 - (B) no longer be able to meet its debts as and when they fall due; or
 - (C) not otherwise be capable of performing its obligations under this Agreement,

then the Access Holder must, within 10 Business Days after being required to do so by Aurizon Network, deliver Security to Aurizon Network which satisfies the requirements of this **clause 6** for an amount of not less than the Security Amount.

- (b) In considering whether to require the Access Holder to provide Security under **clause 6.2(a)(ii)**, Aurizon Network may take into consideration:
 - (i) expected future payment obligations under this Agreement and the financial performance of the Access Holder; and
 - (ii) the Access Holder ceasing to have an Acceptable Credit Rating.

6.3 Requirement to provide Security for the Security Amount

- (a) If the Access Holder is required to provide Security under this **clause 6**, the Security must be provided and maintained for an amount of not less than the Security Amount.
- (b) If at any time during the Term:
 - (i) the Access Holder is required to provide Security under this **clause 6**; and
 - (ii) the Security provided by the Access Holder to Aurizon Network under this **clause 6** is for an amount which is less than the Security Amount (including due to Aurizon Network having recourse to the Security under **clause 6.6**),

then the Access Holder must promptly (and in any event within 10 Business Days after being required to do so by Aurizon Network) deliver to Aurizon Network:

- (iii) additional Security; or
- (iv) replacement Security,

which satisfies the requirements of this **clause 6** so that Security is provided and maintained for an aggregate amount of not less than the Security Amount.

6.4 Requirement to provide Security for additional Train Service Type

Without limiting **clause 6.3**, if:

- (a) at any time during the Term:
 - (i) **Schedule 2** is varied to include an additional Train Service Type; or
 - (ii) the Train Description for an existing Train Service Type is varied;
- (b) at the time of the variation referred to in **clause 6.4(a)** the Access Holder is required to provide Security under this **clause 6**; and
- (c) at the time of the variation referred to in **clause 6.4(a)** the Security provided by the Access Holder to Aurizon Network under this **clause 6** is for an amount which is less than the amount which will be the Security Amount on and from, as applicable:
 - (i) the Train Service Commitment Date for that additional Train Service Type; or

- (ii) the date the variation to the Train Description for that existing Train Service Type takes effect,

having regard to the additional Access Charges payable, in the future, for that Train Service Type, then the Access Holder must promptly (and in any event within 10 Business Days before the applicable date specified in **clause 6.4(c)(i)** or **6.4(c)(ii)**) deliver to Aurizon Network:

- (iii) additional Security; or
- (iv) replacement Security,

which satisfies the requirements of this **clause 6** so that Security is provided and maintained for an aggregate amount of not less than the amount which will be the Security Amount on and from the applicable date specified in **clause 6.4(c)(i)** or **6.4(c)(ii)** (having regard to the additional Access Charges payable, in the future, for that Train Service Type).

6.5 Replacement of Security

- (a) The Access Holder may, with Aurizon Network's consent, replace any Security provided by the Access Holder under this **clause 6** with replacement Security which satisfies the requirements of this **clause 6**.
- (b) If the Security provided by an Access Holder under this **clause 6** is a bank guarantee that has an expiry date, then:
 - (i) the Access Holder must, at least 20 Business Days prior to the expiry of the bank guarantee, deliver to Aurizon Network replacement Security which satisfies the requirements of this **clause 6**; and
 - (ii) if the Access Holder does not deliver to Aurizon Network replacement Security in accordance with **clause 6.5(b)(i)**:
 - (A) Aurizon Network may, in its absolute discretion, draw on the existing bank guarantee;
 - (B) any such amount drawn by Aurizon Network (**Cash Deposit**) will be treated as a deposit of cash delivered by or on behalf of the Access Holder as Security under this Agreement in place of the relevant bank guarantee;
 - (C) this **clause 6** will apply (with any necessary changes) in respect of the Cash Deposit; and
 - (D) if requested by the Access Holder at any time, Aurizon Network must return the Cash Deposit to the Access Holder in exchange for the Access Holder delivering to Aurizon Network replacement Security which satisfies the requirements of this **clause 6**.

6.6 Recourse to Security

Aurizon Network may have recourse to the Security in respect of any amount which the Access Holder fails to pay under or in connection with this Agreement:

- (a) if the Access Holder fails to pay the amount by the due date for payment under this Agreement, Aurizon Network notifies the Access Holder of the payment default and the Access Holder fails to remedy the payment

default within 10 Business Days after the date the notice is given, following the expiry of such period;

- (b) if the amount is not payable by a specified date and the Access Holder fails to make payment within 10 Business Days after Aurizon Network has requested payment of such amount, following the expiry of such period; or
- (c) if the amount is the subject of a Dispute, in accordance with **clause 5.4(c)(i)**.

6.7 Review of requirement to provide Security

If at any time during the Term, the Access Holder:

- (a) is required to provide Security under this **clause 6**; and
- (b) considers that its financial circumstances have changed such that it should no longer be required to provide Security,

then the Access Holder may request (provided that the Access Holder must not request more than once in any Year) that Aurizon Network review the creditworthiness of the Access Holder and Aurizon Network will undertake such a review when requested.

6.8 Return of Security

Aurizon Network must return to the Access Holder (and, where appropriate, give the Access Holder any necessary releases in relation to) any Security provided by the Access Holder under this **clause 6**:

- (a) subject to Aurizon Network's rights of recourse to the Security under **clause 6.6**, promptly and in any event within 10 Business Days after the date of termination or expiry of this Agreement;
- (b) on the Access Holder delivering to Aurizon Network any replacement Security under **clause 6.3(b)(iv)**, **6.4(c)(iv)** or **6.5** which satisfies the requirements of this **clause 6**; or
- (c) if, after a review pursuant to **clause 6.7**, Aurizon Network considers, acting reasonably, that it is no longer necessary for the Access Holder to provide Aurizon Network with Security under this **clause 6**.

7 Accreditation

- (a) Aurizon Network must have and maintain Accreditation to the extent required to perform its obligations and exercise its rights under this Agreement and, if requested to do so in writing by the Access Holder, provide to the Access Holder copies of documentation evidencing currency, renewal or amendment of its Accreditation within five Business Days of such request.
- (b) Aurizon Network must notify the Access Holder as soon as possible of any notice from an Authority affecting, or likely to affect, its Accreditation, and must provide a copy of that notice to the Access Holder on request.

8 Resumption of Access Rights

- (a) Unless otherwise specified in this Agreement, Aurizon Network may resume some or all of the Access Rights in accordance with the Resumption Provisions which form part of this Agreement under **clause 3**.
- (b) Within the later of two Business Days after:
 - (i) a Resumption Notice is given to the Access Holder; and
 - (ii) the resolution of the Dispute if:
 - (A) there is a Dispute in connection with a decision by Aurizon Network to resume the Access Holder's Access Rights; and
 - (B) the outcome of the Dispute is that the Access Rights may be resumed,

the Access Holder may give notice to Aurizon Network and each affected Operator in accordance with **clause 4.5(a)** to vary the Access Rights which the Access Holder has allocated to an Operator to take into account any resumption of Access Rights determined or agreed under the Resumption Provisions which form part of this Agreement under **clause 3** or as determined under the relevant dispute resolution process.

- (c) Except to the extent that the Access Holder has given a notice as contemplated in **clause 8(b)**, the resumption of Access Rights for each Train Service Type:
 - (i) firstly, are deemed to reduce the Access Rights for that Train Service Type for which the Access Holder has not nominated an Operator; and
 - (ii) if, after the operation of **clause 8(c)(i)**, there is an Over-Allocation for the relevant Train Service Type, **clause 4.7** applies in respect of that Over-Allocation.

9 Reduction of Conditional Access Rights due to Capacity Shortfall

9.1 Application

- (a) This **clause 9** only applies in respect of a Train Service Type if the Train Description for that Train Service Type specifies that this **clause 9** applies in respect of that Train Service Type.
- (b) If this **clause 9** applies in respect of a Train Service Type, this **clause 9** only applies to the extent that it:
 - (i) is not inconsistent with the Access Undertaking (as amended by any Change in Access Undertaking); and
 - (ii) does not oblige Aurizon Network to do or not do anything that would cause Aurizon Network to breach the Access Undertaking (as amended by any Change in Access Undertaking).

9.2 Conditional Access Rights

If this **clause 9** applies in respect of a Train Service Type:

- (a) the Access Rights for that Train Service Type under this Agreement (**Conditional Access Rights**) are conditional upon the completion and commissioning of the Expansion specified in the Train Description for that Train Service Type;
- (b) despite the Train Service Commitment Date specified in the Train Description for the Conditional Access Rights, the Train Service Commitment Date for the Conditional Access Rights will be taken to be the later of:
 - (i) the Train Service Commitment Date for the Conditional Access Rights specified in the Train Description for the Conditional Access Rights; and
 - (ii) the date upon which all Segments of the Expansion are completed and commissioned.

9.3 Effect on Operator nominations

- (a) Within the later of:
 - (i) two Business Days after the Capacity Assessment Notice is given to the Access Holder in accordance with the Conditional Access Provisions which form part of this Agreement under **clause 3**; and
 - (ii) if the Access Holder disputes the Capacity Assessment Notice, two Business Days after the resolution of the Dispute,

the Access Holder may notify Aurizon Network and each affected Operator in accordance with **clause 4.5(a)** to vary the Access Rights which the Access Holder has allocated to an Operator to take into account the variation to the Conditional Access Rights under the Conditional Access Provisions which form part of this Agreement under **clause 3**.
- (b) Except to the extent that the Access Holder has given a notice as contemplated in **clause 9.3(a)** in respect of the variation to the Conditional Access Rights under the Conditional Access Provisions which form part of this Agreement under **clause 3** for each affected Train Service Type, the variation to the Conditional Access Rights for each affected Train Service Type:
 - (i) are deemed to reduce the Access Rights for that Train Service Type for which the Access Holder has not nominated an Operator; and
 - (ii) if, after the operation of **clause 9.3(b)(i)**, there remains an Over-Allocation for the relevant Train Service Type, **clause 4.7** applies in respect of that Over-Allocation.

9.4 Future capacity developments

If any Conditional Access Rights are varied under this **clause 9**, the Access Holder acknowledges and agrees that Aurizon Network will only be obliged to develop additional Capacity, and to grant the Access Holder Access Rights in respect of any such additional Capacity, if, and to the extent that, it is obliged to do so under the Access Undertaking (as amended by any Change in Access Undertaking).

~~10 Reduction of Nominated Monthly Train Services if~~

~~Maximum Payload exceeded~~

~~10.1 Notification of reduction of Nominated Monthly Train Services~~

- ~~(a) If, at a point in time (**Assessment Date**), the Average Annual Payload for a Train Service Type operated by a particular Operator (**Defaulting Operator**) exceeds the Maximum Payload for that Train Service Type, then Aurizon Network may, within 20 Business Days after the Assessment Date, give the Access Holder and the Defaulting Operator a notice (**Reduction Notice**) in respect of the Affected Train Service Type.~~
- ~~(b) The Reduction Notice must:~~
 - ~~(i) Specify:~~
- ~~(c) the Average Annual Payload for the Affected Train Service Type as at the Assessment Date;~~
- ~~(d) the Revised Nominal Payload for the Affected Train Service Type;~~
- ~~(e) the Revised Maximum Payload for the Affected Train Service Type; and~~
- ~~(f) the Revised Nominated Monthly Train Services for the Affected Train Service Type;~~
- ~~(g) including reasonable details of the calculation of those amounts; and~~
- ~~(h) notify the Access Holder and the Defaulting Operator that, with effect on the date specified in the Reduction Notice (which date must not be less than three months after the date the Reduction Notice is given to the Access Holder and the Defaulting Operator):~~
- ~~(i) the Nominal Payload for the Affected Train Service Type will be taken to be varied to be the Revised Nominal Payload for that Affected Train Service Type (as specified in the Reduction Notice);~~
- ~~(j) the Maximum Payload for the Affected Train Services Type will be taken to be varied to be the Revised Maximum Payload for that Affected Train Service Type (as specified in the Reduction Notice); and~~
- ~~(k) the Nominated Monthly Train Services for the Affected Train Service Type will be taken to be varied to be the Revised Nominated Monthly Train Services for that Affected Train Service Type (as specified in the Reduction Notice).~~

~~10.2 Determining the Affected Train Service Type~~

- ~~(a) If the relevant Train Service Type (**Split Train Service Type**) operated by the Defaulting Operator which has exceeded the Maximum Payload is also operated by another Operator (**Non-Defaulting Operator**):~~
 - ~~(i) the Train Service Type operated by the Defaulting Operator (**New Train Service Type**); and~~
 - ~~(ii) the Train Service Type operated by the Non-Defaulting Operator (**Original Train Service Type**);~~
- ~~are deemed to be two different Train Service Types on the basis that:~~
- ~~(iii) the "Nominated Monthly Train Services (for a 30 day Month)" for the New Train Service Type is deemed to be the "Nominated Monthly Train Services (for a 30 day Month)" allocated to the Defaulting~~

~~Operator in respect of the Split Train Service Type as at the Assessment Date;~~

~~(iv) — the “Nominated Monthly Train Services (for a 30 day Month)” for the Original Train Service Type is deemed to be the “Nominated Monthly Train Services (for a 30 day Month)” which was not allocated to the Defaulting Operator in respect of the Split Train Service Type as at the Assessment Date; and~~

~~(v) — subject to **clauses 10.2(a)(iii)** and **10.2(a)(iv)**, the Train Description for:~~

~~(A) — the New Train Service Type; and~~

~~(B) — the Original Train Service Type;~~

~~is otherwise the same as for the Split Train Service Type.~~

~~(b) — The **Affected Train Service Type** is:~~

~~(i) — if **clause 10.2(a)** applies, the New Train Service Type operated by the Defaulting Operator; and~~

~~(ii) — in any other case, the Train Service Type operated by the Defaulting Operator which has exceeded the Maximum Payload.~~

~~10.3 — Calculation of Revised Maximum Payload~~

~~The Revised Maximum Payload for an Affected Train Service Type is the amount which is the maximum Payload of the Train Services operated by the Defaulting Operator of the Relevant Rollingstock Configuration for the Train Service Type (rounded to the nearest whole tonne) which was the Relevant Rollingstock Configuration for the Train Service Type which was most used in the operation of Train Services for the Affected Train Service Type by the Defaulting Operator during the 12 month period ending on the Assessment Date.~~

~~10.4 — Calculation of Revised Nominal Payload~~

~~The Revised Nominal Payload for an Affected Train Service Type is the amount (expressed as tonnes) calculated in accordance with the following formula:~~

$$\del{RNP} = \del{RMP} \times \del{LEF}$$

~~where:~~

~~RMP = the Revised Maximum Payload for the Affected Train Service Type (rounded to the nearest whole tonne)~~

~~RNP = the Revised Nominal Payload for the Affected Train Service Type~~

~~LEF = Loading Efficiency Factor~~

~~10.5 — Calculation of Revised Nominated Monthly Train Services~~

~~The Revised Nominated Monthly Train Services for an Affected Train Service Type is the number of Train Services calculated in accordance with the following formula:~~

~~RNMTS = 2 x Loaded Train Services~~

where:

- ~~RNMTS = the Revised Nominated Monthly Train Services for the Affected Train Service Type~~
- ~~Loaded Train Services = IT/RNP (rounded to the nearest whole Train Service on the basis that where the first decimal place is greater than three, the number of Train Services is to be rounded up to the nearest number of whole Train Services and, where the first decimal place is three or less, the number of Train Services is to be rounded down to the nearest number of whole Train Services)~~
- ~~IT = the Indicative Tonnage for the Train Service Type~~
- ~~RNP = the Revised Nominal Payload for the Affected Train Service Type~~

10.6 — Dispute

- ~~(a) — If Aurizon Network gives the Access Holder a Reduction Notice in respect of an Affected Train Service Type, the Access Holder may, within 20 Business Days after Aurizon Network gives the Reduction Notice to the Access Holder, give Aurizon Network a Dispute Notice which Disputes the Reduction Notice in accordance with **clause 28**.~~
 - ~~(b) — If a Dispute referred to in **clause 10.3(a)** is not resolved in accordance with **clause 28.2**, then the Parties must refer the Dispute to an Expert to determine:
 - ~~(i) — the Average Annual Payload for the Affected Train Service Type as at the relevant Assessment Date; and~~
 - ~~(ii) — if the Expert determines that the Average Annual Payload for the Affected Train Service Type as at the relevant Assessment Date exceeds the Maximum Payload for the Train Service Type:
 - ~~(A) — the Revised Nominal Payload for the Affected Train Service Type;~~
 - ~~(B) — the Revised Maximum Payload for the Affected Train Service Type; and~~
 - ~~(C) — the Revised Nominated Monthly Train Services for the Affected Train Service Type.~~~~~~
- ~~(c) — If the Access Holder does not give Aurizon Network a Dispute Notice referred to in **clause 10.3(a)** within the time referred to in **clause 10.3(a)**, then:
 - ~~(i) — the Access Holder must not give Aurizon Network a Dispute Notice Disputing the relevant Reduction Notice or the variation of the Nominal Payload, Maximum Payload or the Nominated Monthly Train Services for the relevant Affected Train Service Type under this **clause 10**;~~~~

- ~~(ii) any such Dispute Notice which is given by the Access Holder will be taken to be of no effect; and~~
- ~~(iii) the Access Holder will not have, and must not make, any Claim against Aurizon Network in respect of that Dispute.~~

10.7 Variation to Train Description

~~If Aurizon Network gives the Access Holder and the Defaulting Operator a Reduction Notice in respect of a Train Service Type, then:~~

- ~~(a) the Nominal Payload for the Train Service Type operated by the Defaulting Operator will be taken to be the Revised Nominal Payload for the Train Service Type;~~
- ~~(b) the Maximum Payload for the Train Service Type operated by the Defaulting Operator will be taken to be varied to be the Revised Maximum Payload for the Train Service Type; and~~
- ~~(c) the Nominated Monthly Train Services for the Train Service Type operated by the Defaulting Operator will be taken to be varied to be the Revised Nominated Monthly Train Services for the Train Service Type,~~

~~as:~~

- ~~(d) specified in the relevant Reduction Notice; or~~
- ~~(e) if **clause 10.3(a)** applies, agreed or determined through the Dispute resolution process under **clause 28**,~~

~~with effect on the later of:~~

- ~~(f) the date specified in the relevant Reduction Notice; and~~
- ~~(g) if the Access Holder gives Aurizon Network a Dispute Notice referred to in **clause 10.3(a)**, the date agreed through the Dispute resolution process, or the date the Expert notifies the Parties of his or her determination, under **clause 28**.~~

10.8 Variation to Train Operations Deeds

~~Where there is a variation to a Train Description in accordance with **clause 10.4**:~~

- ~~(a) the Access Holder will be deemed to have given a notice to Aurizon Network to reduce the number of Nominated Monthly Train Services the Defaulting Operator may operate for that Train Service Type utilising the Access Rights under a Train Operations Deed in accordance with the Reduction Notice; and~~
- ~~(b) Aurizon Network shall provide written notice of that reduction to the Defaulting Operator as soon as practicable and shall:
 - ~~(i) issue a notice to the Access Holder setting out the changes to the “Nominated Monthly Train Services (for a 30 day Month)” set out in **schedule 2** of this Agreement for each of:
 - ~~(A) the Affected Train Service Type; and~~
 - ~~(B) the Original Train Service Type (if applicable); and~~~~
 - ~~(ii) issue a notice to the Defaulting Operator and the Access Holder setting out the changes to the Train Description and the “Nominated~~~~

Monthly Operational Rights (for a 30-day Month)" in schedule 2 of the Defaulting Operator's Train Operations Deed.

~~10.9~~ — ~~No prejudice to other rights~~

~~This clause 10 does not prejudice Aurizon Network's other rights and remedies in respect of any non-compliance by the Access Holder, Defaulting Operator or any other Operator with the Train Description for a Train Service Type.~~

[QRC Note: As discussed in the QRC's covering submission, these payload provisions should be moved to the Undertaking.]

~~11.10~~ Access Holder initiated increase to Maximum Payload

~~11.10.1~~ Request for increased Maximum Payload

(a) At any time during the Term, the Access Holder may give Aurizon Network a notice requesting that Aurizon Network consider increasing the Maximum Payload for a Train Service Type (**Notice of Enquiry**).

(b) A Notice of Enquiry must specify:

(i) ~~subject to clause 0,~~ the proposed increased Maximum Payload for the relevant Train Service Type (Proposed Maximum Payload);
and

(ii) the date on which the Access Holder proposes that the ~~p~~Proposed ~~increased~~ Maximum Payload for that Train Service Type takes effect; ~~and~~

(c) If the Proposed Maximum Payload exceeds the maximum Payload of the Authorised Rollingstock Configuration for the Train Service Type which has the greatest maximum Payload, the Notice of Enquiry must:

(i) specify if ~~clause 11.2(c)~~ would apply to the giving of a Variation Request Notice, the details of the proposed Rollingstock Configuration for the Train Service Type (including the maximum Payload of the proposed Rollingstock Configuration which must not be less than the Proposed Maximum Payload); and

~~(iii) — be accompanied by an Authorisation Request Notice (as defined in an Operator's Train Operations Deed) in respect of the proposed Rollingstock Configuration from each Operator which operates Train Services in respect of that Train Service Type.~~

~~(iv) — The proposed increased Maximum Payload for a Train Service Type specified in a Notice of Enquiry must not exceed:~~

~~(v) — the maximum Payload of the Authorised Rollingstock Configuration for the Train Service Type which has the greatest maximum Payload; or~~

~~(vi) (ii) if the Maximum Payload for the Train Service Type exceeds the maximum Payload of the Authorised Rollingstock Configuration for the Train Service Type which has the greatest maximum Payload, the maximum Payload of the proposed Rollingstock Configuration for the Train Service Type specified in the Notice of Enquiry.~~

11.210.2 Response Notice and Variation Request Notice

- (a) Aurizon Network will consider (acting reasonably) whether or not the Proposed Maximum Payload for the Train Service Type specified in the Notice of Enquiry can be accommodated in accordance with the following principles:
- (i) whether the Proposed Maximum Payload would have a material adverse effect on an Access Seeker or another Access Holder;
 - (ii) whether the Infrastructure is capable of handling the Proposed Maximum Payload;
 - (iii) whether the Proposed Maximum Payload can be accomplished without requiring additional Capacity;
 - (iv) the outcomes of consultation with Customers, including in respect of any impacts under the commercial arrangements of those Customers (for example, an agreement regarding access conditions); and
 - (v) [insert]. [QRC Note: for further discussion.]
- (a)(b) Within 20 Business Days after the Access Holder gives Aurizon Network a Notice of Enquiry in respect of a Train Service Type, Aurizon Network must give the Access Holder a notice (**Response Notice**) specifying:
- (i) whether or not the ~~proposed increased~~Proposed Maximum Payload for the Train Service Type specified in the Notice of Enquiry can be accommodated in consideration of the principles outlined in clause 10.2(a) (including its reasons for that decision); and
 - (ii) if so:
 - (A) the Revised Nominal Payload ~~for that Train Service Type (calculated in accordance with clause 13.1) as the amount (rounded to the nearest whole tonne) which is 98% of the Maximum Payload for the Train Service Type specified in the Notice of Enquiry;~~
 - (B) the Revised Nominated Monthly Train Services ~~for that Train Service Type (calculated in accordance with clause 13.20 as if the Revised Nominal Payload for the Train Service Type for the purpose of that calculation is the Revised Nominal Payload calculated in accordance with clause 11.2(a)(ii)(A));~~
 - (C) the Surplus Access Rights (calculated in accordance with clause 13.3) difference between the Nominated Monthly Train Services for the Train Service Type and the Revised Nominated Monthly Train Services for the Train Service Type (**Surplus Access Rights**);
 - (D) the Revised Indicative Tonnage (calculated in accordance with clause 13.4);
 - (E) the [Relinquishment Fee] that would be payable under the Relinquishment Provisions which form part of this Agreement under **clause Error! Reference source not found.** [insert] in respect of the relinquishment of the Surplus

Access Rights by the Access Holder; and

[**Drafting note:** Aurizon Network and the QRC are working through a mechanism to avoid socialisation of costs among other system users. In its initial form, this mechanism contemplates that where Train Paths are relinquished under these provisions, the Access Holder will pay a fee equal to the AT2 component of access charges that would have been payable in relation to the Train Paths that have been relinquished. Once the mechanism has been fully worked through, Aurizon Network will provide drafting in relation to the appropriate fee that will be payable.]

~~(E)~~(F) the earliest date on which the increase in the Maximum Payload for the Train Service Type could take effect.

~~(b)~~(c) Within 20 Business Days after Aurizon Network gives the Access Holder a Response Notice that specifies that the ~~proposed increased~~Proposed Maximum Payload for a Train Service Type specified in the Notice of Enquiry can be accommodated, the Access Holder may give Aurizon Network a notice (**Variation Request Notice**) which:

(i) requests that Aurizon Network increase the Maximum Payload for the Train Service Type to the ~~proposed increased~~Proposed Maximum Payload specified in the Notice of Enquiry with effect on a date specified in the ate notice (which date must not be earlier, or more than six months later, than the date specified in the relevant Response Notice in accordance with **clause 10.2(b)(ii)(F)**); ~~and~~

(ii) elects to either:

(A) relinquish the Surplus Access Rights; or

(B) maintain the Surplus Access Rights; and

~~(ii)~~ sets out the details of any changes to the nominations previously given under **clause 4.3** or **4.5** ~~Error! Reference source not found.~~ to take into account the relinquishment or maintenance of the Surplus Access Rights.

~~(iii) If the proposed increased Maximum Payload for a Train Service Type specified in a Notice of Enquiry exceeds the maximum Payload of the Authorised Rollingstock Configuration for the Train Service Type which has the greatest maximum Payload, then the Access Holder must not give Aurizon Network a Variation Request Notice in respect of the Train Service Type unless, at the same time, each Operator which operates Train Services in respect of that Train Service Type also gives Aurizon Network an Authorisation Request Notice (as defined in that Operator's Train Operations Deed) in respect of a proposed Rollingstock Configuration which has a maximum Payload which is the same as the proposed increased Maximum Payload.~~

10.3 Dispute

(a) An Access Holder may, within 20 Business Days after Aurizon Network gives the Response Notice to the Access Holder, give Aurizon Network a

Dispute Notice which Disputes the Response Notice in accordance with **clause 28.**

- (b) If a Dispute referred to in **clause 10.3(a)** is not resolved in accordance with **clause 28.2**, then the Parties must refer the Dispute to an Expert to determine the Dispute in accordance with **clause 28.3.**
- (c) If the Access Holder does not give Aurizon Network a Dispute Notice within the time referred to in **clause 10.3(a)**, then:
 - (i) the Access Holder must not give Aurizon Network a Dispute Notice Disputing the relevant Response Notice;
 - (ii) any such Dispute Notice which is given by the Access Holder will be taken to be of no effect; and
 - (iii) the Access Holder will not have, and must not make, any Claim against Aurizon Network in respect of that Dispute.

11.310.4 Consequences of a Variation Request Notice

- (a) The effective date of a Variation Request Notice is the latest of:
 - (i) the date specified in the Variation Request Notice;
 - (ii) if **clause 10.1(c)** applies, the date the proposed Rollingstock Configuration for the Train Service Type specified in the Authorisation Request Notice becomes an Authorised Rollingstock Configuration for the Train Service Type; and
 - (iii) if the Access Holder elects to relinquish the Surplus Access Rights, the date the Access Holder pays Aurizon Network the **[Relinquishment Fee]** in respect of that relinquishment,

(Variation Effective Date).

- (b) If the Access Holder gives Aurizon Network a Variation Request Notice in respect of a Train Service Type for which it elects to relinquish the Surplus Access Rights, then:
 - (i) -the Access Holder will be taken, at the same time, to have given Aurizon Network a Notice of Intention to Relinquish under the Relinquishment Provisions which form part of this Agreement under **clause 13.5**~~Error! Reference source not found.~~ in respect of which:
 - (A) the Nominated Access Rights under those Relinquishment Provisions will be taken to be the Surplus Access Rights for the Train Service Type specified in the relevant Response Notice; and
 - (B) the Relinquishment Date under those Relinquishment Provisions will be taken to be the date specified in the Variation Request Notice; ~~and-~~
 - (ii) on the Variation Effective Date:
- ~~(A) Subject to **clause 11.2(c)**, if the Access Holder gives Aurizon Network a Variation Request Notice in respect of a Train Service Type, then:~~

~~(B)~~(A) the Maximum Payload for the Train Service Type will be taken to be varied to be the ~~proposed increased~~Proposed Maximum Payload for the Train Service Type (as specified in the relevant Notice of Enquiry);

~~(C)~~(B) _____ the Nominal Payload for the Train Service Type will be taken to be varied to be the Revised Nominal Payload for the Train Service Type (as specified in the relevant Response Notice); ~~and~~

(C) _____ the Nominated Monthly Train Services for the Train Service Type will be taken to be varied to be the Revised Nominated Monthly Train Services for the Train Service Type (as specified in the relevant Response Notice); and

~~(D)~~ _____ the Indicative Tonnage will remain unchanged.

~~(E)~~ _____ with effect on the latest of:

~~the date specified in the Variation Request Notice;~~

~~if **clause 11.2(c)** applies, the date the proposed Rollingstock Configuration for the Train Service Type specified in the Authorisation Request Notice becomes an Authorised Rollingstock Configuration for the Train Service Type; and~~

~~the date the Access Holder pays Aurizon Network the [Relinquishment Fee] under the Relinquishment Provisions which form part of this Agreement under **clause Error! Reference source not found.** in respect of the relinquishment of the Surplus Access Rights.~~

(D) _____

[QRC Note: Changes to relinquishment provisions will be required to tie in with the relinquishment fee under this clause.]

(c) If the Access Holder gives Aurizon Network a Variation Request Notice in respect of a Train Service Type for which it elects to maintain the Surplus Access Rights, then this Agreement will be varied on the Variation Effective Date so that:

(i) the Maximum Payload for the Train Service Type will be taken to be the Proposed Maximum Payload for the Train Service Type (as specified in the relevant Notice of Enquiry);

(ii) the Nominal Payload for the Train Service Type will be taken to be the Revised Nominal Payload for the Train Service Type (as specified in the relevant Response Notice);

(iii) the Indicative Tonnage will be taken to be the Revised Indicative Tonnage (as specified in the relevant Response Notice); and

(iii)(iv) the Nominated Monthly Train Services for the Train Service Type will remain unchanged. [Drafting note: see above drafting note on the calculation of this fee.]

11 Reduction of Nominated Monthly Train Services if

Maximum Payload exceeded

11.1 Notification of non-compliance with Maximum Payload

(a) If, at a point in time (**Assessment Date**), the Average Annual Payload for a Train Service Type operated by a particular Operator (**Defaulting Operator**) exceeds the Maximum Payload for that Train Service Type, then Aurizon Network may, within 20 Business Days after the Assessment Date, give the Access Holder and the Defaulting Operator a notice requiring the Access Holder to elect to either:

(i) maintain its existing Maximum Payload and ensure the Defaulting Operator rectifies its behaviour to comply with that Maximum Payload; or

(ii) require an increase to its Maximum Payload by giving a Notice of Enquiry in accordance with **clause 10**,

(**Reduction Notice**).

(b) The Reduction Notice must specify the Average Annual Payload for the Affected Train Service Type as at the Assessment Date, including reasonable details of the calculation of that amount.

(c) Subject to **clause 11.3**, if an Access Holder elects to give a Notice of Enquiry under **clause 11.1(a)(ii)** the relevant Train Service Type is taken to be the Affected Train Service Type.

(d) If an Access Holder fails to provide a Notice of Enquiry within 20 Business Days of receiving a Reduction Notice under **clause 11.1(a)** (and the Access Holder has not disputed that Reduction Notice in accordance with **clause 11.3**), the Access Holder will be deemed to have provided a Notice of Enquiry which specifies the Proposed Maximum Payload:

(i) [the amount which is the maximum Payload of the Train Services operated by the Defaulting Operator of the Relevant Rollingstock Configuration for the Train Service Type (rounded to the nearest whole tonne) which was the Relevant Rollingstock Configuration for the Train Service Type which was most used in the operation of Train Services for the Affected Train Service Type by the Defaulting Operator during the 12 month period ending on the Assessment Date;] or [QRC Note: This is the benchmark/formula proposed by Aurizon Network. To consider whether this is appropriate. It may be too inflexible to require the new proposed maximum to be a certain figure.]

(ii) if disputed by the Access Holder under **clause 11.3**, the amount agreed or determined through the Dispute resolution process under **clause 28**.

11.2 Determining the Affected Train Service Type

(a) If the relevant Train Service Type (**Split Train Service Type**) operated by the Defaulting Operator which has exceeded the Maximum Payload is also operated by another Operator (**Non-Defaulting Operator**):

(i) the Train Service Type operated by the Defaulting Operator (**New Train Service Type**); and

(ii) the Train Service Type operated by the Non-Defaulting Operator (Original Train Service Type).

are deemed to be two different Train Service Types on the basis that:

(iii) the “Nominated Monthly Train Services (for a 30 day Month)” for the New Train Service Type is deemed to be the “Nominated Monthly Train Services (for a 30 day Month)” allocated to the Defaulting Operator in respect of the Split Train Service Type as at the Assessment Date;

(iv) the “Nominated Monthly Train Services (for a 30 day Month)” for the Original Train Service Type is deemed to be the “Nominated Monthly Train Services (for a 30 day Month)” which was not allocated to the Defaulting Operator in respect of the Split Train Service Type as at the Assessment Date; and

(v) subject to clauses 11.2(a)(iii) and 11.2(a)(iv), the Train Description for:

(A) the New Train Service Type; and

(B) the Original Train Service Type,

is otherwise the same as for the Split Train Service Type.

(b) The Affected Train Service Type is:

(i) if clause 11.2(a) applies, the New Train Service Type operated by the Defaulting Operator; and

(ii) in any other case, the Train Service Type operated by the Defaulting Operator which has exceeded the Maximum Payload.

11.3 Dispute

(a) An Access Holder may, within 20 Business Days after Aurizon Network gives the Reduction Notice to the Access Holder, give Aurizon Network a Dispute Notice which Disputes the Reduction Notice in accordance with clause 28.

(b) If a Dispute referred to in clause 11.3(a) is not resolved in accordance with clause 28.2, then the Parties must refer the Dispute to an Expert to determine the Dispute in accordance with clause 28.3.

(c) If the Access Holder does not give Aurizon Network a Dispute Notice within the time referred to in clause 11.3(a), then:

(i) the Access Holder must not give Aurizon Network a Dispute Notice Disputing the relevant Reduction Notice;

(ii) any such Dispute Notice which is given by the Access Holder will be taken to be of no effect; and

(iii) the Access Holder will not have, and must not make, any Claim against Aurizon Network in respect of that Dispute.

11.4 No prejudice to other rights

Subject to clause 13.5, this clause 11 does not prejudice Aurizon Network’s other rights and remedies in respect of any non-compliance by the Access Holder, Defaulting Operator or any other Operator with the Train Description for

a Train Service Type.

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~~Reduction of Nominated Monthly Train Services~~
~~if~~ Increase of Nominal Payload ~~increased~~

~~Notice of Intention to Increase Nominal Payload~~

(a) Aurizon Network may notify the QCA that it is considering increasing the Nominal Payload for a Train Service Type of one or more Access Holders (Affected Access Holders) if:

- (i) the increase to the Nominal Payload for the Train Service Type is required as part of an Expansion process; or
- (ii) there is demand for additional Capacity on the relevant part of the Network on which the Train Services for those Train Service Type(s) are operated and:
 - (A) that demand cannot currently be met;
 - (B) the most prudent and efficient way of meeting that demand is to require an increase to the Nominal Payloads; and
 - (C) Aurizon Network has first consulted with all relevant Access Holders and relevant Railway Operators about other options for increasing the Capacity of the relevant part of the Network.

(b) The QCA will consider a notice from Aurizon Network under clause 12(a) and either approve or reject the increase in Nominal Payload having regard to:

- (i) consultation with the Affected Access Holders and relevant Customers and Operators of those Affected Access Holders (Affected Parties);
- (ii) whether the increased Nominal Payload is capable of being accommodated without having a material adverse effect on the Affected Parties or other Access Holders;
- (iii) whether there is a more prudent way of addressing the demand for additional Capacity; and
- (iv) whether any compensation should be payable to any of the Affected Parties, including:
 - (A) compensation for the reasonable costs of increasing the Access Holders' facilities (such as a train load out facility and rail loop); and
 - (B) compensation for increased rail haulage charges.

(c) Aurizon Network can only require an Access Holder to change its Nominal Payload where approved by the QCA and subject to any conditions which the QCA may require.

~~(a) Subject to clause 12.1(b), at any time during the Term, Aurizon Network may give the Access Holder a notice of Aurizon Network's intention to~~

increase the Nominal Payload for a Train Service Type (**Notice of Intention to Increase Nominal Payload**).

- ~~(i) — Aurizon Network must not give a Notice of Intention to Increase Nominal Payload for a Train Service Type unless Aurizon Network has first consulted with all relevant Access Holders and relevant Railway Operators about options for increasing the capacity of the relevant part of the Network on which Train Services for the Train Service Type are operated.~~
- ~~(b) — If Aurizon Network gives a Notice of Intention to Increase Nominal Payload to the Access Holder, Aurizon Network must also give a copy of that Notice of Intention to Increase Nominal Payload to each affected Operator (if any).~~
- ~~(c) — A Notice of Intention to Increase Nominal Payload must:~~
- ~~(d) — specify:~~
 - ~~(e) — the increased Nominal Payload (Revised Nominal Payload) for the Train Service Type (as determined by Aurizon Network in its discretion); and~~
 - ~~(f) — the Revised Maximum Payload for the Train Service Type; and~~
 - ~~(g) — the Revised Nominated Monthly Train Services for the Train Service Type,~~
 - ~~(h) — including reasonable details of the calculation of those amounts;~~
 - ~~(i) — specify the date (**Effective Date**) on which the variations specified in the Notice of Intention to Increase Nominal Payload will take effect (provided that such Effective Date must not be less than 18 months (or such other period as agreed between the Parties) after the date on which Aurizon Network gives the Notice of Intention to Increase Nominal Payload to the Access Holder); and~~
 - ~~(ii) — notifying the Access Holder that, subject to clause 12.4(c)(iii), with effect on the Effective Date:~~
 - ~~(iii) — the Nominal Payload for the Train Service Type will be taken to be varied to be the Revised Nominal Payload for the Train Service Type (as specified in the Notice of Intention to Increase Nominal Payload);~~
 - ~~(iv) — the Maximum Payload for the Train Services Type will be taken to be varied to be the Revised Maximum Payload for that Train Service Type (as specified in the Notice of Intention to Increase Nominal Payload); and~~
 - ~~(v) — the Nominated Monthly Train Services for that Train Service Type will be taken to be varied to be the Revised Nominated Monthly Train Services for that Train Service Type (as specified in the Notice of Intention to Increase Nominal Payload).~~
 - ~~(vi) — Calculation of Revised Maximum Payload~~
 - ~~(vii) — The Revised Maximum Payload for a Train Service Type is the amount (expressed as tonnes) calculated in accordance with the following formula:~~

~~(x) — RNP x CF~~

~~(xiii) —~~

~~(xvi) — the Revised Maximum Payload for the Train Service Type (rounded to the nearest whole tonne)~~

~~(xix) — the Revised Nominal Payload for the Train Service Type as specified in the relevant Notice of Intention to Increase Nominal Tonnage~~

~~(xxii) — 1.02 (or such other conversion factor agreed between the Parties)~~

~~(xxiii) —~~

~~(xxiv) — Calculation of Revised Nominated Monthly Train Services~~

~~(xxv) — The Revised Nominated Monthly Train Services for a Train Service Type is the number of Train Services calculated in accordance with the following formula:~~

~~(xxviii) — $2 \times$ Loaded Train Services~~

~~(xxxi) —~~

~~(xxxiv) — the Revised Nominated Monthly Train Services for the Train Service Type~~

~~(xxxvii) — IT/RNP (rounded to the nearest whole Train Service on the basis that where the first decimal place is greater than three, the number of Train Services is to be rounded up to the nearest number of whole Train Services and, where the first decimal place is~~

~~three or less, the number of Train Services is to be rounded down to the nearest number of whole Train Services)~~

~~(xl) the Indicative Tonnage for the Train Service Type~~

~~(xlili) the Revised Nominal Payload for the Train Service Type as specified in the relevant Notice of Intention to Increase Nominal Payload~~

~~12.2 Dispute in relation to variations to Train Description~~

- ~~(a) If Aurizon Network gives the Access Holder a Notice of Intention to Increase Nominal Payload in respect of a Train Service Type, the Access Holder may, within 20 Business Days after Aurizon Network gives the Notice of Intention to Increase Nominal Payload to the Access Holder, give Aurizon Network a Dispute Notice which Disputes:~~
 - ~~(b) the Revised Maximum Payload for the Train Service Type; and/or~~
 - ~~(c) the Revised Nominated Monthly Train Services for the Train Service Type,~~
 - ~~(d) specified in the Notice of Intention to Increase Nominal Payload in accordance with **clause 28**.~~
 - ~~(e) The Access Holder must not Dispute the Revised Nominal Payload specified in a Notice of Intention to Increase Nominal Payload and any Dispute Notice which is given by the Access Holder in respect of such a Dispute will be taken to be of no effect.~~
 - ~~(f) If a Dispute referred to in **clause 12.4(a)** is not resolved in accordance with **clause 28.2**, then the Parties must refer the Dispute to an Expert to determine:
 - ~~(i) the Revised Maximum Payload for the Train Service Type; and~~~~
 - ~~(g) the Revised Nominated Monthly Train Services for the Train Service Type,~~
 - ~~(h) in each case, based on the Revised Nominal Payload specified in the Notice of Intention to Increase Nominal Payload.~~

- ~~(i) — If the Access Holder does not give Aurizon Network a Dispute Notice referred to in **clause 12.4(a)** within the time referred to in **clause 1.1(a)**, then:
 - ~~(i) — the Access Holder must not give Aurizon Network a Dispute Notice Disputing the
 - ~~(A) — the Revised Maximum Payload for the Train Service Type; and/or~~
 - ~~(B) — the Revised Nominated Monthly Train Services for the Train Service Type;~~~~
 - ~~(ii) — specified in the Notice of Intention to Increase Nominal Payload;~~
 - ~~(iii) — any such Dispute Notice which is given by the Access Holder will be taken to be of no effect; and~~
 - ~~(iv) — the Access Holder will not have, and must not make, any Claim against Aurizon Network in respect of that Dispute.~~~~

~~12.3 — Withdrawal of Notice of Intention to Increase Nominal Payload~~

- ~~(i) — Aurizon Network may, in its absolute discretion, withdraw a Notice of Intention to Increase Nominal Payload at any time before the date which is 10 months before the Effective Date.~~

~~If Aurizon Network withdraws a Notice of Intention to Increase Nominal Payload under **clause 12.8(a)**, the variations to the Nominal Payload, Maximum Payload and Monthly Nominal Train Services for the Train Service Type set out in the Notice of Intention to Increase Nominal Payload will not take effect.~~

~~12.4 — Variation to Train Description~~

~~If Aurizon Network gives the Access Holder a Notice of Intention to Increase Nominal Payload in respect of a Train Service Type, then, unless the Notice of Intention to Increase Nominal Payload is withdrawn under **clause 12.4(c)(iii)**, with effect on the Effective Date:~~

- ~~(i) — the Nominal Payload for the Train Service Type will be taken to be varied to be the Revised Nominal Payload for the Train Service Type;~~
- ~~(ii) — the Maximum Payload for the Train Service Type will be taken to be varied to be the Revised Maximum Payload for the Train Service Type; and~~
- ~~(iii) — the Nominated Monthly Train Services for the Train Service Type will be taken to be varied to be the Revised Nominated Monthly Train Services for the Train Service Type;~~

~~as:~~

~~specified in the relevant Notice of Intention to Increase Nominal Payload;
or~~

- ~~(b) — if **clause 1.1(a)** applies, agreed or determined through the Dispute resolution process under **clause 28**.~~

~~12.5 — Variation of Train Operations Deeds and Operator nominations~~

(a) ~~If Aurizon Network gives the Access Holder a Notice of Intention to Increase Nominal Payload in respect of a Train Service Type, then, unless the Notice of Intention to Increase Nominal Payload is withdrawn under **clause 12.3**, with effect on the Effective Date the Access Holder will be deemed to have given a notice to Aurizon Network in accordance with **clause 4.5(a)** varying the Access Rights which the Access Holder has allocated to each Operator under a Train Operations Deed in respect of that Train Service Type:~~

~~(i) if the Access Holder has only nominated one Operator, so as to be consistent with the Revised Nominal Payload, Revised Maximum Payload and Revised Nominated Monthly Services for the Train Service Type set out in the relevant Notice of Intention to Increase Nominal Payload; and~~

~~if the Access Holder has nominated multiple Operators, so as to ensure that, in aggregate, the train descriptions under those Train Operations Deeds for that Train Service Type are consistent with the Revised Nominated Payroll, Revised Maximum Payload and Revised Nominated Monthly Services for the Train Service Type set out in the relevant Notice of Intention to Increase Nominal Payload (based on a consistent variation of those train descriptions, having regard to the proportion of all Train Services for that Train Service Type allocated to each Operator).~~

13 Calculations for changes to payload

13.1 Calculation of Revised Nominal Payload

The Revised Nominal Payload for a Train Service Type for an Affected Train Service Type is the amount (expressed as tonnes) calculated in accordance with the following formula:

$$\text{RNP} \quad \equiv \quad \text{RPMP} \times \text{LEF}$$

where:

RPMP \equiv the Revised Proposed Maximum Payload for the Train Service Type for the Affected Train Service Type (rounded to the nearest whole tonne)

RNP \equiv the Revised Nominal Payload for the Train Service Type for the Affected Train Service Type

LEF \equiv Loading Efficiency Factor

13.2 Calculation of Revised Nominated Monthly Train Services

The Revised Nominated Monthly Train Services for a Train Service Type for an Affected Train Service Type is the number of Train Services calculated in accordance with the following formula:

$$\text{RNMTS} \quad \equiv \quad 2 \times \text{Loaded Train Services}$$

where:

RNMTS ≡ the Revised Nominated Monthly Train Services for the Train Service Type

Loaded Train Services ≡ IT/RNP (rounded to the nearest whole Train Service on the basis that where the first decimal place is greater than three, the number of Train Services is to be rounded up to the nearest number of whole Train Services and, where the first decimal place is three or less, the number of Train Services is to be rounded down to the nearest number of whole Train Services)

IT ≡ the Indicative Tonnage for the Train Service Type

RNP ≡ the Revised Nominal Payload for the Affected Train Service Type

13.3 Calculation of Surplus Access Rights

The Surplus Access Rights is the difference between the Nominated Monthly Train Services for the Train Service Type and the Revised Nominated Monthly Train Services for the Train Service Type.

13.4 Calculation of Revised Indicative Tonnage

The Revised Indicative Tonnage is the number of Train Services calculated in accordance with the following formula:

Revised Indicative Tonnage ≡ $RNMTS/2 \times RNP$

where:

RNMTS ≡ the Revised Nominated Monthly Train Services for the Train Service Type

RNP ≡ the Revised Nominal Payload for the Train Service Type

13.5 No resumption during process to change payload

Where **clause 10**, **clause 11** or **clause 12** has been triggered by an Access Holder or Aurizon Network, Aurizon Network must not take steps to resume any Access Rights in accordance with **clause 8**.

~~13~~14 Relinquishment of Access Rights

The Access Holder may relinquish some or all of the Access Rights in accordance with the Relinquishment Provisions which form part of this Agreement under **clause 3**.

~~14~~15 Transfer of Access Rights by Access Holder

The Access Holder may Transfer all or part of the Access Rights to itself or a Third Party in accordance with the Transfer Provisions which form part of this Agreement under **clause 3**.

~~45~~16 Reduction Factor

~~45.1~~16.1 **Determination of the Reduction Factor**

If Nominated Access Rights are intended to be relinquished or transferred under the Relinquishment Provisions or the Transfer Provisions which form part of this Agreement under **clause 3**, the Reduction Factor must be calculated in accordance with the Reduction Factor Provisions which form part of this Agreement under **clause 3**.

~~45.2~~16.2 **Replacement Access Agreement**

If Aurizon Network identifies an opportunity for it to enter into an Access Agreement with an existing or prospective Network Customer that would result in a lessening of the Relinquishment Fee or Transfer Fee (as applicable) that would otherwise be payable to Aurizon Network under the Relinquishment Provisions or the Transfer Provisions which form part of this Agreement under **clause 3** (as applicable), Aurizon Network will not unreasonably delay the process for negotiating and executing an Access Agreement with that existing or prospective Network Customer.

~~46~~17 Resumptions, reductions, relinquishments and transfers - General

~~46.1~~17.1 **Termination where no Access Rights remain**

- (a) Where Access Rights have been resumed, reduced, relinquished or transferred in accordance with this Agreement (including under the Resumption Provisions, the Conditional Access Provisions, the Relinquishment Provisions and the Transfer Provisions which form part of this Agreement under **clause 3** and **clauses 8, 9, 1, 15** and **29.6**) to the extent that there is no longer any Access Rights remaining the subject of this Agreement, then Aurizon Network may terminate this Agreement by notice to the Access Holder (without prejudice to those provisions which are stated to survive this Agreement).
- (b) Any termination under this **clause 17.1** is without prejudice to any rights of any Party which accrued on or before termination.

~~46.2~~17.2 **Effect on entitlement to operate and Access Charge Rates**

Where Access Rights have been resumed, reduced, relinquished or transferred in accordance with this Agreement (including under the Resumption Provisions, the Conditional Access Provisions, the Relinquishment Provisions and the Transfer Provisions which form part of this Agreement under **clause 3** and **clauses 8, 9, 1, 15** and **29.6**), then for the avoidance of doubt:

- (a) the Access Holder's entitlement to have an Operator operate Train Services is also reduced in accordance with that resumption, reduction, relinquishment or transfer of Access Rights;
- (b) the Access Holder's Nominated Monthly Train Services for each applicable Train Service Type will be taken to be varied to be reduced in accordance with that resumption, reduction, relinquishment or transfer of Access Rights; and

- (c) the Access Holder will no longer be obliged to pay Access Charges in respect of the resumed, reduced, relinquished or transferred Access Rights (except for any such Access Charges that accrued prior to the resumption, reduction, relinquishment or transfer, including any TOP Charge payable in respect of the part of the Year prior to the resumption, reduction, relinquishment or transfer).

16.317.3 No compensation or liability

- (a) Except for any payment specifically provided in this Agreement or liability for any breach by Aurizon Network of this Agreement, Aurizon Network is not liable for any loss or damage, however caused (including in contract, tort (including negligence) or otherwise) suffered or incurred by the Access Holder in connection with any resumption, reduction, relinquishment or transfer of Access Rights in accordance with the Resumption Provisions, the Conditional Access Provisions, the Relinquishment Provisions and the Transfer Provisions which form part of this Agreement under **clause 3** and **clauses 8, 9, 1, 15** and **29.6**.
- (b) The Access Holder releases Aurizon Network from any Claim for loss or damage referred to in **clause 17.3(a)** that the Access Holder may otherwise have.

17.18 Consequences of a failure of an Operator to satisfy conditions

17.18.1 Reduction of allocation of Access Rights

If:

- (a) an Operator (**Defaulting Operator**) fails to satisfy the conditions for:
 - (i) the commencement of Train Services under clause 10.2 of its Train Operations Deed; or
 - (ii) the commencement of Train Services for a Train Service Type under clause 10.3 of its Train Operations Deed; and
- (b) Aurizon Network has given a notice to the Access Holder and the Defaulting Operator in accordance with clause 10.2(c) or clause 10.3(c)(iv)(A)(1) (as applicable) of the Defaulting Operator's Train Operations Deed,

then, on such notice being given by Aurizon Network:

- (c) the Access Holder is deemed to have withdrawn its allocation of Access Rights to the Defaulting Operator in respect of:
 - (i) in the case of a notice under clause 10.2(c) of the Defaulting Operator's Train Operations Deed, all of the Access Rights for which the Defaulting Operator has been nominated; and
 - (ii) in the case of a notice under clause 10.3(c)(iii) of the Defaulting Operator's Train Operations Deed, that part of the Access Rights for which the Defaulting Operator has been nominated but in respect of which the Defaulting Operator has failed to satisfy the relevant conditions in clause 10.3 of its Train Operations Deed; and

- (d) without limiting the Access Holder's rights under **clauses 4.3** and **4.5**, the Access Holder will have the right under **clauses 4.3(b)** and **4.5** to nominate a new Operator to use, or vary the previous nomination of another Operator to include, the Access Rights which were previously allocated to the Defaulting Operator.

17.218.2 Reversing changes to Train Descriptions

- (a) If:
 - (i) a Defaulting Operator fails to satisfy the conditions for the commencement of Train Services for a Train Service Type (**relevant Train Service Type**) under clause 10.3 of its Train Operations Deed; and
 - (ii) Aurizon Network has given a notice to the Access Holder and the Defaulting Operator in accordance with clause 10.3(c)(iv)(B)(1) of the Defaulting Operator's Train Operations Deed,the Access Holder may elect to allocate the varied Train Service Type to another Operator (either through a new nomination or variation of an existing nomination).
- (b) If the Access Holder fails to notify Aurizon Network of its election within 10 Business Days then the Train Description for the relevant Train Service Type will be taken not to have been varied (even if the relevant variation has taken effect) and the Train Description for the relevant Train Service Type will be taken to be the Train Description for the relevant Train Service Type in force immediately before the variation took effect.

18.19 Compliance

18.119.1 General requirements – Parties

To the extent relevant to the performance of its obligations under this Agreement, each Party must observe and comply with:

- (a) all applicable Laws;
- (b) the lawful requirements of relevant Authorities; and
- (c) to the extent applicable to that Party:
 - (i) the terms of the Access Undertaking (as amended by any Change in Access Undertaking); and
 - (ii) the IRMP (subject to, in the Access Holder's case, receipt of the IRMP from Aurizon Network in accordance with **clause 4.3(f)(ii)**).

18.219.2 General Requirements – Aurizon Network

To the extent relevant to the performance of its obligations under this Agreement, Aurizon Network must observe and comply with:

- (a) the conditions of its Accreditation;
- (b) all licences and permits affecting its operations;
- (c) the Network Management Principles; and
- (d) any Environmental Authority it holds from time to time.

18.319.3 Non-compliance by Operator with Train Description

- (a) If:
- (i) Train Services for a Train Service Type operated by an Operator (**Defaulting Operator**) do not comply, in any material respect, with the Train Description for the Train Service Type, except where such non-compliance is attributable to another Railway Operator or Aurizon Network;
 - (ii) the Defaulting Operator fails to demonstrate to the reasonable satisfaction of Aurizon Network, within 20 Business Days of being requested to do so, that those Train Services operated by the Defaulting Operator will consistently comply with the applicable Train Description for the remainder of the Term; and
 - (iii) Aurizon Network provided a copy of the request to the Defaulting Operator to the Access Holder on or about the same time as providing it to the Defaulting Operator,

then, without limiting any right Aurizon Network has to suspend or terminate the Train Services for a Train Service Type under a Train Operations Deed, Aurizon Network must promptly:

- (iv) notify the Access Holder of any such non-compliance and the failure to demonstrate future consistent compliance with the relevant Train Description (**Notice of Defaulting Operator**); and
 - (v) commence consultation with the Access Holder and the Defaulting Operator in respect of the non-compliance.
- (b) Without limiting any right Aurizon Network has to suspend or terminate the Train Services for a Train Service Type under the Train Operations Deed, before taking any steps under **clause 19.3(c)**, Aurizon Network must provide the Access Holder with at least 20 Business Days from the date of the Notice of Defaulting Operator to:
- (i) unless the Train Services for a Train Service Type have been terminated under a Train Operations Deed, procure the Defaulting Operator to rectify the non-compliance notified under **clause 18.3(a)**; or
 - (ii) nominate an alternative Operator to provide the relevant Train Services in accordance with its rights to do so under this Agreement, and

unless the Train Services for a Train Service Type have been terminated under a Train Operations Deed, provide the Access Holder prior notice of any action Aurizon Network intends to take under **clause 19.3(c)**.

- (c) If, following the provision of the Notice of Defaulting Operator under **clause 18.3(a)** and taking of the steps in **clause 19.3(b)**, the Access Holder has not nominated an alternative Operator to provide the relevant Train Services within 20 Business Days from the provision of the Notice of Defaulting Operator or Aurizon Network continues to not be reasonably satisfied that the Defaulting Operator will consistently comply with the Train Description under the Train Operations Deed for the remainder of the term of that Train Operations Deed, Aurizon Network may:

- (i) vary the Train Description for the applicable Train Service Type to a level it reasonably expects to be achievable by the Defaulting Operator for the remainder of the Term, having regard to the extent of previous compliance with the applicable Train Description (but not taking into account, for the purpose of assessing previous compliance, any non-compliance to the extent that the non-compliance was attributable to another Railway Operator or to Aurizon Network); and
 - (ii) reasonably vary this Agreement in accordance with **clauses 36.3(f), 36.3(g) and 36.3(h)** to reflect the impact of the change in the applicable Train Description.
- (d) If Aurizon Network varies the Train Description for a Affected Train Service Type under **clause 19.3(c)(i)**, it must issue a notice to the Access Holder setting out the changes to the “Nominated Monthly Train Services (for a 30 day Month)” set out in **Schedule 2** of this Agreement.
 - (e) The Access Holder is entitled to dispute any variation proposed by Aurizon Network pursuant to this **clause 19.3** in accordance with the process set out in **clause 36.3(h)**.

~~19.20~~ Weighbridges and Overload Detectors

~~19.120.1~~ Verification

- (a) If a Weighbridge or Overload Detector is located en route between an Origin and Destination for a Train Service Type, the Party responsible for that Weighbridge or Overload Detector (as specified in item 5 of Schedule 3) must use reasonable endeavours to ensure that such Weighbridge or Overload Detector is operational, calibrated and available to weigh Trains operated over such Weighbridge or Overload Detector.
- (b) Aurizon Network may vary at any time the numbers and locations of Weighbridges and Overload Detectors, subject to providing reasonable notice to the Access Holder.
- (c) If a party to the Train Operations Deed gives a notice under clause 17.5 of the Train Operations Deed, then:
 - (i) subject to **clause 20.1(c)(ii)**, unless otherwise determined by calibration testing under clause 17.5 of the Train Operations Deed, the relevant Weighbridge or Overload Detector (as applicable) is deemed to have malfunctioned from the date the notice is given under clause 17.5(a) of the Train Operations Deed until the testing referred to in clause 17.5(b) of the Train Operations Deed has been carried out and, if required, the Weighbridge or Overload Detector has been recalibrated. Until such testing has been carried out and the Weighbridge or Overload Detector has been recalibrated, the mass of the relevant Train or Wagon which would otherwise have been measured by that Weighbridge or Overload Detector will be the Maximum Desirable Gross Tonnage (as the term is defined in the Train Operations Deed) for the Train or Wagon, as applicable; and
 - (ii) where the person conducting the test in accordance with clause

17.5(b) of the Train Operations Deed determines that the Weighbridge or Overload Detector (as applicable) is measuring within the tolerances specified in item 5 of Schedule 3 of the Train Operations Deed, the Weighbridge or Overload Detector will be treated as having been measuring accurately from the date on which the relevant notice was given under clause 17.5(a) of the Train Operations Deed.

- (iii) If **clause 20.1(c)(ii)** applies in respect of a Weighbridge, the invoice for Access Charges for the Billing Period immediately following the Billing Period in which the determination in **clause 20.1(c)(ii)** is made will be adjusted to appropriately account for the difference in payment of Access Charges arising from the Weighbridge having been treated as malfunctioning under **clause 20.1(c)(i)**.

20.21 Infrastructure management

20.21.1 Notifications

- (a) As soon as is reasonably practicable after it becomes aware, the Access Holder must notify Aurizon Network of any damage to or disrepair or failure in operation or function of any part of the Nominated Network.
- (b) The Access Holder:
 - (i) unless permitted under this Agreement or authorised by Aurizon Network, must not cause any Obstruction or permit to continue any Obstruction caused by the Access Holder; and
 - (ii) must notify Aurizon Network as soon as reasonably practicable after the Access Holder's Staff or Access Holder's directors discover or become aware of:
 - (A) any Obstruction (including all Incidents) or any breach or suspected breach of Safeworking Procedures; or
 - (B) anything which the Access Holder, the Access Holder's Staff or Access Holder's directors, observe which may reasonably be considered to cause or contribute to the occurrence of an Incident or Obstruction; or
 - (C) any harm to the Environment caused or contributed to by the Access Holder's use of its Access Rights within the area of the Nominated Network, which the Access Holder knows would result in a breach by Aurizon Network of the terms of any environmental authority it holds in connection with the Nominated Network.

20.21.2 Investigations

- (a) If an Incident occurs, an Investigation into the Incident must be:
 - (i) commenced as soon as practicable unless otherwise agreed between the Parties; and
 - (ii) conducted in accordance with the Investigation Procedures.
- (b) Each Party must cooperate, and ensure that Aurizon Network's Staff or the Access Holder's Staff (as applicable) cooperate, fully with any Investigation.

- (c) The Parties must consult in good faith in relation to the implementation of any recommendations arising from an Investigation in accordance with the Investigation Procedures.

21.22 Interface management

21.122.1 Compliance with Interface Risk Management Plan

Each Party must advise the other Party of any failure to comply with the IRMP as soon as reasonably practicable after the Party becomes aware of such non-compliance, including details of the nature of the non-compliance and how the Party has rectified or intends to rectify the non-compliance.

21.222.2 Interface representative

- (a) Prior to the commencement of any Train Services, each Party must nominate one or more appropriately qualified representatives (by identifying the name, title, experience (including length of experience) and qualifications of each representative) (**Interface Representative**) who is or are (as applicable) to be responsible for:
- (i) making decisions in relation to interface issues that arise in connection with this Agreement;
 - (ii) liaising and cooperating with representatives of the other Party on those interface issues; and
 - (iii) meeting with representatives of the other Party at locations, times and by means (including in person) specified by Aurizon Network from time to time.
- (b) Each Party must ensure that any representative it nominates under this **clause 22.2** is available to efficiently and effectively perform the responsibilities of the Interface Representative specified in **clause 22.2(a)** and that it has nominated an Interface Representative under this **clause 22.2** at all times during the Term.

22.23 Insurance by Access Holder

22.123.1 Maintain insurance policies

Before the commencement of Train Services, the Access Holder must, at its expense, take out and subsequently maintain current at all times during the Term insurance with a corporation (as defined in the Corporations Act) licensed to conduct insurance business in Australia (or otherwise reasonably acceptable to Aurizon Network) those policies of insurance required by this Agreement.

22.223.2 Required insurance policies

The Access Holder must effect and maintain insurance for the risks and on the terms specified in **Schedule 5**.

22.323.3 Disclosure of insurance policies

The Access Holder must provide to Aurizon Network evidence of the insurance policies effected and maintained pursuant to this **clause 23** (including evidence that the cover provided under those insurance policies complies with this **clause 23** and of the currency of those insurance policies) to Aurizon Network's reasonable satisfaction:

- (a) at least 10 Business Days before the commencement of Train Services;
- (b) within 10 Business Days after renewal of each insurance policy during the Term; and
- (c) within 10 Business Days after being requested to do so in writing by Aurizon Network.

22.423.4 Failure to disclose insurance policies

Without prejudice to Aurizon Network's other rights and remedies in respect of such default, if the Access Holder, whenever required to do so under this Agreement, fails to produce to Aurizon Network evidence to the reasonable satisfaction of Aurizon Network of insurances that have been effected or maintained by it and does not remedy that default within 10 Business Days after Aurizon Network gives notice to the Access Holder requiring that default to be remedied, Aurizon Network may effect and maintain the insurance and pay the premiums and any amount so paid will be a debt due from the Access Holder to Aurizon Network.

22.523.5 Minimum terms of policies

Each of the policies of insurance effected in accordance with this Agreement must, to the extent permitted by Law:

- (a) note the interests of the Access Holder, any contractor of the Access Holder engaged by the Access Holder in relation to the performance of the Access Holder's obligations under this Agreement and Aurizon Network;
- (b) not contain any exclusions, endorsements or alterations to the accepted policy wording that adversely amends the cover provided without the written consent of Aurizon Network (not to be unreasonably withheld or delayed); and
- (c) include the terms and be for the amounts referred to in **Schedule 5**.

22.623.6 Access Holder not to render policy void

The Access Holder must not render any of the insurances effected in accordance with this **clause 23** void or voidable or liable to refusal of any claim.

22.723.7 Compliance

The Access Holder must at all times comply with the terms and conditions of all insurance policies effected pursuant to this **clause 23**.

22.823.8 Notice of potential claims

In addition to any other obligation on the Access Holder under this Agreement, the Access Holder must:

- (a) notify Aurizon Network as soon as practicable after the making of any Claim under any insurance policy required by this Agreement;
- (b) notify Aurizon Network of the Claim in reasonable detail; and
- (c) keep Aurizon Network informed of subsequent developments concerning any Claim,

to the extent that such Claim is in connection with this Agreement.

~~22.9~~23.9 **Access Holder to pay all excess/deductibles**

- (a) The Access Holder must, in respect of any Claims by it or any other insured for which it is responsible, pay and bear all excesses/deductibles provided for in any insurances effected in accordance with this **clause 23**.
- (b) If the Access Holder fails to pay any excess/deductible provided for in any insurances effected in accordance with this **clause 23**, Aurizon Network may pay the relevant excess/deductible and any amount so paid will be a debt due from the Access Holder to Aurizon Network.

~~22.10~~23.10 **Settlement of claims**

If:

- (a) Aurizon Network makes a Claim against the Access Holder for damage to the Infrastructure;
- (b) the Claim is in respect of the same matter as the Access Holder claims under a policy required by this Agreement for damage to Infrastructure; and
- (c) the Access Holder has not disputed Aurizon Network's Claim,

then upon settlement of the Access Holder's Claim, under such policy, the portion of monies owed by the Access Holder to Aurizon Network must be paid to Aurizon Network from the monies received by the Access Holder under the policy against which the Access Holder made a Claim.

~~23~~24 **Indemnities**

~~23.1~~24.1 **Indemnity for personal injury and property damage**

Subject to **clause 24.2** and **clause 25**, each Party is solely liable for, and releases, indemnifies and will keep indemnified the other Party, its directors and Staff against, all Claims of any nature suffered or incurred by, or made or brought against, the other Party, its directors or Staff in respect of:

- (a) any loss of, damage to or destruction of property (including property of the other Party); or
- (b) personal injury to or death of any person,
in each case caused by or contributed to (to the extent of the contribution) by:
- (c) any breach of this Agreement by the Party; or
- (d) any negligent act or omission of, the Party or the Party's Staff in connection with this Agreement.

~~23.2~~24.2 **Indemnity by Access Holder for certain liabilities to Third Parties**

Despite **clause 24.1** but subject to **clause 25**, the Access Holder is solely liable for, and releases, indemnifies and will keep indemnified Aurizon Network, Aurizon Network's directors and Aurizon Network's Staff against, all Claims of any nature made or brought by a Third Party against, Aurizon Network, Aurizon Network's directors or Aurizon Network's Staff in respect of:

- (a) any loss of, damage to or destruction of property; or
- (b) personal injury to or death of any person,

in each case caused by or contributed to (to the extent of the contribution) by:

- (c) any breach of this Agreement by the Access Holder; or
- (d) any negligent act or omission of the Access Holder or the Access Holder's Staff.

23.324.3 Duty to mitigate

Each Party must use all reasonable endeavours to mitigate the damage, loss, cost, liability or expense in respect of which an indemnity in this Agreement applies.

23.424.4 General provisions regarding indemnities

- (a) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Parties and survives the expiry or termination of this Agreement.
- (b) It is not necessary for a Party to incur expense or make a payment before enforcing any indemnity in this Agreement.

24.25 Limitations and exclusions of liability

24.125.1 Exclusion of Consequential Loss

Except as expressly provided otherwise in **clause 31** or the IRMP Provisions which form part of this Agreement under **clause 3**, neither Party is liable to the other under or in connection with this Agreement (including under an indemnity) for any Consequential Loss however caused (including any breach of this Agreement or negligent act or omission of a Party).

24.225.2 Time limit and minimum threshold on Claims

Neither Party (**first Party**) is liable for, and the other Party must not make any Claim against the first Party under or in connection with this Agreement unless:

- (a) notice of the Claim has been given to the first Party within 12 Months after the other Party becomes aware of the occurrence of the event or circumstance giving rise to the Claim; and
- (b) the amount of the Claim exceeds \$100,000 in respect of any one event or cause of action or series of related events or causes of action, provided that if this condition is satisfied then the other Party may proceed for the full amount of the Claim and not only the amount in excess of \$100,000.

24.325.3 Claims and exclusions in respect of Infrastructure standard

Despite any other provision of this Agreement, Aurizon Network, its directors and Aurizon Network's Staff are not liable to the Access Holder for any Claim, and the Access Holder must not make any Claim against Aurizon Network, Aurizon Network's directors and/or Aurizon Network's Staff, in respect of any:

- (a) loss of or damage to real or personal property, including property of the Access Holder;
 - (b) personal injury to or death of any person; or
 - (c) any other damage, expense, injury, cost or loss whatsoever,
- arising out of or in connection with the standard of the Infrastructure or any

failure of or defect in the Infrastructure, except to the extent that such loss, damage, injury or death, cost or expense results directly from the failure of Aurizon Network to perform its obligations under clause 19.2(a) of a Train Operations Deed or Aurizon Network's negligence in performing those obligations.

24.425.4 Claims and exclusions in respect of non-provision of access

- (a) Subject to **clause 25.4(b)**, only and despite any other provision of this Agreement, Aurizon Network, Aurizon Network's directors and Aurizon Network's Staff are not liable to the Access Holder for any Claim, and the Access Holder must not make any Claim against Aurizon Network, Aurizon Network's directors and/or Aurizon Network's Staff, in respect of any failure by Aurizon Network to make the Infrastructure available for an Operator to operate a Train Service for the Access Holder at the Scheduled Time in the Train Schedule.
- (b) Aurizon Network is liable to the Access Holder in respect of any failure by Aurizon Network to make the Infrastructure available to enable an Operator to operate a Train Service for the Access Holder at the Scheduled Time in the Train Schedule if (and then only to the extent that):
 - (i) Aurizon Network did not reschedule the relevant Train Service if required to do so under a Train Operations Deed; and
 - (ii) the failure by Aurizon Network to make the Infrastructure available was caused by or was the result of an Operational Constraint, that Operational Constraint resulted from a breach of this Agreement by Aurizon Network or the negligence of Aurizon Network; and
 - (iii) the failure by Aurizon Network to make the Infrastructure available was not permitted under this Agreement or the relevant Train Operations Deed or was attributable to a breach of this Agreement by, or negligent act or omission of, Aurizon Network; and
 - (iv) the failure by Aurizon Network to make the Infrastructure available was not attributable to:
 - (A) the Access Holder or the Access Holder's Staff;
 - (B) an Operator or an Operator's Staff;
 - (C) another Railway Operator (other than Aurizon Network) or any employees, contractors, volunteers or agents of another Railway Operator (other than Aurizon Network);
 - (D) a Force Majeure Event;
 - (E) Major Periodic Maintenance of, or Infrastructure Enhancements to, the Infrastructure scheduled in a manner consistent with the Network Management Principles;
 - (F) if:
 - (1) the Access Rights for the relevant Train Service are Conditional Access Rights;
 - (2) there is a Capacity Shortfall in respect of any Segment of the applicable Expansion; and

- (3) the Conditional Access Rights have not been varied under the Conditional Access Provisions which form part of this Agreement under **clause 3**,
the unavailability in the Infrastructure is attributable to the Capacity Shortfall in relevant Infrastructure;
- (G) a breach of an Infrastructure Lease by an Infrastructure Lessor or any negligent act or omission of an Infrastructure Lessor; or
- (H) any action taken by Aurizon Network, acting reasonably, in response to an emergency or a genuine safety risk; and
- (v) either:
 - (A) the Parties and the relevant Operator have not agreed upon and implemented a performance and adjustment regime for the purposes of the relevant Train Operations Deed and the total number of Train Services (expressed as a percentage) cancelled in a Billing Period as a result of a failure by Aurizon Network to make the Infrastructure available (other than any failure by Aurizon Network to make the Infrastructure available which is attributable to an event or circumstance specified in **clauses 25.4(b)(iv)(A) to 25.4(b)(iv)(H)**) exceeds five percent of the total number of Train Services scheduled in the Daily Train Plan for that Billing Period; or
 - (B) the Parties and the relevant Operator have agreed upon and implemented a performance and adjustment regime for the purposes of the relevant Train Operations Deed, but the failure to make the Infrastructure available is of a magnitude which is beyond the scope of that performance and adjustment regime.

24.525.5 Claims and exclusions in respect of delays to Train Movements

Despite any other provision of this Agreement, a Party (**Defaulting Party**) is not liable to the other Party (**Affected Party**) for any Claim, and the Affected Party must not make any Claim against the Defaulting Party, in respect of delays to Train Movements unless (and then only to the extent that):

- (a) the delay was a result of a breach of this Agreement by the Defaulting Party, or a negligent act or omission on the part of the Defaulting Party; and
- (b) if the delay was caused by or the result of an Operational Constraint:
 - (i) where Aurizon Network is the Affected Party, the Operational Constraint resulted from a breach of this Agreement by the Access Holder; or
 - (ii) where the Access Holder is the Affected Party, the Operational Constraint was not permitted under this Agreement or the relevant Train Operations Deed or resulted from a breach of this Agreement by, or negligent act or omission of, Aurizon Network; and
- (c) the delay is not attributable to:

- (i) the Affected Party or where the Affected Party is:
 - (A) Aurizon Network - Aurizon Network's Staff; or
 - (B) the Access Holder - the Access Holder's Staff, an Operator or an Operator's Staff;
 - (ii) another Railway Operator (other than the Defaulting Party) or any employees, contractors, volunteers or agents of another Railway Operator (other than the Defaulting Party);
 - (iii) a Force Majeure Event;
 - (iv) Major Periodic Maintenance of, or Infrastructure Enhancements to, the Infrastructure scheduled in a manner consistent with the Network Management Principles; or
 - (v) a breach of an Infrastructure Lease by an Infrastructure Lessor or any negligent act or omission of an Infrastructure Lessor; or
 - (vi) any action taken by Aurizon Network, acting reasonably, in response to an emergency or a genuine safety risk; and
- (d) either:
- (i) the Parties and the relevant Operator have not agreed upon and implemented a performance and adjustment regime for the purposes of the relevant Train Operations Deed; or
 - (ii) the Parties and the relevant Operator have agreed upon and implemented a performance and adjustment regime for the purposes of the relevant Train Operations Deed, but the delays are of a magnitude which is beyond the scope of that performance and adjustment regime.

24.625.6 Defence of Claims by Third Parties

- (a) Each Party must provide such reasonable assistance as requested by the other Party in the defence of any Claim made against the other Party by a Third Party arising out of any Incident or other event giving rise to the Claim.
- (b) The Party that requested assistance under **clause 25.6(a)** must, within five Business Days after a demand is made, pay to the other Party any costs and expenses reasonably incurred by the other Party in providing the assistance requested under **clause 25.6(a)**.

24.725.7 Exclusion of Claims in certain other circumstances

- (a) Except to the extent that an Operational Constraint results from a breach by, or negligent act or omission of, Aurizon Network of this Agreement or a Train Operations Deed, any delays or cancellations of Train Services caused by or resulting from Operational Constraints will not constitute a default by Aurizon Network of its obligations under this Agreement and Aurizon Network will not be liable for any Claims suffered or incurred by or made or brought by or against the Access Holder as a result of or arising from the imposition of such an Operational Constraint.
- (b) Except as otherwise provided in this Agreement, Aurizon Network will not be liable for any delays or cancellations of Train Services or Claims

suffered or incurred by or made or brought by or against the Access Holder and the Access Holder must not make any Claim against Aurizon Network, its director and/or Aurizon Network's Staff as a result of an Operator complying with a request by Aurizon Network in accordance with clause 20.4(i) of a Train Operations Deed.

- (c) If Aurizon Network takes action in accordance with clause 20.4(e) of a Train Operations Deed, then Aurizon Network has no liability for any damage to or loss of freight caused by such actions.
- (d) Aurizon Network will not be liable for any delays or cancellations of Train Services or Claims suffered or incurred by or made or brought by or against the Access Holder as a result of the exercise by Aurizon Network of its rights under clause 23 of a Train Operations Deed, provided that Aurizon Network complies with the relevant provisions under the IRMP regarding conduct of an audit or inspection.

25.26 Determination of liability and loss adjustment

25.26.1 Determination of liability

In the event of an Incident involving the Access Holder or any other event which results or could result in a Claim by or against the Access Holder or Aurizon Network, liability as between the Access Holder and Aurizon Network is determined, for the purposes of **clauses 24** and **25.3**:

- (a) as agreed between the Parties;
- (b) subject to **clause 26.1(c)**, failing such agreement within one Month of either Party giving notice to the other requiring agreement on liability, by a loss adjuster appointed under **clause 26.2**; or
- (c) where the amount of the Claim exceeds \$200,000 and either Party is dissatisfied with the report of the loss adjuster, by a court of competent jurisdiction.

25.26.2 Loss Adjuster

Subject to **clause 36**, where a matter is to be referred to a loss adjuster in accordance with **clause 26.1**:

- (a) the loss adjuster:
 - (i) must be appointed by the Parties; or
 - (ii) in default of such appointment within 10 Business Days after the need to appoint a loss adjuster, is to be nominated at either Party's request by the President of The Australasian Institute of Chartered Loss Adjusters;
- (b) if the loss adjuster is to be nominated under **clause 26.2(a)(ii)** and the President of The Australasian Institute of Chartered Loss Adjusters declines to nominate a person as the loss adjuster but provides a list of people that could be appointed as the loss adjuster, then:
 - (i) the first person specified in that list will be taken to be nominated as the loss adjuster;
 - (ii) if the first person specified in that list does not accept the

- appointment as the loss adjuster, the next person specified in that list will be taken to be the first person specified in that list and will be nominated as the loss adjuster; and
- (iii) the process specified in **clause 26.2(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the loss adjuster accepts the appointment as the loss adjuster;
- (c) the Parties must comply with, and do all things necessary to satisfy and give effect to, the reasonable requirements of an agreed or nominated loss adjuster (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of the President of The Australasian Institute of Chartered Loss Adjusters agreeing to nominate a loss adjuster;
 - (d) the loss adjuster must:
 - (i) be a Fellow of the Australasian Institute of Chartered Loss Adjusters or have equivalent qualifications and experience;
 - (ii) have no interest or duty which conflicts or may conflict with the loss adjuster's function as a loss adjuster (the loss adjuster being required to fully disclose any such interest or duty before their appointment); and
 - (iii) not be, or have been in the last five years, an employee of an Operator, the Access Holder or Aurizon Network or of a Related Body Corporate of any of them;
 - (e) the loss adjuster appointed under this **clause 26.2**:
 - (i) is not permitted to act until the loss adjuster has given written notice of the acceptance of the appointment to both Parties;
 - (ii) is required to undertake to keep confidential all matters coming to the loss adjuster's knowledge by reason of their appointment and the performance of their duties; and
 - (iii) is deemed to be and act as an expert and not an arbitrator, and the Law relating to arbitration, including the *Commercial Arbitration Act 2013* (Qld), does not apply to the loss adjuster or their determination or the procedures by which they may reach a determination.

25-326.3 **Parties to assist loss adjuster**

- (a) Each Party must ensure to the best of its ability that the loss adjuster appointed under **clause 26.2** is given the opportunity to interview any employee, agent or contractor involved in, or with knowledge of, the Incident or event giving rise to the Claim or with any other relevant information that may be of use to the loss adjuster.
- (b) Each Party must make available to the loss adjuster appointed under **clause 26.2** any files, documents, data, recordings or other information in the possession or control of the Party that may be of use to, or is requested by, the loss adjuster for the purposes of their investigation.

25.426.4 Decision of the loss adjuster

- (a) The loss adjuster appointed under **clause 26.2** will determine the quantum of the relevant Claim and the liability of the Access Holder and/or Aurizon Network in respect of such Claim and must provide a copy of their report on such matters to each of the Parties within a reasonable time after their appointment.
- (b) In the absence of manifest error, the decision of the loss adjuster is final and binding upon the Parties where the total claims arising from the Incident or event giving rise to the Claim are equal to or less than \$200,000.

25.526.5 Costs of the loss adjuster

The costs of the loss adjuster must be borne by the Parties in such proportions as liability is determined by the loss adjuster, or where the liability is ultimately determined by a court of competent jurisdiction, in such proportions as liability is determined by the court.

26.27 Material Change

26.127.1 Adjustment for a Material Change

- (a) If there is no Reference Tariff applicable to the Train Services for a Train Service Type under this Agreement, then:
 - (i) if at any time after the Commencement Date a Material Change occurs which affects the financial position of Aurizon Network or the cost to Aurizon Network of performing its obligations or exercising its rights under this Agreement and/or a Train Operations Deed, then Aurizon Network must notify the Access Holder giving details of the Net Financial Effect on Aurizon Network of the Material Change;
 - (ii) within 10 Business Days after receipt of a notice under **clause 27.1(a)(i)**, the Parties must meet and negotiate in good faith any appropriate adjustments to the amounts payable under this Agreement to remove as far as practicable the Net Financial Effect on Aurizon Network of the Material Change and return Aurizon Network to the position it would have been in had it not been for the Material Change; and
 - (iii) if the Parties have not agreed on the relevant adjustments within 15 Business Days after Aurizon Network's notice, then either Party may refer the matter to an Expert for determination in accordance with **clause 28.3**.
- (b) If there is a Reference Tariff applicable to the Train Services for a Train Service Type under this Agreement, then the relevant Reference Tariff Provisions which form part of this Agreement under **clause 3** will provide for the consequences of Material Change.

26.227.2 Parties' obligations continue

The Parties' obligations under this Agreement continue despite the existence of a Material Change.

27.28 Disputes

27.128.1 Method

If any claim, dispute or question (**Dispute**) arises under this Agreement, then unless otherwise expressly provided to the contrary in this Agreement, such Dispute must be resolved in accordance with this **clause 28** and either Party may give to the other Party a notice (**Dispute Notice**) specifying the Dispute and requiring that it be dealt with in accordance with this **clause 28**.

27.228.2 Authorised representative resolution

- (a) Except as otherwise provided in this Agreement, within five Business Days after a Dispute Notice is given, the Dispute must be referred for resolution to an authorised representative of each of the Parties with authority to settle the Dispute on behalf of the relevant Party.
- (b) Within 10 Business Days after a Dispute Notice is given, the officers referred to in **clause 28.2(a)** must meet to resolve the Dispute.
- (c) Meetings referred to in **clause 28.2(b)** may be held in person or by telephone, video conference or other means of instantaneous communication.
- (d) If the Dispute is not resolved within 10 Business Days (**Resolution Period**) after:
 - (i) the date that the authorised representatives first meet to resolve the Dispute in accordance with **clause 28.2(b)**; or
 - (ii) if the authorised representatives do not meet within the time required under **clause 28.2(b)**, the date the Dispute Notice is given,then the relevant Dispute may, by agreement between the Parties within 10 Business Days of expiration of the Resolution Period, be referred for determination by an Expert in accordance with **clause 28.3** or by arbitration in accordance with **clause 28.4**.
- (e) If the Parties fail to agree, within 10 Business Days of expiration of the Resolution Period, whether to refer the Dispute to an Expert or to arbitration, either Party may refer the Dispute to the courts of the State in accordance with **clause 28.6**.

27.328.3 Expert

Subject to **clause 36.1**, where any matter may be referred to an expert (**Expert**) pursuant to **clause 28.2(d)**, or is expressly required by this Agreement to be referred to an Expert, then except as otherwise provided for in this Agreement:

- (a) an Expert must be appointed by agreement between the Parties, or in default of such appointment within 10 Business Days of the requirement or right (as applicable) to refer the matter to an Expert, then that person is to be nominated at either Party's request by:
 - (i) if the Parties agree the Dispute is purely of:
 - (A) a financial or accounting nature; or
 - (B) a technical nature,the President (for the time being) of the Resolution Institute in Australia; or

- (ii) in any other case, the President (for the time being) of the Queensland Law Society Inc;
- (b) if the Expert is to be nominated by a person referred to in **clause 28.3(a)** and that person declines to nominate a person as the Expert but provides a list of people that could be appointed as the Expert, then:
 - (i) the first person specified in that list will be taken to be nominated as the Expert;
 - (ii) if the first person specified in that list does not accept the appointment as the Expert, then the next person specified in that list will be taken to be nominated as the Expert; and
 - (iii) the process specified in **clause 28.3(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the Expert accepts the appointment as the Expert;
- (c) subject to **clause 28.3(b)**, if the Expert is to be nominated by a person referred to in **clause 28.3(a)** and the person nominated as the Expert does not accept appointment as the Expert, then an alternative person is to be nominated as the Expert at either Party's request by the same person referred to in **clause 28.3(a)**;
- (d) if the Expert is to be nominated by a person referred to in **clause 28.3(a)** the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person agreeing to nominate an Expert;
- (e) the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated Expert (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person accepting the appointment as an Expert;
- (f) the Expert must:
 - (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (ii) have no interest or duty which conflicts or may conflict with their function as Expert, the Expert being required to fully disclose any such interest or duty by notice to the Parties before their appointment;
 - (iii) not be, or have been in the last five years, an employee of an Operator, the Access Holder, or Aurizon Network or of a Related Body Corporate of any of them;
 - (iv) not be permitted to act until the Expert has given notice to the Parties that the Expert is willing and able to accept the appointment;
 - (v) have regard to the provisions of this Agreement and consider all

- submissions (including oral submissions by either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter provided to the Expert by the Parties;
- (vi) provide both Parties with a copy of the Expert's determination in the form of a report setting out reasonable details of the reasons for the Expert's determination within a reasonable time after their appointment; and
 - (vii) be required to undertake to keep confidential all matters coming to their knowledge by reason of their appointment and performance of their duties (including, if required by a Party, by entering into a confidentiality agreement in favour of the Parties);
- (g) the Expert is deemed to be and must act as an expert and not an arbitrator and the Law relating to arbitration (including the *Commercial Arbitration Act 2013* (Qld)) will not apply to the Expert or the determination or the procedures by which the Expert may reach a determination;
 - (h) in the absence of manifest error, the decision of the Expert is final and binding upon the Parties;
 - (i) the costs of the Expert (and the costs of any advisers to the Expert) must be borne severally (and not jointly and severally) by the Parties in equal shares, with each Party bearing its own costs of participating in the dispute resolution process (unless otherwise agreed by the Parties);
 - (j) the expert determination will be conducted in accordance with the expert determination rules adopted by the Resolution Institute from time to time, except that to the extent of any inconsistency between those rules and this Agreement, the terms of this Agreement prevail;
 - (k) any determination made by an Expert must be consistent with the provisions of this Agreement; and
 - (l) the Parties must:
 - (i) procure the Expert to use reasonable endeavours to make its determination or finding in respect of the Dispute within 2 Months from the date the initial statement regarding the Dispute is submitted by the claimant to the Expert; and
 - (ii) do everything reasonably requested by the Expert to assist the Expert in determining the Dispute, including providing or making available to the Expert, as soon as reasonably practicable, all information and materials in their possession or control requested by the Expert and attending any hearing convened by the Expert.

27.428.4 Arbitration

- (a) Subject to **clause 36.1**, the Parties may agree to refer any Dispute to arbitration by a single arbitrator sitting in Brisbane agreed upon between the Parties and, failing agreement upon such arbitrator within 10 Business Days after the date of notice from one Party to the other requiring the appointment of an arbitrator, by an arbitrator appointed by the President of the Resolution Institute. Every such reference will be an arbitration

within the meaning of the *Commercial Arbitration Act 2013* (Qld), and subject to the provisions relating to arbitration contained in that Act.

- (b) If the Resolution Institute declines to nominate a person as the arbitrator but provides a list of people that could be appointed as the arbitrator, then:
 - (i) the first person specified in that list will be taken to be nominated as the arbitrator;
 - (ii) if the first person specified in that list does not accept the appointment as the arbitrator, then the next person specified in that list will be taken to be nominated as the arbitrator; and
 - (iii) the process specified in **clause 28.4(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the arbitrator accepts the appointment as the arbitrator;
- (c) subject to **clause 28.4(b)**, if the person nominated as the arbitrator under **clause 28.4(a)** does not accept appointment, then either Party may request that the Resolution Institute appoints an alternative person as the arbitrator.

27.528.5 Queensland Competition Authority (QCA)

Subject to **clause 36.1**, the Parties may agree to refer, and where required by this Agreement must refer, any Dispute to the QCA.

27.628.6 Determination by Court

If any Dispute is not:

- (a) resolved in accordance with **clause 28.2**;
- (b) referred to an Expert in accordance with **clause 28.3**; nor
- (c) referred to the QCA in accordance with **clause 28.5**,

then either Party may refer the Dispute to the courts of the State.

2829 Force Majeure

28.129.1 Notice of Force Majeure

- (a) If, by reason of a Force Majeure Event affecting Aurizon Network, Aurizon Network is prevented or hindered (or likely to be prevented or hindered) from carrying out, whether wholly or in part, its obligations under this Agreement (other than an obligation to pay money), then Aurizon Network must, as soon as reasonably practicable after it becomes aware of the Force Majeure Event, give the Access Holder prompt (and, in any event, within 5 Business Days after it becomes aware of the event or circumstance causing the Force Majeure Event) notice (which may be provided in electronic form) of the Force Majeure Event including:
 - (i) details of the Force Majeure Event and (if applicable) that part of the Nominated Network affected or likely to be affected; and
 - (ii) the details of the obligations affected or likely to be affected.

- (b) Aurizon Network must provide the Access Holder with a further notice as soon as reasonably practicable and in any event within 2 Business Days of the notice provided under **clause 29.1(a)** if the notice provided in **clause 29.1(a)** either is in electronic form or does not include the following information:
 - (i) the information in **clause 29.1(a)**); and
 - (ii) full particulars of all relevant matters including:
 - (A) details of the action Aurizon Network has taken to remedy the situation and details of the action that Aurizon Network proposes to take to remedy the situation (to the extent that they are known); and
 - (B) a reasonable estimate of the time during which Aurizon Network will be (or is likely to be) prevented or hindered from carrying out, whether wholly or in part, its obligations under this Agreement due to the Force Majeure Event.
- (c) Without prejudice to its rights under this **clause 29.1**, Aurizon Network may issue further notices in respect of the Force Majeure Event as it considers reasonably necessary to update the Access Holder as to each of the matters set out above.
- (d) Aurizon Network must:
 - (i) include the Access Holder (and its Customer, if any) and its Train Operator, if any, in any meeting which Aurizon Network may have in respect of the Force Majeure Event; and
 - (ii) provide a copy of any notice given to the Access Holder to that Access Holder's Customer, if any, and Train Operator, if any.

28.229.2 Suspension of obligations

- (a) Subject to compliance with the requirements of **clause 29.1**, Aurizon Network's obligations under this Agreement are suspended during the time and to the extent that Aurizon Network's performance of its obligations is prevented or hindered by the Force Majeure Event.
- (b) If the notice is not provided in accordance with **clause 29.1(a)** or **29.1(b)**, then the obligations of Aurizon Network under this Agreement will be suspended on and from the later of the time the notice requirements of **clause 29.1(a)** and **29.1(b)** are satisfied.

28.329.3 Duty to mitigate

- (a) Subject to **clause 29.3(b)**, Aurizon Network must use all reasonable endeavours to remedy or overcome the effect of the Force Majeure Event affecting its obligations under this Agreement as soon as possible and must attempt to:
 - (i) mitigate the effect of the Force Majeure Event; and
 - (ii) identify alternative viable means of performing its obligations, including the provision of the Access Rights affected (if applicable).

- (b) Aurizon Network is not obliged to settle any strike, lockout or other labour dispute other than on terms acceptable to it.

28.429.4 End of period of Force Majeure Event

The suspension of the obligations of Aurizon Network due to a Force Majeure Event ends when, but only to the extent that, Aurizon Network is no longer prevented or hindered from performing, whether wholly or in part, its obligations under this Agreement by reason of the relevant Force Majeure Event, at which time Aurizon Network must as soon as reasonably practicable:

- (a) issue a notice to the Access Holder advising the extent to which it is recommencing the performance of its obligations; and
- (b) recommence the performance of its obligations to the extent outlined in the notice.

28.529.5 Reduction of Access Rights due to loss or damage to Nominated Network

- (a) If:
 - (i) any part of the Nominated Network specified in **item 2 of Schedule 3** is damaged or destroyed by a Force Majeure Event; and
 - (ii) in Aurizon Network's reasonable opinion the cost of repairing such damage or destruction or replacing that part of the Nominated Network is not economic on the basis of the then and committed future utilisation of that part of the Nominated Network,then Aurizon Network may, by notice, advise the Access Holder (and its Customer, if applicable), other affected Access Holders (as defined in the Access Undertaking), each affected Railway Operator and the QCA of:
 - (iii) the estimated cost of effecting the necessary repairs or replacement;
 - (iv) the level of insurance available to effect the necessary repairs and replacement;
 - (v) a detailed explanation as to why the cost of repairing or replacing is not economic; and
 - (vi) Aurizon Network's intention to not repair or replace the relevant part of the Nominated Network unless the Access Holder and other Access Holders (or their Customers or Railway Operators, as applicable) using that part of the Nominated Network pay the difference between the amount of insurance available to effect the necessary repairs or replacement and the actual anticipated cost to effect those repairs or replacements.
- (b) If the Access Holder (or its Customer or Operator, as applicable) notifies Aurizon Network that:
 - (i) it agrees to bear the whole incremental cost of necessary repairs or replacement (after the amount of insurance available has been applied); or
 - (ii) it agrees to bear that part requested by Aurizon Network of the incremental cost of necessary repairs or replacement (and subject

to Aurizon Network being satisfied that all other relevant Access Holders (or their Customers or Railway Operators, as applicable) have also agreed to bear their respective part of such costs) (after the amount of insurance available has been applied),

then Aurizon Network will proceed with the repairs or replacement within a reasonable time after:

- (iii) if clause **29.5(b)(i)** applies, receipt by Aurizon Network from the Access Holder (or its Customer or Operator) of payment of the relevant amount; and
 - (iv) if clause **29.5(b)(ii)** applies, receipt by Aurizon Network from the Access Holder (or its Customer or Operator) of the last payment of the relevant amount.
- (c) If an Access Holder (or its Customer or Operator, as applicable) pays to Aurizon Network any of the costs under **clause 29.5(b)**, on completion of the necessary repairs or replacement:
- (i) Aurizon Network must, within a reasonable time, refund to the party who made such payment any amount by which the amount paid that party exceeds the actual cost; or
 - (ii) the Access Holder (or its Customer or Operator, if applicable) must, within a reasonable time, pay to Aurizon Network the amount by which the actual cost exceeds proportionately the amount agreed to be paid by that party,
- (as applicable).
- (d) If, within 40 Business Days after receipt of a notice from Aurizon Network under **clause 29.5(a)**, the Access Holder (or its Customer or Operator, as applicable) has not given notice to Aurizon Network under **clause 29.5(b)**, then Aurizon Network may, by giving not less than 20 Business Days' notice in writing to the Access Holder (**Nominated Network FM Reduction Notice**), reduce the Access Rights by the FM Access Rights, in which case, the FM Access Rights will cease to form part of the Access Rights of the Access Holder on and from the date specified in the Nominated Network FM Reduction Notice (which must be at least 20 Business Days from the date of the Nominated Network FM Reduction Notice).

28.629.6 Effect of Nominated Network FM Reduction Notice on Operator nominations

- (a) Within 10 Business Days after the Nominated Network FM Reduction Notice is given to the Access Holder, the Access Holder may give written notice to Aurizon Network and each affected Operator in accordance with **clause 4.5(a)** to vary the Access Rights which the Access Holder has allocated to an Operator to take into account the reduction to the Access Rights by the FM Access Rights.
- (b) Except to the extent that the Access Holder has given a notice as contemplated in **clause 29.6(a)** in respect of the reduction to the Access Rights by the FM Access Rights, the FM Access Rights for each Train Service Type:

- (i) firstly, are deemed to reduce the Access Rights for that Train Service Type for which the Access Holder has not nominated an Operator; and
 - (ii) if, after the operation of **clause 29.6(b)(i)**, there remains an Over-Allocation for the relevant Train Service Type, **clause 4.7** applies in respect of that Over-Allocation.
- (c) As soon as practicable after the expiry of the period referred to in **clause 29.6(a)**, Aurizon Network must issue a notice to the Access Holder and each affected Operator summarising, in respect of each Train Service Type affected by the FM Access Rights, the changes to:
- (i) the “Nominated Monthly Train Services (for a 30 day Month)” set out in **Schedule 2** of this Agreement; and
 - (ii) the “Nominated Monthly Operational Rights (for a 30 day Month)” in schedule 2 of each affected Operator’s Train Operations Deed.

28.729.7 Termination after extended Force Majeure Event

If, by reason of a Force Majeure Event, Aurizon Network is wholly prevented or hindered from carrying out its obligations under this Agreement (other than an obligation to pay money) for a period of more than three consecutive Months, then:

- (a) the Parties must meet to endeavour to identify any alternative viable means to perform the suspended obligations; and
- (b) failing any alternative means being agreed within one Month after the end of the three Month period, the Access Holder may terminate this Agreement by 20 Business Days’ notice to Aurizon Network and **clauses 29.4** and **29.5** apply without prejudice to any of the rights of the Parties which accrued before the date of such termination.

2930 Suspension

29.130.1 Suspension of Access Rights

If a Suspension Event specified in **Schedule 6** occurs, Aurizon Network may, by notice in writing to the Access Holder and the relevant Operator (**Suspension Notice**), suspend the Access Rights of the Access Holder.

29.230.2 Details of suspension

A Suspension Notice given by Aurizon Network to the Access Holder and the relevant Operator under **clause 30.1** must set out:

- (a) the rights of the Access Holder which are affected by the suspension;
- (b) the reason for the suspension; and
- (c) the actions the Access Holder must take to have the suspension lifted.

29.330.3 Effect of suspension

The suspension of any rights under this **clause 30** does not affect or suspend any other obligation of the Access Holder, including the obligation to pay Access Charges under this Agreement, and is without prejudice to Aurizon Network’s other rights and remedies in respect of that or any other default.

29.430.4 Duration of suspension

The suspension of any rights under **clause 30.1** continues until such time as the Access Holder has remedied the relevant default or non-compliance notified in the Suspension Notice.

29.530.5 Suspension of an Operator's rights under a Train Operations Deed

- (a) The Access Holder acknowledges that, under a Train Operations Deed, Aurizon Network has a right to suspend the right of a particular Operator to operate some or all of the Operator's Train Services for a Train Service Type or Train Services generally upon the occurrence of any one or more of a number of specified events or circumstances in respect of that Operator.
- (b) Aurizon Network will notify the Access Holder if it suspends the right of a particular Operator to operate some or all of the Operator's Train Services for a Train Service Type or Train Services generally under a Train Operations Deed and the Access Holder will have the right to nominate an alternate Operator to operate the affected services in accordance with **clause 4.3** or **4.4**.
- (c) The suspension of any of an Operator's rights under a Train Operations Deed does not affect or suspend any obligation of the Access Holder, including the obligation to pay Access Charges under this Agreement.

3031 Liability for wrongful suspension

Where Aurizon Network suspends some or all of the Access Holder's Access Rights or an Operator's rights under a Train Operations Deed, Aurizon Network will be liable to the Access Holder in respect of loss or damage (including damages for Consequential Loss arising from the suspension) if, and only if:

- (a) no reasonable person in Aurizon Network's position could have formed the view that the stated grounds for the suspension existed (Aurizon Network must bear the burden of establishing that a reasonable person in Aurizon Network's position could have formed that view);
- (b) where the suspension is of an Operator's rights under a Train Operations Deed, the Access Holder's loss or damage is not, and has not been, included in a claim by the Operator in respect of that suspension; and
- (c) the Access Holder has used all reasonable endeavours to mitigate the loss or damage arising from the suspension.

3132 Termination

31.132.1 Termination of Agreement

- (a) Subject to **clause 32.1(b)** and without limiting any rights of termination contained elsewhere in this Agreement, Aurizon Network may, by notice in writing to the Access Holder, terminate this Agreement if a Termination Event specified in **Schedule 6** occurs.
- (b) If there is a Corresponding Suspension Event in respect of the Termination Event referred to in **clause 32.1(a)**, then Aurizon Network

may only exercise its rights under **clause 32.1(a)** if it has first exercised its right of suspension in respect of the Corresponding Suspension Event under **clause 30**.

31.232.2 Termination by the Access Holder

Without limiting any rights of termination contained elsewhere in this Agreement, the Access Holder may, by notice in writing to Aurizon Network, terminate this Agreement if any of the following occurs:

- (a) an Insolvency Event in relation to Aurizon Network occurs and continues for a period of 40 Business Days;
- (b) Aurizon Network's Accreditation is cancelled or amended such that it cannot perform its obligations generally under this Agreement, and such default continues for at least 20 Business Days after the Access Holder gives Aurizon Network notice of the default;
- (c) Aurizon Network fails to pay when due any amount payable under this Agreement, and such default continues for at least 20 Business Days after the Access Holder gives Aurizon Network notice of the default; or
- (d) Aurizon Network is in default of the due performance of any other obligation under this Agreement, and such default continues for at least 40 Business Days after the Access Holder gives Aurizon Network notice of the default.

31.332.3 Grounds for termination to be specified

A notice given under **clause 32.1** or **32.2** must set out the grounds for the termination.

31.432.4 Obligations and other rights upon termination or expiry

- (a) Neither termination of this Agreement by a Party under this **clause 32** nor expiry of this Agreement prejudices:
 - (i) a Party's right to make a Claim, recover damages or avail itself of other remedies under this Agreement or at law; or
 - (ii) either Party's rights to recover money due to it under this Agreement.
- (b) On termination of this Agreement, Aurizon Network and the Access Holder are released from all further obligations or liabilities under this Agreement, except for:
 - (i) rights which accrued on or before termination, including for any breach of this Agreement which occurred before termination. Any liability in respect of such prior breach will be limited in the manner provided in this Agreement; or
 - (ii) any provisions which are expressed as surviving the expiry or termination of this Agreement.

3233 Assignment

32.133.1 Assignment by Aurizon Network

- (a) Aurizon Network may Assign the whole or any part of its rights or obligations under this Agreement without the prior consent of the Access Holder, provided that:

- (i) the Assignee is Accredited; and
 - (ii) Aurizon Network procures that the Assignee covenants with the Access Holder by deed to be bound by and to perform the obligations of Aurizon Network under this Agreement to the extent of the rights and obligations Assigned to the Assignee.
- (b) On the Assignee entering into the deed referred to in **clause 33.1(a)**, Aurizon Network is released and discharged from further liability under this Agreement in respect of the obligations which the Assignee has undertaken under that deed to be bound by and to perform.

32.233.2 Assignment by the Access Holder

- (a) The Access Holder may not Assign its rights or obligations under this Agreement other than in accordance with this **clause 33.2**.
- (b) The Access Holder may, provided it is not in default in the performance or observance of any of its obligations under this Agreement, Assign the whole or any part of its rights and obligations under this Agreement to:
 - (i) a Related Body Corporate of the Access Holder which is capable of performing the obligations of the Access Holder under this Agreement, provided that:
 - (A) the Access Holder remains liable for the performance of the duties, responsibilities and obligations assumed by the Assignee; and
 - (B) the performance by the Assignee will (to the extent of such performance) discharge the Access Holder's liability for the performance of the duties, responsibilities and obligations Assigned; or
 - (ii) a person other than a Related Body Corporate of the Access Holder with the prior written consent of Aurizon Network, provided that such consent will not be unreasonably withheld if Aurizon Network is satisfied that such person is:
 - (A) financially sound; and
 - (B) otherwise capable of performing the obligations of the Access Holder under this Agreement.
- (c) Any Assignment by the Access Holder of its rights and obligations under this Agreement is conditional on and will not take effect until:
 - (i) the Assignee covenants with Aurizon Network by deed, in such terms as Aurizon Network may reasonably require, to be bound by and to perform the obligations of the Access Holder under this Agreement; and
 - (ii) if required by Aurizon Network, the Assignee delivers Security to Aurizon Network which satisfies the requirements of **clause 6** for an amount of not less than the Security Amount.
- (d) Subject to **clause 33.2(e)**, if a Change in Control of the Access Holder occurs without Aurizon Network's prior written consent, the occurrence of the Change in Control will be taken to be an Assignment of the Access

Holder's rights and obligations under this Agreement which is not permitted under this **clause 33.2**.

- (e) **Clause 33.2(d)** does not apply to a Change in Control where:
 - (i) the Access Holder or its Ultimate Holding Company is listed on a recognised stock exchange;
 - (ii) the Change in Control is a result of a Change in Control of that listed entity; and
 - (iii) that listed entity remains listed on that recognised stock exchange both before and after that Change in Control.
- (f) This **clause 33.2** does not limit the Access Holder's right to Transfer Access Rights in accordance with the Transfer Provisions which form part of this Agreement under **clause 3**.

33.333.3 Charging

A Party (**Chargor**) may create a Charge over all of its rights under this Agreement in favour of a recognised financial institution (**Chargee**) to secure financial accommodation provided to the Chargor in relation to its obligations under this Agreement, provided that the Chargee must first covenant in writing in favour of the other Party (**Non-Charging Party**), pursuant to a deed in such terms as the Non-Charging Party may reasonably require, that in relation to the exercise of any power of sale or other right or remedy under the Charge granted to the Chargee, the Chargee and any person (including any receiver or receiver and manager or agent) claiming through the Chargee will comply with the provisions of this **clause 33** as if it were originally a party to this Agreement, and will not exercise any power of sale of the rights and/or obligations of the Chargor under this Agreement except in accordance with this **clause 33**.

3334 GST

33.134.1 Construction

In this **clause 34**:

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

33.234.2 Consideration GST exclusive

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

33.334.3 Payment of GST

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

supply.

33.434.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 34.3** in addition to, and at the same time that, the consideration for the supply is to be provided under this Agreement.

33.534.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under **clause 34.3**. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

33.634.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the recipient under **clause 34.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.

33.734.7 Reimbursements

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

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

3435 Confidentiality

34.135.1 Confidentiality

Subject to **clause 35.2**, the Recipient must:

- (a) keep confidential, and must not disclose to any Third Party, any Confidential Information disclosed to the Recipient by the Discloser; and
- (b) not use the Confidential Information for any purpose other than for the purposes of this Agreement or, if Aurizon Network is the Recipient, for the purposes of:
 - (i) capacity assessment and capacity modelling;
 - (ii) investigation and planning of Maintenance Work;
 - (iii) planning Infrastructure Enhancements; and
 - (iv) complying with its obligations under the Access Undertaking.

34.235.2 Permitted disclosures

The Recipient may disclose Confidential Information disclosed to it by the Discloser to a Third Party where:

- (a) the Recipient has obtained the prior written approval of the Discloser to such disclosure. The Discloser must not unreasonably withhold such approval if the Recipient has procured a confidentiality undertaking in respect of the information from such Third Party in favour of both Parties on terms and conditions satisfactory to both Parties, acting reasonably; or
- (b) disclosure is:
 - (i) required or compelled by any order of a court of competent jurisdiction;
 - (ii) required or compelled by any Law;
 - (iii) required or compelled by notice validly issued by any Authority;
 - (iv) necessary for the conduct of any legal proceedings, including any dispute resolution process under this Agreement;
 - (v) reasonably required for the performance of Train Control functions;
 - (vi) required under any stock exchange listing requirement or rule;
 - (vii) required by the Rail Safety Regulator or an Environmental Regulator;
 - (viii) to an Operator provided that:
 - (A) the Disclosure is:
 - (1) required by the terms of this Agreement;
 - (2) reasonably necessary for the performance of obligations or the exercise of rights under this Agreement or the Operator's Train Operations Deed; or
 - (3) reasonably necessary in connection with the safe operation of the Nominated Network; and
 - (B) the Discloser must ensure that the Operator keeps the Confidential Information confidential on terms no less onerous than this **clause 35**;
 - (ix) to the Recipient's banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the Discloser;
 - (x) to an expert for the purposes of a dispute resolution process, or an auditor for the purposes of an audit, under a "User Funding Agreement" (as defined in the Access Undertaking), if such expert or auditor has executed a legally enforceable confidentiality deed in favour of the Discloser;
 - (xi) to legal practitioners and accountants of the Recipient or a Related Body Corporate of it:
 - (A) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;
 - (B) who are under a duty of confidentiality to the Recipient; and

- (C) who have been advised of the confidential nature of the Confidential Information; or
- (xii) otherwise permitted or required in accordance with this Agreement or the Access Undertaking (as amended by any Change in Access Undertaking).

34.335.3 Discloser may give certain directions

On expiry or termination of this Agreement, the Discloser may direct the Recipient to do any combination of the following in respect of some or all of the Confidential Information disclosed by the Discloser to the Recipient:

- (a) subject to the lawful requirements of the Recipient to retain copies of Confidential Information for business records and document control registers, to immediately deliver to the Discloser the Confidential Information specified by the Discloser;
- (b) to immediately destroy the Confidential Information specified by the Discloser; and
- (c) where the Recipient has disclosed the Confidential Information to any Third Party, to procure the compliance by that Third Party with the requirements of this **clause 35.3** as if that Third Party were the Recipient.

34.435.4 PPS Act

In addition to the obligations imposed under this **clause 35**, each Party agrees to not disclose any information of the kind described in section 275(1) of the PPS Act, including:

- (a) information about this Agreement including a copy of it;
- (b) information about the amount or the obligation secured by any Security Interest created by or under this Agreement and the terms of such payment or performance at any time; or
- (c) information about Relevant Collateral at any time.

34.535.5 Survival

Without limiting **clause 38.1**, this **clause 35** survives the destruction or return of Confidential Information in accordance with this Agreement.

34.635.6 Injunctive relief

The Recipient acknowledges and agrees that a breach of this **clause 35** would be harmful to the business interests of the Discloser and that, as a result, the Discloser may seek urgent injunctive relief, specific performance or a similar remedy to prevent the occurrence or continuance of any breach or suspected breach of this **clause 35** in addition to any other remedies available at law or in equity under or independently of this Agreement.

3536 Relationship with Train Operations Deed

35.136.1 Disputes

- (a) Prior to any referral of a matter to a loss adjuster, expert, arbitrator or the QCA (**Adjudicator**) in accordance with **clause 26.1** or **28**, either Party may notify the other Party that an Operator should be a party to that

referral and, if such a notice is given, then the Party which has given the notice must:

- (i) notify the relevant Operator of the matter to be referred to the Adjudicator; and
 - (ii) provide the relevant Operator with a copy of the provisions of this Agreement governing the referral of a matter to, the determination of a matter by, and the payment of the costs of, the Adjudicator.
- (b) If an Operator is given a notice under **clause 36.1(a)**, then:
- (i) where the Adjudicator is to be a loss adjuster, expert or arbitrator, the Parties are deemed not to have agreed the appointment of the loss adjuster, expert or arbitrator unless the Operator has also agreed to the appointment of that loss adjuster, expert or arbitrator;
 - (ii) the Parties must comply with **clause 26.1** or **28**, as applicable, in respect of the Operator as though the Operator was a Party to this Agreement for the purposes of the matter referred to the Adjudicator; and
 - (iii) the Adjudicator, in addition to determining the matter between the Parties, must also determine any claim, dispute, question or liability involving the Operator and the relevant Train Operations Deed arising in connection with any of the events or facts the subject of the matter referred to the Adjudicator (unless that claim, dispute, question or liability has already been agreed by Aurizon Network and the Operator or otherwise determined).
- (c) If the Access Holder is notified of a matter to be referred to an Adjudicator in accordance with a Train Operations Deed, then the Access Holder:
- (i) must comply with the provisions of that agreement governing the referral of a matter to, the determination of a matter by, and the payment of the costs of, an Adjudicator;
 - (ii) must provide the Adjudicator with a copy of this Agreement;
 - (iii) agrees that **clauses 26.1** and **28** do not apply to any claim, dispute, question or liability involving the Access Holder and this Agreement in connection with the matter referred to the Adjudicator; and
 - (iv) agrees that, for the avoidance of doubt, the decision of that Adjudicator, in the absence of manifest error, will be final and binding upon the Access Holder.

35-236.2 Performance Levels

- (a) If a notice is given under the Train Operations Deed that a party considers that the Performance Levels are no longer appropriate:
 - (i) Aurizon Network must promptly provide a copy of the notice to the Access Holder; and
 - (ii) the Parties and the Operator must use reasonable endeavours to agree on varied Performance Levels.
- (b) If the Parties and the Operator are unable to agree to such variations then the existing Performance Levels will continue to apply unless varied by

Aurizon Network in accordance with clause 12.2(a)(iv) of the Train Operations Deed.

35.336.3 Amendments due to changes to Train Operations Deed

If:

- (a) modified or additional Rollingstock or Rollingstock Configurations are authorised under a Train Operations Deed;
- (b) the Performance Levels specified in a Train Operations Deed are varied;
- (c) an Interface Risk Management Plan or Environmental Management Plan is prepared, reviewed, amended or audited, in accordance with a Train Operations Deed;
- (d) the Train Description under a Train Operations Deed is varied; or
- (e) a Train Operations Deed is otherwise amended as a result of or in connection with any of the matters in paragraphs (a) to (d),

then:

- (f) the Parties must amend this Agreement (including, but not limited to, by Aurizon Network varying the Access Charge Rates or Train Description) as reasonably necessary to reflect the change or variation to the Train Operations Deed and otherwise comply with this Agreement (including, for example, the Access Holder varying its nomination of the Operator (if necessary)), provided that any such amendment ceases to apply to the extent the relevant Operator ceases to be nominated as the Operator of the relevant Train Services;
- (g) Aurizon Network must advise the Access Holder of any variations to the Access Charge Rates payable by the Access Holder as a result of that change or variation; and
- (h) where the Parties cannot agree on the amendments to this Agreement, to the extent that those amendments:
 - (i) are not variations to the Access Charge Rates, the matter will be referred to an expert in accordance with **clause 28.3**; and
 - (ii) are variations to the Access Charge Rates (and any other amendments have been agreed by the Parties or otherwise determined), either Party may refer the matter to the QCA for determination in accordance with **clause 28.5**,

provided that any such amendment or variation will not result in any increase to the total capacity allocated to the Access Holder under this Agreement.

35.436.4 Notice to Access Holder

- (a) If any of the matters referred to in **clauses 36.3(a) to 36.3(e)** is proposed by Aurizon Network or the Operator and the proposal, if agreed, would require amendments to this Agreement or otherwise adversely affect the Access Rights or utilisation of the Access Rights, then Aurizon Network must provide:
 - (i) written notice to the Access Holder of the proposal as soon as practicable; and

- (ii) the Access Holder with a reasonable opportunity to participate in any negotiations or discussions between Aurizon Network and the Operator of such a proposal.
- (b) If the Access Holder disputes the proposed amendments to this Agreement or the effect on the Access Rights or utilisation of the Access Rights (as applicable) arising from a matter referred to in **clauses 36.3(a) to 36.3(e)**, then the Access Holder may refer the dispute to the QCA for determination in accordance with **clause 28.5**.

36.37 Notices

36.137.1 Form of Notice

Any notice, demand, invoice, certification, process or other communication authorised or required to be given by a Party to another under this Agreement (other than a Train Control Direction or a direction from the Incident Commander) (**Notice**) must be in writing and signed by an authorised officer of that Party and may, if agreed by the Parties, be in electronic form.

36.237.2 Method of service

A Notice may be given by being:

- (a) personally delivered to a Party;
- (b) left at the Party's current address for service;
- (c) sent to the Party's current address for service by pre-paid ordinary mail;
- (d) sent by facsimile transmission to the Party's current facsimile number for service; or
- (e) if agreed by the Parties, sent by email to the Party's current email address for service.

36.337.3 Deemed Notice

Subject to **clause 37.5**, a Notice given in accordance with this **clause 37** is deemed to be given if:

- (a) personally delivered, upon delivery;
- (b) posted to an address in Australia, three Business Days after posting;
- (c) posted to an address outside Australia, 10 Business Days after posting;
- (d) sent by facsimile, on the next Business Day after being sent if following transmission the sender receives a transmission report indicating that the facsimile was sent to the addressee's facsimile number; or
- (e) sent by email, on the next Business Day after being sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

36.437.4 Addresses for notices

- (a) Each Party's address for notices is as set out in **item 2 of Schedule 1**.
- (b) A Party may from time to time change its particulars for service by giving notice of that change to the other Party.

36.537.5 Train Control Direction or Incident Commander's Direction

- (a) A Train Control Direction is deemed to have been given at the time the direction is given, issued or made.
- (b) A direction from an Incident Commander is deemed to have been given at the time the direction is communicated by the Incident Commander.

3738 General

37.138.1 Survival

This **clause 38** and **clauses 5, 6, 17, 21, 25, 26, 28, 32, 34, 35** and **37** survive the expiration or termination of this Agreement.

37.238.2 Amendment

- (a) Except as otherwise provided in this Agreement, any variation or amendment to this Agreement must be in writing signed by both Parties.
- (b) The Access Holder must provide each Operator with a copy of any written agreement to variations or amendments to this Agreement.

37.338.3 Entire agreement

- (a) This Agreement, the Schedules and other documents referred to in the Schedules constitute the entire understanding and agreement between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and are of no force or effect. No Party is liable to any other Party in respect of those matters.
- (c) Neither Party has relied on any representations made by the other Party relating to the subject matter of this Agreement or otherwise.
- (d) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

37.438.4 Counterparts

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

37.538.5 Non-merger

Each representation, covenant and obligation under this Agreement continues in full force and effect until such representation, obligation or covenant is satisfied or completed.

37.638.6 Authority to enter into agreement

- (a) Each Party warrants to the other Party that, in respect of itself, it has full power to enter into and perform its obligations under this Agreement, and that this Agreement constitutes valid and binding obligations on it, enforceable in accordance with its terms.

- (b) If this Agreement is executed by an attorney, the attorney states, by such execution, that as at the time of such execution the attorney has received no notice of the revocation of the power of attorney pursuant to which the attorney has executed this Agreement.

37.738.7 Consents and approvals

Unless otherwise stated in this Agreement, if a Party has a right to accept, reject, decide, determine, consent or make any decision or exercise any discretion or decide to give any notice under this Agreement, the Party may do so conditionally or unconditionally at its discretion.

37.838.8 Relationship

The relationship between the Parties is entirely contractual. Nothing in this Agreement creates, or is to be taken to create, any partnership, joint venture or relationship of employer and employee between the Parties or any of them.

37.938.9 Certificate

A certificate signed by any duly authorised officer of Aurizon Network as to a matter or as to a sum payable to Aurizon Network in connection with this Agreement is prima facie evidence of the matter stated in it or the sum payable.

37.1038.10 Costs

Subject to any express provision in this Agreement to the contrary, each Party bears its own legal and other expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Agreement.

37.1138.11 Duty

- (a) The Access Holder is, as between the Parties, liable for and must duly pay all stamp duty (including any fine or penalty) on or relating to this Agreement and any document executed under or in connection with it.
- (b) If Aurizon Network pays any stamp duty (including any fine or penalty) on or relating to this Agreement, or any document executed under or in connection with it, the Access Holder must, within 10 Business Days after receiving such demand, reimburse Aurizon Network the amount paid.

37.1238.12 Waiver and exercise of rights

- (a) A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) No failure or delay by either Party to exercise any right or remedy under this Agreement may be construed or operate as a waiver or be evidence of delay, laches or acquiescence in equity or at law in respect of such right or remedy.
- (c) A waiver or consent by any Party of any default or breach of any term of this Agreement does not constitute a waiver of later defaults or breaches of the same or any other term.
- (d) A Party's election not to exercise any rights under this Agreement does not prejudice any other rights which that Party may have against the other Party arising out of any failure by the other Party to comply with this Agreement.

~~37.13~~38.13 **Computation of time**

Where time is to be calculated by reference to a day or event, that day or the day of the event will be excluded.

~~37.14~~38.14 **Severance of invalid or illegal terms**

- (a) If any term of this Agreement, or its application to any Party, person or circumstance, is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatever, then:
 - (i) that term, or its application to such Party, person or circumstance, is severed from this Agreement;
 - (ii) the remainder of this Agreement, excluding the severed part, remains in force, and any term which includes the severed part applies to such Party, person or circumstance without reliance on the part severed; and
 - (iii) to the extent permissible by Law, the Parties must agree to replace the severed term, effective from the date of severance, with a valid and enforceable term which so far as possible achieves the same purpose, object or effect as the invalid, void, voidable or otherwise unenforceable term was intended to achieve and does not cause any substantial reduction in the benefits of either Party or material re-allocation of risks between the Parties.
- (b) The Parties must act reasonably and in good faith in seeking an agreement under this **clause 38.14** as to a replacement term.
- (c) If the Parties cannot agree upon a replacement term, this Agreement is continued in accordance with **clauses 38.14(a)(i)** and **38.14(a)(ii)**.

~~37.15~~38.15 **Rights cumulative**

Subject to any express provision in this Agreement to the contrary, the rights of any Party under this Agreement are cumulative and are in addition to any other rights of that Party.

~~37.16~~38.16 **Approvals and consents**

Subject to any express provision in this Agreement to the contrary, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement.

~~37.17~~38.17 **Third Party Land**

The Access Holder acknowledges that:

- (a) the land specified in **item 4 of Schedule 3 (Third Party Land)** is not owned or controlled by Aurizon Network; and
- (b) entry onto that Third Party Land is not included within the definition of Access,

and agrees that in respect of that Third Party Land:

- (c) the Access Holder will comply with the requirements of the person that owns or controls that Third Party Land (**Landowner**) in relation to that Third Party Land as notified to the Access Holder by Aurizon Network from time to time;

- (d) if, after the Commencement Date, there is a change in the costs incurred by Aurizon Network due to the requirements of the Landowner in respect of that Third Party Land, then that change is deemed to be a Material Change; and
- (e) if Aurizon Network's rights in respect of that Third Party Land are terminated for any reason other than the default of Aurizon Network of any agreement that affects Aurizon Network's use of that Third Party Land or other than by agreement with the Landowner, then Aurizon Network may, by notice to the Access Holder, suspend and/or terminate the Access Rights insofar as they relate to that part of the Nominated Network which is situated on that Third Party Land.

~~37.18~~38.18 **Implementation of agreement**

Each Party must promptly execute all documents and do all such acts and things as are necessary or desirable to implement and give full effect to the provisions of this Agreement.

~~37.19~~38.19 **Governing law and jurisdiction**

- (a) This Agreement is governed by, and is to be construed in accordance with, the law in force in the State.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State, and any courts which have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.

~~37.20~~38.20 **PPS Act**

- (a) If a Party (**first party**) reasonably determines that this Agreement contains a "Security Interest" for the purposes of the PPS Act (**Security Interest**), the other Party (**second party**) agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the first party (after consultation with the second party) reasonably asks and considers necessary for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
 - (ii) enabling the first party to apply for any registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the first party; or
 - (iii) enabling the first party to exercise rights in connection with the Security Interest.
- (b) A Party is not required to give any notice under the PPS Act to the other Party or any other person and each Party waives the right to receive any such notice (including a notice of 'Verification Statement' as this term is defined under the PPS Act) unless the notice is required by the PPS Act and that obligation cannot be excluded.
- (c) To the extent that this Agreement gives rise to a Security Interest, the Parties agree that for the purposes of section 115 of the PPS Act, the following sections of the PPS Act will not apply to any Relevant Collateral:

- (i) section 95 (notice by Secured Party of removal of Accession);
- (ii) section 121(4) (notice by Secured Party of enforcement of Security Interest in liquid assets);
- (iii) section 125 (obligation of Secured Party to dispose of or retain Collateral after seizure);
- (iv) section 130, to the extent that it requires a party to give any notice to the other party (notice by Secured Party of disposal of Collateral);
- (v) section 132(3)(d) (obligation of Secured Party to show amounts paid to other Secured Parties in statement of account);
- (vi) section 132(4) (statement of account by Secured Party if it does not dispose of Collateral within prescribed period);
- (vii) section 135 (notice by Secured Party of retention of Collateral);
- (viii) section 142 (redemption of Collateral); and
- (ix) section 143 (reinstatement of Security Agreement).

3839 Most favoured nation status

38-139.1 Notice of contravention of price differentiation limitations

If the Access Holder (**Claimant Access Holder**) believes on reasonable grounds that:

- (a) Aurizon Network has entered into an Access Agreement with another Network Customer for a Network Train Service that transports the same specified commodity in the same specified geographic area as a Train Service operated using the Access Rights granted under this Agreement (**Like Train Service**); and
- (b) the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in the Access Undertaking (including the value of the access charge, take or pay terms and terms of payment),

then the Claimant Access Holder may provide written notification to Aurizon Network which must include the reasons why the Claimant Access Holder considers this to be the case.

38-239.2 Aurizon Network's response

Within 20 Business Days after receipt of such notification, Aurizon Network must advise the Claimant Access Holder:

- (a) whether or not Aurizon Network agrees that the Access Agreement with the other Network Customer is for a Like Train Service and, if not, the reasons why Aurizon Network considers this to be the case;
- (b) if Aurizon Network agrees that the Access Agreement with the other Network Customer is for a Like Train Service, whether or not Aurizon Network agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in the Access Undertaking and, if not, the reasons why Aurizon Network considers that the access charge applicable to the

Like Train Service has not been developed in contravention of the limits on price differentiation; and

- (c) if Aurizon Network agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation, then within 40 Business Days after the advice provided under this **clause 39.2**, Aurizon Network must advise the Claimant Access Holder:
- (i) whether or not Aurizon Network has been able to vary the access charge applicable to the Like Train Service such that it no longer contravenes the limits on price differentiation set out in the Access Undertaking; or
 - (ii) if Aurizon Network has not been able to vary the access charge applicable to the Like Train Service, that Aurizon Network agrees to the reduction of the Access Charges payable by the Claimant Access Holder, including the amount of the proposed reduced Access Charges.

38.339.3 Disputes

If the Access Holder does not agree with Aurizon Network's response, the dispute must be referred to an Expert for resolution in accordance with **clause 28.3**.

38.439.4 Interaction with other Network Customers

If:

- (a) another Network Customer notifies Aurizon Network that it believes that some or all of the Claimant Access Holder's Train Services are a "Like Train Service" as defined in the other Network Customer's Access Agreement to a Network Train Service operated by the other Network Customer, and that the Access Charge has been developed in contravention of the limits on price differentiation set out in the Access Undertaking; and
- (b) Aurizon Network agrees that this Agreement is for a Like Train Service and that any Access Charge under this Agreement has been developed in contravention of the limits on price differentiation set out in the Access Undertaking,

then Aurizon Network has the right by notice to the Claimant Access Holder to vary the Access Charge such that it no longer contravenes the limits on price differentiation set out in the Access Undertaking.

39.40 JV Participants and liability

39.140.1 Applicability

This **clause 40** only applies if **item 5 of Schedule 1** states that it applies.

39.240.2 Warranty

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

39.340.3 JV Participants and percentage interests

- (a) The percentage interest of the JV Participants in the Joint Venture will be as notified by the Access Holder to Aurizon Network from time to time, in accordance with this Agreement.
- (b) As at the Commencement Date, the respective percentage interests of the JV Participants in the Joint Venture are as specified in **item 7 of Schedule 1**.

39.440.4 Liability of JV Participants

- (a) The liability of each JV Participant under this Agreement will, subject to **clause 40.4(c)**, be several in respect of Financial Obligations in proportion to their respective percentage interests.
- (b) Each JV Participant will be jointly and severally liable in respect of the performance of any obligations under this Agreement that are not Financial Obligations.
- (c) Subject to **clause 40.4(e)**, if a JV Participant is in default of a Financial Obligation, and the Access Holder has not given notice to Aurizon Network identifying the defaulting JV Participant within five Business Days after the date of Aurizon Network giving a notice to the Access Holder identifying the default, all JV Participants will be jointly and severally liable for the performance of the Financial Obligation.
- (d) Any notice given by the Access Holder under **clause 40.4(c)** is conclusive evidence that the JV Participant specified in the notice is the JV Participant that is in default and the notice binds all JV Participants.
- (e) If a Financial Obligation is a payment obligation which does not have a specified due date, then **clause 40.4(c)** comes into effect only if:
 - (i) Aurizon Network notifies the JV Participants of the failure to comply with the Financial Obligation; and
 - (ii) the default is not remedied after a reasonable time (of at least 20 Business Days) from the date the JV Participants receive the notice under **clause 40.4(e)(i)**.

39.540.5 Termination and Suspension

For the avoidance of doubt, where a Suspension Event or Termination Event is attributable to or relates to an act or omission of one or more (but not all) of the JV Participants, Aurizon Network will be entitled to suspend or terminate (as applicable) this Agreement under **clauses 30 and 32** (as applicable) despite the Suspension Event or Termination Event (as applicable) not being attributable to or relating to an act or omission of all of the JV Participants.

Execution

Executed as an agreement

Executed by Aurizon Network Pty Ltd)
ABN 78 132 181 116:)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date

Executed by [the Access Holder])
ABN [insert]:)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date

Schedule 1 – Reference schedule

Item	Description	Details	
Access Holder details			
1	Access Holder	Name:	[insert]
		ABN:	[insert]
Particulars for Notices			
2	Address for Notices	Aurizon Network	
		Address:	[insert]
		Facsimile:	[insert]
		Email:	[insert]
		Attention:	[insert]
		Access Holder	
		Address:	[insert]
		Facsimile:	[insert]
		Email:	[insert]
		Attention:	[insert]
Security details			
3	Does clause 6.1 apply?	[yes/no]	
4	Security Amount	<p>The Security Amount (if applicable), at a time, will be an amount estimated by Aurizon Network (acting reasonably) as equivalent to the maximum amount of aggregate TOP Charges for all Train Service Types under this Agreement that could potentially be payable in up to 6 months assuming:</p> <p>(a) all of the Train Services were not operated for the Access Holder during the applicable period; and</p> <p>(b) the reason that the Train Services are not operated is not as a result of an Aurizon Network Cause.</p>	
[Joint Venture]			
5	Does clause 40 apply?	[yes/no]	
6	Name of Joint Venture	[insert name of Joint Venture or "Not Applicable" if no Joint Venture]	
7	JV Participants and percentage interests	Name of JV Participant	Percentage Interest
		[insert name]:	[insert interest]%
		[insert name]:	[insert interest]%

Item	Description	Details
		[insert name]: [insert interest]%

Schedule 2 – Train Descriptions

Part A – Matters applicable to specific Train Service Types

1 Train Service Type #1

1.1 Applicable Reference Tariff

[insert name of applicable type of Reference Tariff]

1.2 Matters relevant to Train Service Type – irrelevant to Reference Tariff

Details of dates	
Train Service Compliance Date	[insert]
Train Service Commitment Date	[insert]
Train Service Expiry Date	[insert]
General details	
Commodity	Coal
Coal System	[insert]
Reference Train Service	[yes /no]
Conditional Access Rights	
Do the Conditional Access Provisions apply?	[yes/no] [if yes, insert description of Expansion]
Operator(s)	
Name:	[insert]
Address:	[insert]
Facsimile:	[insert]
Email:	[insert]
Attention:	[insert]

1.3 Key characteristics of Train Service Type #1 – Reference Tariff sensitive

Details of route and facilities	
Origin	[insert]
Destination	[insert]
Loaded distance from Origin to Destination (km)	[insert]
Empty distance from Destination to	[insert]

Details of route and facilities	
Origin (km)	
Loading Facility	[insert]
Unloading Facility	[insert]
Depot	[insert]
Through-Running Train Service Type	[yes /no]
Details of maximum dwell times	
Maximum Time at Loading Facility (hours)	[insert]
Maximum Time at Unloading Facility (hours)	[insert]
Maximum Time at Depot (hours)	[insert]
Maximum Other Dwell Times (hours)	[insert]
Maximum Sectional Running Times	
Maximum Sectional Running Times	The Maximum Sectional Running Time for a Section for the Train Service Type are set out in appendix A to this Schedule 2 .
Nominated Monthly Train Services	
Nominated Monthly Train Services	The Nominated Monthly Train Services for the Train Service Type is set out in appendix B to this Schedule 2 .
Maximum Payload	
Maximum Payload	The Maximum Payload for the Train Service Type is set out in appendix B to this Schedule 2 .

1.4 Special operating restrictions

Without limiting the special operating restrictions which are specified in **item 1.2** of **Part B** of **Schedule 2** as being applicable to all Train Service Types, in scheduling Train Services for the Train Service Type in accordance with the Network Management Principles, Aurizon Network will comply with the following special operating restrictions (if any):

Item	Special operating restriction
1	[insert]
2	[insert]

1.5 Cycle description

Subject to:

- (a) any Train Control Direction given to the Operator in respect of a Train Service;
- (b) any exceptions which are specified in **part B** of this **Schedule 2** as being applicable to all Train Service Types; and
- (c) any exceptions specified in the table below,

the Operator must operate Train Services for the Train Services Type over the most direct route on the Nominated Network between the Origin and Destination and Destination and Origin (as applicable).

Item	Exceptions
1	[insert]
2	[insert]

Where there is duplicated Track or multiple roads (eg yards), Aurizon Network will have the ability to schedule the Train Service over any of the Tracks or roads.

1.6 Permitted Train Movements on the Nominated Network

Item	Permitted Movements
1	[Insert any permitted Train Movements by the Operator on the Nominated Network other than direct corridor travel of the Train Service in accordance with the specified Sectional Running Times and Dwell Times.]
2	[insert]

Part B – Matters applicable to all Train Service Types

1 Matters applicable to all Train Service Types

1.1 Overview

The matters set out in this **part B** of **Schedule 2** are applicable to all Train Service Types and form part of the Train Description for all Train Service Types.

1.2 Special operating restrictions

Without limiting the special operating restrictions for a Train Service Type which are specified in **item 1.4** of **Part A** of **Schedule 2** (if any), in scheduling Train Services in accordance with the Network Management Principles, Aurizon Network will comply with the following special operating restrictions:

Item	Special operating restriction
1	[insert]
2	[insert]

1.3 Cycle description

Subject to the exceptions set out in the table below, Train Services cycle description is the most direct route over the Nominated Network between the Origin and Destination and Destination and Origin (as applicable).

Item	Exceptions
1	[insert]
2	[insert]

1.4 Stowage

Item	Stowage requirements
1	[Insert short term Stowage requirements additional to that provided in the relevant Reference Tariff Provisions.]
2	[insert]

Appendix A to Schedule 2 - Sectional Running Times

1 Train Services that are Reference Train Services

[Drafting note: This item will set out the Maximum Sectional Running Times for Train Services that are Reference Train Services.]

Maximum Sectional Running Times: Reference Train Services

Location From	Location To	Empty (mins)	Loaded (mins)

Standard Sectional Running Times: Reference Train Services

Location From	Location To	Empty (mins)			Loaded (mins)		
		Pass to Stop	Start to Pass	Start to Stop	Pass to Stop	Start to Pass	Start to Stop

2 Train Services that are not Reference Train Services

[Drafting note: If a Train Service for a Train Service Type is a not a Reference Train Service, the Maximum Sectional Running Times for Train Services for that Train Service Type for each Section will be specifically set out in this item.]

Maximum Sectional Running Times: Non- Reference Train Services

Location From	Location To	Empty (mins)	Loaded (mins)

Standard Sectional Running Times: Non-Reference Train Services

Location From	Location To	Empty (mins)			Loaded (mins)		
		Pass to Stop	Start to Pass	Start to Stop	Pass to Stop	Start to Pass	Start to Stop

Appendix B to Schedule 2 – Nominated Monthly Train Services

1 Train Service Type #1

Nominated Monthly Train Services (for a 30 day Month)	[insert]
Maximum Payload	[insert] tonnes
Nominal Payload	[insert] tonnes
Indicative Tonnage (for a 30 day Month)	[insert] tonnes

Note for information purposes only: The Nominated Monthly Train Services (for a 30 day Month) for a Train Service Type is the number of Train Services calculated in accordance with the following formula:

$$\text{NMTS} = 2 \times \text{Loaded Train Services}$$

where:

NMTS = the Nominated Monthly Train Services (for a 30 day Month) for the Train Service Type

Loaded Train Services = IT/AAP (rounded to the nearest whole Train Service on the basis that where the first decimal place is greater than three, the number of Train Services is to be rounded up to the nearest number of whole Train Services and, where the first decimal place is three or less, the number of Train Services is to be rounded down to the nearest number of whole Train Services)

IT = the Indicative Tonnage (for a 30 day Month) for the Train Service Type

AAP = the Nominal Payload for the Train Service Type

Appendix C to Schedule 2 – Conditional Access Rights

1 Train Service Type #1

Details of Expansion	
Details of Expansion	[insert]
Details of Segments	
Details of Segment #1	Description: [insert] Initial Available Capacity: [insert]
Details of Segment #2	Description: [insert] Initial Available Capacity: [insert]
Details of Segment # [#]	Description: [insert] Initial Available Capacity: [insert]

Schedule 3 – Nominated Network

1 Nominated Network

The Nominated Network is that part of the Infrastructure described by reference to the diagrams and/or tables set out below, but does not include any freight terminals, railway stations, passenger facilities, workshops or maintenance depots (including provisioning facilities).

[Insert line diagram(s) depicting the Nominated Network]

2 Parts of Nominated Network subject to clause 29.2

For the purpose of **clause 29.2**, the specified parts of the Nominated Network are those parts of the Nominated Network described by reference the diagrams and/or tables set out below:

[Insert line diagram(s) depicting the Nominated Network]

[Drafting note: Aurizon Network may specify parts of the Nominated Network for the purpose of **clause 29.2** which are life expired, obsolete and/or only used by a single user.]

3 Train Control centres and signal cabins

The movement of an Operator's Trains while on the Nominated Network will be controlled by the Train Control centres and signal cabins at locations to be notified by Aurizon Network from time to time.

4 Third Party Land

[Insert diagram(s)/table(s) (if applicable)]

5 Weighbridges and Overload Detectors

5.1 Weighbridges

Location	Party responsible for Weighbridge	Tolerance
[insert]	[insert]	[The tolerances required to achieve verification under the <i>National Measurement Act 1960</i> (Cth)]

5.2 Overload Detectors

Location	Party responsible for Overload Detector	Tolerance
[insert]	[insert]	+/- [insert] %

Schedule 4 – Access Charges

1 Definitions

1.1 Definitions

In this **Schedule 4**:

Access Charge Rates for a Train Service Type means the rates specified in **item 2** of this **Schedule 4** for that Train Service Type.

Access Charges for the purposes of this **Schedule 4** means:

- (a) for a Billing Period means the amount calculated in accordance with **item 3.1** of this **Schedule 4** for the Billing Period; and
- (b) for a Train Service Type for a Billing Period means the amount calculated in accordance with **item 3.2** of this **Schedule 4** for the Train Service Type and Billing Period.

Adjustment Charge for a Billing Period means the amount calculated and approved as an Adjustment Charge (as defined in the Access Undertaking) in accordance with the Access Undertaking for that Billing Period.

Advice Date in respect of a Change in Reference Tariff Provisions means the date on which the QCA's decision making or approving the Change in Reference Tariff Provisions is first published by the QCA.

Change in Reference Tariff Provisions means any change (including variation, repeal or replacement) of:

- (a) the Reference Tariff Provisions; or
- (b) the Reference Tariffs (including the creation of a new Reference Tariff), made or approved by the QCA from time to time.

Corresponding Train Service for a Train Service Type means a Network Train Service which:

- (a) has an origin and destination which is the same as the Origin and Destination for the Train Service Type;
- (b) has the same End User for the Train Service Type; and
- (c) is subject to the same type of Reference Tariff as the Reference Tariff Type for that Train Service Type,

and operated under an Access Agreement.

egtk means the electric gross tonne kilometres attributed to the relevant Train Service, being:

- (a) the gtk for the Train Service, if that Train Service uses electric traction; and
- (b) zero, if the Train Service does not use electric traction.

End User means in respect of Network Train Services operated in relation to an origin to destination, the person who is either:

- (a) the “Customer” (as defined under the Access Undertaking) for those Network Train Services; or
- (b) if there is no “Customer” (as defined under the Access Undertaking), the Access Holder for those Network Train Services under an Access Agreement.

Expansion Tariff has the meaning given in the Access Undertaking.

Gross Tonnes for a Train Service (whether loaded or empty) operated for a Train Service Type means the amount which is the sum of:

- (a) for each locomotive comprised in the Train Service, the Maximum Gross Mass for that locomotive;
- (b) for each loaded or partly loaded Wagon comprised in the Train Service:
 - (i) if there is a functioning Weighbridge located en route between the Origin and Destination for the Train Service Type, the mass of the Wagon as determined at such Weighbridge (provided that if there is more than one functioning Weighbridge located en route between the Origin and Destination for the Train Service Type, the mass will be determined by the Weighbridge that is located closest to the Origin for the Train Service Type); and
 - (ii) if there is no functioning Weighbridge located en route between the Origin and Destination for the Train Service Type, the amount (expressed in tonnes rounded to two decimal places) calculated in accordance with the following formula for each loaded or partly loaded Wagon comprising the Train Service:

$$(MGM - TW) \times LEF + TW$$

Where:

MGM = the Maximum Gross Mass for the Wagon

TW = the Tare Weight for the Wagon

LEF = the Loading Efficiency Factor for the Train Service

- (c) for each empty Wagon comprised in the Train Service, the Tare Weight for the Wagon; and
- (d) for all other Rollingstock comprised in the Train Service, the Maximum Gross Mass for the Rollingstock.

gtk for an operated Train Service (whether loaded or empty) for a Train Service Type means the amount which is the Gross Tonnes for the Train Service for the Train Service Type multiplied by:

- (a) if the Train Service was operated from the Origin to Destination for the Train Service Type, the number of kilometres of the loaded distance from Origin to Destination for the Train Service Type as specified in the Train Service Description for that Train Service Type; or
- (b) if the Train Service was operated from the Destination to Origin for the Train Service Type, the number of kilometres of the empty distance from the Destination to Origin for the Train Service Type as specified in the Train Service Description for that Train Service Type.

Gtk Forecast has the meaning given in the Access Undertaking.

Loading Efficiency Factor for a loaded Train Service means:

- (a) if a loading efficiency factor has been agreed in writing between Aurizon Network and the QCA as applicable to this Access Agreement, that loading efficiency factor;
- (b) if paragraph (a) does not apply and a loading efficiency factor (however described) is specified in or can be determined from Aurizon Network's Access Undertaking, that loading efficiency factor (expressed as a percentage); or
- (c) if paragraph (a) or (b) does not apply, 98%.

Maximum Gross Mass for a Wagon or other Rollingstock has the meaning given in the applicable Train Operations Deed.

Net Tonnes or "nt" for a Train Service (whether loaded or empty) operated for a Train Service Type means:

- (a) the Gross Tonnes for the Train Service; less
- (b) the sum of:
 - (i) for each locomotive comprised in the Train Service, the Maximum Gross Mass for the locomotive;
 - (ii) for each Wagon (whether loaded or empty) comprised in the Train Service, the Tare Weight for the Wagon; and

for all other Rollingstock (whether loaded or empty) comprised in the Train Service, the Tare Weight for the Rollingstock.

Nominal Train Payload has the meaning given in the Access Undertaking.

ntk for a Train Service (whether loaded or empty) operated for a Train Service Type means the amount which is the Net Tonnes for the Train Service multiplied by:

- (a) if the Train Service was operated from the Origin to Destination for the Train Service Type, the number of kilometres of the loaded distance from Origin to Destination for the Train Service Type as specified in the Train Service Description for that Train Service Type; or
- (b) if the Train Service was operated from the Destination to Origin for the Train Service Type, the number of kilometres of the empty distance from the Destination to Origin for the Train Service Type as specified in the Train Service Description for that Train Service Type.

Reference Train Path or **RTP** has the meaning given to the term "rtp" in the Access Undertaking.

Review Date in respect of a Change in Reference Tariff Provisions means the first day of the Month during which the Change in Reference Tariff Provisions takes effect.

Schedule 4 Variation Notice has the meaning given in **item 5.2(a)** of this **Schedule 4**.

Tare Weight for a Wagon or other Rollingstock has the meaning given in the applicable Train Operations Deed.

Tariff Gtk has the meaning given in the Access Undertaking.

TOP Charge:

- (a) for a Year means the amount which is the sum of the “TOP Charge” (as defined in **paragraph (b)** of this definition) for each Train Service Type for the Year; and
- (b) for a Train Service Type for a Year means, subject to **item 5.2** of this **Schedule 4**, the amount calculated in accordance with **item 4** of this **Schedule 4** for the Train Service Type and Year.

1.2 Access Charge Rates definitions

In this **Schedule 4**, a reference to any Access Charge Rate for a Train Service Type means the Access Charge Rate as varied from time to time in accordance with this Agreement.

1.3 Final Year of Agreement

For the purposes of this **Schedule 4**, if this Agreement does not end on 30 June of any Year, the final Year of this Agreement will be the twelve (12) Month period commencing on the 1 July occurring before the date of the expiration or termination of this Agreement and ending on the 30 June occurring after the date of the expiration or termination of this Agreement.

2 Access Charge Rates

Description of Access Charge Rate	Definition	Access Charge Rate (ex GST)	
		\$	Unit
Train Service Type # [insert]			
Incremental Maintenance Tariff	AT ₁	[insert]	\$ / '000 gtk
Incremental Capacity Tariff	AT ₂	[insert]	\$ / RTP
Allocated Tariff 1	AT ₃	[insert]	\$ / '000 ntk
Allocated Tariff 2	AT ₄	[insert]	\$ / Net Tonne
Electric Tariff	AT ₅	[insert]	\$ / '000 egtk
Electric Energy Charge	EC	[insert]	\$ / '000 egtk
QCA Levy	QL	[insert]	\$ / Net Tonne
Train Service Type # [insert]			
Incremental Maintenance Tariff	AT ₁	[insert]	\$ / '000 gtk
Incremental Capacity Tariff	AT ₂	[insert]	\$ / RTP
Allocated Tariff 1	AT ₃	[insert]	\$ / '000 ntk
Allocated Tariff 2	AT ₄	[insert]	\$ / Net Tonne
Electric Tariff	AT ₅	[insert]	\$ / '000 egtk
Electric Energy Charge	EC	[insert]	\$ / '000 egtk

Description of Access Charge Rate	Definition	Access Charge Rate (ex GST)	
		\$	Unit
QCA Levy	QL	[insert]	\$ / Net Tonne

[Drafting note: If a Train Service Type has a cross system component to it, this table will be populated in accordance with the cross system pricing rules in Schedule F of the Access Undertaking, and in particular for clarity note that the access charge is based on a cross system reference tariff. Where there is an ‘Expansion Tariff’ (as defined in the Access Undertaking), this table will be populated in accordance with Schedule F of the Access Undertaking for the correct expansion tariff.]

3 Calculations for Access Charge

3.1 Calculation of Access Charges for Billing Period

The Access Charge for a Billing Period is the sum of each of the following for the Billing Period:

- (a) the Access Charge for each Train Service Type operated during the Billing Period calculated in accordance with **item 3.2** of this **Schedule 4**; and
- (b) the Adjustment Charge (if any) applicable to the Billing Period.

3.2 Calculation of Access Charges for Train Service Type

The Access Charge for a Train Service Type is calculated as:

$$\left(AT_1 \times \frac{gtk}{1000} \right) + (AT_2 \times rtp) + \left(AT_3 \times \frac{ntk}{1000} \right) + (AT_4 \times nt) + \left(AT_5 \times \frac{egtk}{1000} \right) + \left(EC \times \frac{egtk}{1000} \right) + (QCA Levy \times nt) + TOP Charge$$

where:

- (a) AT_1 is the incremental maintenance tariff specified as the AT_1 input in the Access Charge Rates for the relevant Train Service Type;
- (b) AT_2 is the incremental capacity tariff specified as the AT_2 input in the Access Charge Rates for the relevant Train Service Type;
- (c) AT_3 is an allocative tariff specified as the AT_3 input in the Access Charge Rates for the relevant Train Service Type;
- (d) AT_4 is an allocative tariff specified as the AT_4 input in the Access Charge Rates for the relevant Train Service Type;
- (e) AT_5 is the electric access tariff specified as the AT_5 input in the Access Charge Rates for the relevant Train Service Type;
- (f) EC is the electric energy charge which is initially (from the Commencing Date) as specified as the EC input in the Access Charge Rates for the relevant Train Service Type), and after the Commencing Date as otherwise published by Aurizon Network on the Website on or about each 31 May during the Term after Aurizon Network seeks and obtains the

QCA's approval for a new electric energy charge (taking into account any over or under recovery in the previous Year);

- (g) QCALevy is the QCA levy charge specified as the QL input in the Access Charge Rates for the relevant Train Service Type;
- (h) TOPCharge is, if the Billing Period is a Billing Period ending on 30 June, the TOP Charge for each Train Service Type for the Year in which that 30 June occurs; and
- (i) each of gtk, rtp, ntk, nt, egtk is the sum of the gtk, rtp, ntk, nt, egtk, as applicable, for all Train Services for the relevant Train Service Type operated during the relevant Billing Period.

3.3 Clarification matters for calculation of Access Charges

- (a) The Access Charge is GST exclusive.
- (b) For clarity, for the purposes of this **Schedule 4**, a Train Service is a one way Train Service, that is, the journey from the Origin to the Destination is one Train Service, and the return journey from the Destination to the Origin is a second Train Service.

4 Calculation of TOP Charge

4.1 System Test

- (a) This **item 4.1** of **Schedule 4** only applies to a Train Service which has a Reference Tariff Type which is a 'System Reference Tariff' (as defined in the Access Undertaking).
- (b) Subject to **items 4.1(a)** and **5.2** of this **Schedule 4**, the TOP Charge for a Train Service for a Year will be zero if:

$$TGtkY > (FGtkY - NGtkY)$$

where:

TGtkY = the Tariff Gtk for that Train Service for the relevant Year

FGtkY = the Gtk Forecast for the relevant Year

NGtkY = the "gtk" (as defined in the Access Undertaking) not achieved due to the non-operation of Network Train Services (that are subject to the same type of Reference Tariff as the Reference Tariff Type for that Train Service) for Aurizon Network Cause for the relevant Year.

4.2 TOP Charge

- (a) If the TOP Charge for a Train Service Type for a Year is not zero as a result of the operation of **item 4.1** of this **Schedule 4**, the TOP Charge for that Train Service Type for the Year, subject to **item 5.2** of this **Schedule 4**, is calculated as follows:
 - (i) first, the maximum potential TOP Charge will be calculated based on **items 4.2(c)** to **4.2(d)** of this **Schedule 4**; and
 - (ii) second, that maximum potential TOP Charge will be adjusted by applying each of:

- (A) **item 4.2(f) (Mine capping)**; and
- (B) **item 4.2(g) to (i) (Tariff capping)**,

as applicable and in that order to determine the actual TOP Charge for that Train Service Type.

- (b) If the TOP Charge for a Train Service Type for a Year is not zero as a result of the operation of **item 4.1** of this **Schedule 4**, the TOP Charge for that Train Service Type for the Year:
 - (i) is determined for each Year;
 - (ii) is invoiced for each Year following completion of that Year; and
 - (iii) must not be less than zero.
- (c) The maximum potential TOP Charge for a Train Service Type will be calculated as the amount which is 100% of the amount calculated as:

$$(AT_2 \times rtp \times NTS) + \left(AT_3 \times \frac{ntk}{1000} \right) + (AT_4 \times nt)$$

where:

- (i) each of AT2, AT3 and AT4 are the incremental capacity tariffs specified as the AT2, AT3 and AT4 inputs in the Access Charge Rates for the relevant Train Service Type;
- (ii) the nt and ntk (as applicable) are calculated by:
 - (A) the aggregate nt and ntk (as applicable) that would have been achieved for the relevant Year had the full contracted entitlement been railed for the relevant Train Service Type; less
 - (B) the aggregate nt and ntk (as applicable) not railed for the relevant Year due to the non-operation of Train Services for an Aurizon Network Cause; less
 - (C) the aggregate nt and ntk (as applicable) railed for the relevant Year; and
- (iii) NTS is calculated as:
 - (A) the number of Train Services for the relevant Train Service Type that the Access Holder would have operated for the relevant Year had the full contracted entitlement been railed; less
 - (B) the number of those Train Services that either:
 - (1) were not able to be operated solely as a result of an Aurizon Network Cause; or
 - (2) were operated (whether loaded or empty) during that Year.
- (d) To calculate nt and ntk for the purpose of **item 4.2(c)(ii)** of this **Schedule 4**, Aurizon Network must:
 - (i) identify the number of Train Services for the relevant Train Service Type that would have operated under this Agreement had the full

- contracted entitlement been used; and
- (ii) determine the number of Train Services for the relevant Train Service Type that did not operate under that contracted entitlement due to an Aurizon Network Cause, provided that if the Access Holder has more than one Access Agreement for the same origin to destination pair, Aurizon Network will allocate those Train Services as between this Agreement and the other Access Agreements in the order in which those Access Agreements were executed (unless the relevant Access Holder has nominated a different order, in which case that order will be applied),
- and calculate the nt and ntk by using the Nominal Train Payload applicable for the relevant Reference Tariff.
- (e) For the purpose of calculating TOP Charges, the Access Holder's entitlement to operate Train Services is, without limitation, determined by reference to the Train Services that could have been operated in accordance with this Agreement including even if:
 - (i) where the Access Holder is not a Train Operator:
 - (A) the Access Holder has not nominated a Train Operator to utilise Access Rights relevant to all or any of the Train Services;
 - (B) either:
 - (1) the Access Holder must ensure a Train Operator does not operate; or
 - (2) Aurizon Network suspends the right of the Access Holder to have a Train Operator operate,
 all or any of the Train Services; or
 - (C) under the relevant Train Operations Deed, either:
 - (1) the relevant Train Operator must not operate; or
 - (2) Aurizon Network suspends the right of the relevant Train Operator to operate,
 all or any of the Train Services; or
 - (ii) where the Access Holder is a Train Operator, the Access Holder must not operate, or Aurizon Network suspends the right of the Access Holder to operate, all or any of the Train Services,

except to the extent of any express exceptions specified in this Agreement for the purpose of calculating the TOP Charge where the Access Holder is taken to not have an entitlement to operate the relevant Train Service Type.

Mine capping

- (f) If:
 - (i) Train Services operated in relation to a Train Service Type in respect of an End User under this Agreement, has not exceeded the Train Service Entitlement in this Agreement; and

- (ii) there is another Access Agreement (excluding Access Agreements executed or renewed prior to 1 October 2010) (**Other Agreement**) with Corresponding Train Services that have been exceeded,

then the TOP Charge under this Agreement will be reduced by the amount of the additional revenue from Access Charges for AT2-4 from those excess Train Services under the Other Agreement but only to the extent that:

- (iii) both that Take or Pay liability and those Access Charges are set by reference to the same Reference Tariff;
- (iv) the additional revenue under the Other Agreement has not been utilised to reduce the Take or Pay liability under another Access Agreement (other than this Agreement or the Other Agreement); and
- (v) the additional revenue from the Other Agreement can only be used for a reduction of TOP Charge under this **item 4.2(f)** of this **Schedule 4**, in respect of the Year in which that additional revenue arose and cannot be accrued, rolled over or otherwise used to reduce a TOP Charge for any other Year.

Tariff capping

- (g) **Item 4.2(h)** of this **Schedule 4**, must only be applied after **item 4.2(f)** of this **Schedule 4**, (if applicable) has been applied.
- (h) Subject to **items 4.2(i)**, and to **item 4.2(f)** of this **Schedule 4**, (if applicable) having first been applied, if the Total Actual Revenue (as defined in the Access Undertaking) for AT₂₋₄ in relation to access charges for all Access Agreements set by reference to the relevant Reference Tariff less the aggregate amount of Tariff Take or Pay (as defined in the Access Undertaking) that Aurizon Network is entitled to earn from all Access Agreements executed or renewed on or after 30 June 2006 (other than any new or varied Access Agreement to the extent entered or varied as part of transferring Access Rights from existing Access Agreements in place on the day immediately prior to 30 June 2006 under a provision of the Access Agreement which permits the transfer of Access Rights) (**Total Revenue**) is:
 - (i) greater than or equal to the Allowable Revenue (as defined in the Access Undertaking) for AT₂₋₄ in relation to the relevant Reference Tariff, the TOP Charge is not payable for that Year under this Agreement; or
 - (ii) less than the Allowable Revenue (as defined in the Access Undertaking) for AT₂₋₄ in relation to the Reference Tariff:
 - (A) Aurizon Network must calculate the aggregate amount of Tariff Take or Pay (as defined in the Access Undertaking) that Aurizon Network is entitled to earn from all Full Take or Pay Agreements (as defined in the Access Undertaking) (**Total Actual Take or Pay**); and
 - (B) if the Total Actual Take or Pay exceeds the amount by

which the Allowable Revenue for AT_{2-4} in relation to the relevant Reference Tariff exceeds the Total Revenue from Access Charges set by reference to the relevant Reference Tariff (**Maximum Take or Pay Amount**), then:

- (1) Aurizon Network will calculate for each relevant Access Holder, the proportion that the Access Holder's Tariff Take or Pay amount bears to the Total Actual Take or Pay (**Proportion**); and
 - (2) the TOP Charge will be reduced by an amount equal to the Access Holder's Proportion of the Maximum Take or Pay Amount.
- (i) In determining what Aurizon Network would be entitled to earn for the purposes of **item 4.2(h) of Schedule 4**, Aurizon Network is deemed to have contracted on the terms of the relevant Standard Access Agreement (as defined under the Applicable Undertaking) that applied on the date of execution or renewal of an Access Agreement, except for:
- (i) those Access Agreements which have been altered by agreement from that form in a manner consistent with the terms of any Approved Undertaking or approval of the QCA, in which case Aurizon Network's entitlement will be calculated in accordance with the terms of such Access Agreements; and
 - (ii) a New Access Agreement to the extent entered into as part of transferring Access Rights from an Old Access Agreement executed under the 2001 Undertaking, under a provision of the Access Agreement which permits the transfer of Access Rights, in which case Aurizon Network's entitlement to Tariff Take or Pay amounts will be calculated on the basis that Aurizon Network has contracted on the terms of the relevant Standard Access Agreement (as defined under the 2001 Undertaking) that applied on the date of execution of that Old Access Agreement.

The capitalised terms used in this **item 4.2(h) of Schedule 4** have the meaning given them in the Access Undertaking.

4.3 TOP Charge on Expansion Tariff

- (a) This item 4.3 of **Schedule 4** applies if the Access Charge Rates include a rate set by reference to an Expansion Tariff.
- (b) The TOP Charge for each Train Service Type will be calculated in accordance with:
 - (i) the formulae in **item 4.2(c) of Schedule 4**; plus
 - (ii) $AT_5 \times egtk / 1000$;where:

AT₅ is the electric access tariff specified as the AT₅ input in the Access Charge Rates for the relevant Train Service Type; and
egtk is calculated by:

- (A) the aggregate egtk that would have been achieved for the relevant Year had the full contracted entitlement been railed for the relevant Train Service Type; less
 - (B) the aggregate egtk not railed for the relevant Year due to the non-operation of that Train Service Type for an Aurizon Network Cause; less
 - (C) the aggregate egtk railed for the relevant Year;
- provided always that the amount of TOP Charge for the Year must not be less than zero.
- (c) In order to calculate egtk for the purposes of **item 4.3(b)** of **Schedule 4**, Aurizon Network must:
 - (i) identify the number of Train Services that would have operated had the full contracted entitlement been used;
 - (ii) determine the number of Train Services that did not operate under that contracted entitlement due to an Aurizon Network Cause; and
 - (iii) convert this to egtk by using the Nominal Train Payload for the relevant Reference Tariff as reasonably determined by Aurizon Network.
 - (d) For clarity:
 - (i) there is no Take or Pay trigger test, that is **item 4.1** of **Schedule 4** does not apply; and
 - (ii) there are no capping mechanisms, that is **items 4.2(f) to 4.2(i)** of **Schedule 4** do not apply.

5 Review of schedule 4

5.1 Acknowledgment

The Parties agree that **items 2 to 4** of this **Schedule 4** were determined by reference to the Reference Tariff Provisions as at:

- (a) if the Train Service Type was a Train Service Type as at the Commencement Date – the Commencement Date; or
- (b) if **Schedule 2** was varied to include the Train Service Type – the date **Schedule 2** was varied to include the Train Service Type.

5.2 Review of schedule 4

- (a) Within 20 Business Days after the Advice Date for a Change in Reference Tariff Provisions, Aurizon Network must give the Access Holder a notice (**Schedule 4 Variation Notice**) specifying variations to:
 - (i) the Access Charge Rates for any Train Service Type;
 - (ii) the TOP Methodology; and
 - (iii) any other aspect of this **Schedule 4**.
- (b) In considering any variations to this **Schedule 4** under **item 5.2(a)** of this **Schedule 4** as a result of a Change in Reference Tariff Provisions, Aurizon Network must have regard to:

- (i) any change to Reference Tariffs (including new Reference Tariffs);
- (ii) any change to the methodology for calculating take or pay charges under the Access Undertaking;
- (iii) any change to the characteristics of the Reference Train Service;
- (iv) any differences between the Train Service Description for a Train Service Type and the characteristics of the Reference Train Service;
- (v) any change to RTP for the Train Service Type or its calculation;
- (vi) other related factors in the Reference Tariff Provisions; and
- (vii) the Access Undertaking.

5.3 Dispute

- (a) If Aurizon Network gives the Access Holder a Schedule 4 Variation Notice in respect of a Change in Reference Tariff Provisions, the Access Holder may, within 10 Business Days after Aurizon Network gives the Schedule 4 Variation Notice, give Aurizon Network a Dispute Notice which Disputes the variations specified in the Schedule 4 Variation Notice in accordance with **clause 28**.
- (b) If a Dispute referred to in **item 5.3(a)** of this **Schedule 4** is not resolved in accordance with **clause 28.2**, then the Parties must refer the Dispute to an Expert to determine the Dispute in accordance with **clause 28.3** and **item 5.4** of this **Schedule 4**.
- (c) If the Access Holder does not give Aurizon Network a Dispute Notice referred to in **item 5.3(a)** of this **Schedule 4** within the time referred to in **item 5.3(a)** of this **Schedule 4**, then:
 - (i) the variations specified in the Schedule 4 Variation Notice will take effect on the Review Date for relevant the Change in Reference Tariff Provisions;
 - (ii) the Access Holder must not give Aurizon Network a Dispute Notice Disputing the variations specified in the Schedule 4 Variation Notice;
 - (iii) any such Dispute Notice which is given by the Access Holder will be of no effect; and
 - (iv) the Access Holder must not make any Claim against Aurizon Network in respect of that Dispute.

5.4 Expert determination

If a Dispute referred in **item 5.3(a)** of this **Schedule 4** is referred to an Expert, then:

- (a) promptly after the date the Dispute is referred to the Expert, Aurizon Network must provide the Expert with documentation to support the variations specified in the Schedule 4 Variation Notice;
- (b) the Expert must:
 - (i) undertake to keep confidential all matters coming to its knowledge

- by reason of the Expert's appointment and performance of its duties, other than that already in the public domain; and
- (ii) not include such information in its reasons for reaching the determination;
- (c) the Expert must review the documentation provided by Aurizon Network under **item 5.4(a)** of this **Schedule 4** and determine whether or not the variations specified in the Schedule 4 Variation Notice are consistent with the Access Undertaking and the relevant Change in Reference Tariff Provisions;
 - (d) if the Expert determines that the variations specified in the Schedule 4 Variation Notice are consistent with the Access Undertaking and the relevant Change in Reference Tariff Provisions, the variations will take effect on the Review Date for the relevant Change in Reference Tariff Provisions;
 - (e) if the Expert determines that the variations specified in the Schedule 4 Variation Notice are not consistent with the Access Undertaking and the relevant Change in Reference Tariff Provisions, then:
 - (i) the Expert must use reasonable endeavours to attempt to reach agreement with Aurizon Network as to, and failing such agreement must determine, the variations to this **Schedule 4** which are reasonable as a result of the relevant Change in Reference Tariff Provisions, having regard to:
 - (A) the matters specified in **item 5.2(b)** of this **Schedule 4**; and
 - (B) any other matters which a Party submits that the Expert should have regard to in determining the Dispute.
 - (ii) the variations agreed between the Expert and Aurizon Network, or determined by the Expert, in accordance with **item 5.4(e)(i)** of this **Schedule 4** will take effect on the Review Date for the relevant Change in Reference Tariff Provisions.
 - (f) Despite **clause 28.3(j)**, the costs of the Expert (and the costs of any advisers to the Expert) will be borne by:
 - (i) the Access Holder if the Expert determines that the variations specified in the Schedule 4 Variation Notice are reasonable as a result of the relevant Change in Reference Tariff Provisions;
 - (ii) Aurizon Network if the Expert determines that the variations specified in the Schedule 4 Variation Notice are not reasonable as a result of the relevant Change in Reference Tariff Provisions; or
 - (iii) in such other proportion as the Expert may otherwise determine.

Schedule 5 – Insurance

1 Workers compensation insurance

The Access Holder must effect and maintain insurance covering such liability as may arise at common law or by virtue of any applicable workers' compensation legislation in respect of any Access Holder's Staff.

Schedule 6 – Suspension Events and Termination Events

Item	Suspension Event	Termination Event
1	The Access Holder fails to pay by the due date any amount payable under this Agreement, and such default continues for at least 10 Business Days after Aurizon Network notifies the Access Holder of the default (and always subject to clause 5.4).	The Access Holder fails to pay by the due date any amount payable under this Agreement, and such default continues for at least 20 Business Days after Aurizon Network notifies the Access Holder of the default (and always subject to clause 5.4).
2	An Insolvency Event occurs in respect of the Access Holder.	An Insolvency Event occurs in respect of the Access Holder and continues for a period of at least 40 Business Days.
3	The Access Holder fails to: (a) effect or maintain the insurances required under clause 23.2 ; or (b) provide evidence of the insurances required under clause 23.2 having been effected and maintained, and such default continues for at least five Business Days after Aurizon Network notifies the Access Holder of the default.	The Access Holder fails to: (a) effect or maintain the insurances required under clause 23.2 ; or (b) provide evidence of the insurances required under clause 23.2 having been effected and maintained, and such default continues for at least 20 Business Days after Aurizon Network notifies the Access Holder of the default.
4	The Access Holder fails to establish, maintain or replace the Security as required under this Agreement, and such default continues for at least five Business Days after Aurizon Network notifies the Access Holder of the default.	The Access Holder fails to establish, maintain or replace the Security as required under this Agreement, and such default continues for at least 20 Business Days after Aurizon Network notifies the Access Holder of the default.
5	The Access Holder purports to Assign any of its rights or interests in this Agreement other than as permitted in this Agreement.	The Access Holder purports to Assign any of its rights or interests in this Agreement other than as permitted by this Agreement.
6	The Access Holder fails to comply with any obligation under this Agreement (other than any obligation which, if not complied with by the Access Holder, may (either of itself or if other requirements are satisfied) result in any other Suspension Event occurring), and such default continues for at least 20 Business Days after Aurizon Network notifies the Access Holder of the default.	The Access Holder fails to comply with any obligation under this Agreement (other than any obligation which, if not complied with by the Access Holder, may (either of itself or if other requirements are satisfied) result in any other Termination Event occurring), and such default continues for at least 40 Business Days after Aurizon Network notifies the Access Holder of the default.

Schedule 7 – Pro forma Access Interface Deed

Aurizon Network Pty Ltd

[Insert Customer]

Access Interface Deed

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Date

Parties

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

[insert] of [insert address] (**Customer**)

Background

- A Aurizon Network and the Access Holder are parties to the Access Agreement.
 - B Aurizon Network and the Access Holder (in its capacity as the 'Operator' under the Train Operations Deed) are also parties to the Train Operations Deed.
 - C The Access Holder (in its capacity as 'Operator') and the Customer are parties to the Rail Haulage Agreement.
 - D In accordance with the Access Agreement, the Parties enter into this Deed to create a contractual relationship between Aurizon Network and the Customer and record their agreement in respect of circumstances in which they will be liable to each other for loss suffered in connection with the provision or utilisation of Access.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Deed:

Access Agreement means the Access Agreement [insert] between Aurizon Network and the Access Holder dated on or about [insert], as amended from time to time.

Access Agreement Liability Provisions has the meaning given in clause 2.4(a).

Access Holder means [insert].

Access Rights means rights of access granted by Aurizon Network to the Access Holder under the Access Agreement.

Access Undertaking means the access undertaking submitted by Aurizon Network to the QCA and approved by the QCA under the *Queensland Competition Authority Act 1997* (Qld) as in force at the time of entering into the Access Agreement.

Business Day means a day which is not a Saturday, Sunday or public holiday

in Brisbane or, if and to the extent that this Deed expressly refers to another place, in that other place.

Claim means any action, proceeding, claim, demand, damage, loss, cost, liability or expense including the costs and expenses of defending or settling any action, proceeding, claim or demand.

Consequential Loss means:

- (a) any loss of revenue, loss of profits or loss of production;
- (b) any loss of whatever nature concerning supply of product from a mine to any Third Party or to make product available to transport;
- (c) loss of business opportunities;
- (d) loss of or damage to reputation or goodwill;
- (e) any wasted overheads or demurrage;
- (f) loss of or damage to credit rating;
- (g) in respect of a breach of an agreement, loss or damage that does not naturally, according to the usual course of things, arise from the breach; and
- (h) loss or damage suffered or incurred by a Party arising out of a Claim against that Party by a Third Party, to the extent that the loss or damage would not be recoverable by the Third Party if the Party was not liable to the Third Party for "Consequential Loss" (as defined in this definition) in respect of the Claim by the Third Party,

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

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

investigations, inquiries or proceedings by a governmental or regulatory body in respect of such failure or breaches.

Deed means this Access Interface Deed.

Financial Obligation means any obligation of the Customer to pay, or cause to be paid, an amount of money.

Haulage Services means the haulage services provided by the Access Holder to the Customer under the Rail Haulage Agreement.

Infrastructure has the meaning given to the term "Rail Infrastructure" in the Access Undertaking.

Infrastructure Lease means any lease or sublease to Aurizon Network of any Infrastructure which forms part of the Nominated Network.

Infrastructure Lessor means any lessor or sublessor under an Infrastructure Lease.

Joint Venture means the unincorporated joint venture (if any) between the JV Participants specified in Item 2 of Schedule 1.

JV Participants means the entities (if any) specified in Item 3 of Schedule 1.

Party means a party to this Deed.

Product has the meaning given in **clause 3.1(a)**.

Queensland Competition Authority or **QCA** means the authority established under the *Queensland Competition Authority Act 1997* (Qld).

Rail Haulage Agreement means the agreement between the Access Holder and the Customer for the provision of rail haulage services to the Customer and for which purpose the Access Holder requires the Access Rights.

Staff of a party, means the employees, contractors, volunteers and agents of the party and any other person under the control or supervision of the party which is involved in:

- (a) in the case of Aurizon Network, any activity associated with the Access Agreement, the Infrastructure or the provision of Access Rights; and
- (b) in the case of the Customer, any activity associated with:
 - (i) the Haulage Services; or
 - (ii) the Customer's mine or other production facility (if any) or any loading or unloading facility to which the Haulage Services relate.

Third Party means a person other than the Customer or Aurizon Network.

Train Operations Deed means the Train Operations Deed referred to in paragraph B of the Background of this Deed.

1.2 Definitions in the Access Undertaking

Words or expressions which are used and not defined in this Deed, but are defined in the Access Undertaking have the meaning given to them in the Access Undertaking.

1.3 Construction

In this Deed, unless expressed to the contrary:

- (a) the singular include the plural and vice versa;
- (b) a gender includes all other genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it;
- (e) a reference to:
 - (i) a person includes a partnership, unincorporated association, corporation or other entity, government or statutory body;
 - (ii) a person includes its legal personal representatives, successors and assigns;
 - (iii) conduct includes any omission or any representation, statement or undertaking, whether or not in writing;
 - (iv) conduct includes a benefit, remedy, discretion or power;
 - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vi) the words "include", "includes" or "including" must be read as if they are followed by the words "without limitation";
 - (vii) writing includes:
 - (A) any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and
 - (B) words created or stored in any electronic medium and retrievable in perceivable form;
 - (viii) time is to local time in Brisbane, Queensland;
 - (ix) "A\$", "\$" or "dollars" is a reference to the lawful currency of Australia;
 - (x) this or any other document or agreement includes the document or agreement as novated, varied or replaced from time to time and despite any change in the identity of the parties;
 - (xi) anything (including any amount) is a reference to the whole or part or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
 - (xii) under a clause includes in accordance with that clause;
 - (xiii) a clause or schedule is a reference to a clause or schedule (as applicable) in this Deed;
 - (xiv) any legislation or any provision of any legislation includes any modification or re-enactment of it, any legislative provision

substituted for it and all regulations and statutory instruments issued under it;

- (xv) any Authority, association or body whether statutory or otherwise (**first body**) is, if the first body ceases to exist or is re-constituted, re-named or replaced or the powers or functions of the first body is transferred to any other Authority, association or body (**replacement body**), deemed to refer to the replacement body established or constituted in lieu of the first body or as nearly as may be succeeding to the powers or functions of the first body;
- (xvi) access or access rights does not include rights granted by the Railway Manager to a Railway Operator under a train operations deed; and
- (xvii) subject to **clause 6**, the Customer, if the Customer is comprised of more than one entity (for example, if the Customer is comprised of the participants in an unincorporated joint venture), is a reference to each entity comprising the Customer.

1.4 Headings

Headings do not affect the interpretation of this Deed.

2 Relations between the Parties

2.1 No liability for Consequential Loss

A Party (**first Party**) is not liable to the other Party, and the other Party must not make any Claim against the first Party under or in connection with this Deed, the Access Agreement, the Access Rights or the Infrastructure in respect of any Consequential Loss whether as a result of:

- (a) the performance, non-performance or breach of this Deed, the Access Agreement or any other obligation;
- (b) the standard of or any failure of or defect in the Infrastructure;
- (c) negligence;
- (d) breach of warranty or representation; or
- (e) any other act, omission or circumstance whatsoever.

2.2 Indemnities for personal injury and property damage and duty to mitigate

- (a) Subject to **clauses 2.1 and 2.4**, each Party (indemnifying Party) is solely liable for and releases, indemnifies and will keep indemnified the other Party, its directors and Staff against all Claims of any nature suffered or incurred by or made or brought against the other Party, its directors or Staff due to or arising out of the Access Agreement or this Deed in respect of:

- (i) any loss of or damage to or destruction of property (including property of the other Party); or
- (ii) personal injury to or death of any person,

in each case caused by or (to the extent of the contribution) contributed to by:

- (iii) the wilful default of; or
 - (iv) any deliberate act or omission (unless that act or omission is permitted under the Access Agreement or Train Operations Deed) or negligent act or omission of,
- the
- (v) indemnifying Party or the directors or Staff of the indemnifying Party; or
 - (vi) Access Holder (where the indemnifying Party is the Customer), if the default or act or omission is caused by, or (to the extent of the contribution) contributed to by, an act or omission of the Customer,
- in connection with this Deed, the Access Agreement or the Access Rights.

2.3 Extent of Aurizon Network’s liability to Customer for non-Consequential Loss

Subject to **clauses 2.1** and **2.4**, Aurizon Network will be liable to the Customer for any Claim to the same extent that Aurizon Network would have been liable for that Claim under the Access Agreement if the Claim was made by the Access Holder.

2.4 Exclusions of liability in Access Agreement apply

- (a) Each provision of the Access Agreement that directly or indirectly has the purpose or effect of regulating, excluding or limiting the liability of, or the making of a Claim against, Aurizon Network or the Access Holder (including limiting what conduct will constitute a breach and setting out when and how a Claim may be brought including any preconditions to doing so) (**Access Agreement Liability Provision**) will also operate to regulate, exclude or limit:

- (i) the liability of Aurizon Network or the Customer (as applicable); and
- (ii) the making of a Claim against, Aurizon Network or the Customer (as applicable) by the other Party under or in connection with this Deed or the Access Agreement, the Access Rights or the Infrastructure,

on the basis that all references to the Access Holder in the Access Agreement Liability Provisions will be deemed to include a reference to the Customer (unless **clause 2.4(b)** or **2.4(c)** applies).

- (b) If an Access Agreement Liability Provision refers to or requires the Access Holder or Aurizon Network and the Access Holder to agree anything:
 - (i) the matter to be agreed solely relates to the Claim or subject of the Claim by the Customer; and
 - (ii) the matter has not, before the Claim is first notified to the other Party, been agreed by Aurizon Network and the Access Holder,

the reference to, or requirement for, the agreement of the Access Holder or the Access Holder and Aurizon Network in the Access Agreement Liability Provision (as applied under **clause 2.4(a)**) is to be read as if it was a reference to the agreement of the Customer or the agreement of the Customer and Aurizon Network (as applicable).

- (c) If:
 - (i) an Access Agreement Liability Provision refers to or requires the Access Holder or Aurizon Network and the Access Holder to agree anything;
 - (ii) the matter to be agreed partly relates to the Claim or subject of the Claim by the Customer; and
 - (iii) the matter has, before the Claim is first notified to the other Party, been agreed by Aurizon Network and the Access Holder,the Access Agreement Liability Provision (as applied under **clause 2.4(a)**) must be read subject to the matter as agreed by Aurizon Network and the Access Holder.
- (d) The Customer acknowledges that it has been provided with a copy of the Access Agreement Liability Provisions by the Access Holder.
- (e) For the avoidance of doubt, nothing in this **clause 2.4** operates to make the Customer liable or to increase any otherwise existing liability, or to entitle Aurizon Network to make any Claim against the Customer, for or to satisfy (whether in full or in part) any liability or obligation of the Access Holder or any act or omission of the Access Holder, its directors or Staff.

2.5 Duty to mitigate

Each Party must use all reasonable endeavours to mitigate the damage, loss, cost, liability or expense in respect of which an indemnity in this **clause 2** applies.

2.6 Acceptance of benefit

To the extent that the Rail Haulage Agreement or the Access Holder's (in its capacity as 'Operator') conditions of carriage with the Customer includes any exclusion or limitation of liability for Aurizon Network's benefit, this **clause 2.6** constitutes Aurizon Network's notice to the Customer of Aurizon Network's acceptance of the benefit of any such exclusion or limitation of liability for the purposes of section 55 of the *Property Law Act 1974* (Qld).

2.7 No effect on other arrangements

Nothing in this Deed, including **clauses 2.1, 2.3 and 2.4**, will operate to limit, exclude or qualify any liability or obligation of:

- (a) one Party to the other Party arising under or in connection with any agreement or deed (other than this Deed) to which Aurizon Network and the Customer are parties, whether alone or together with one or more other persons; or
- (b) any liability or obligation of the Access Holder (in its capacity as 'Operator') to the Customer arising under or in connection with the Rail Haulage Agreement or the Haulage Services.

2.8 General provisions regarding indemnities

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the Parties.
- (b) It is not necessary for a Party to incur expense or make a payment before enforcing any indemnity in this Deed.

3 Warranties by the Customer

[Drafting note: Where the Customer is unable to give each of the following warranties, (because the Customer does not own the mine, does not own the coal, or is not entitled to the proceeds of sale) Aurizon Network intends to enter into individual deeds with relevant parties which can give these warranties, where each deed will include clauses from the Access Interface Deed relevant to that party.]

3.1 Warranties

Each Customer warrants that at all times during the term of the Access Agreement and whilst the Customer is a party to this Deed, the Customers together are:

- (a) the owner of all of the mine or other production facility (if any) which produces the product which is to be transported using the Access Rights (**Product**);
- (b) the owner of the Product while that Product is being transported using the Access Rights; and
- (c) entitled to the proceeds of the sale of the Product while that Product is being transported using the Access Rights.

3.2 Reliance on warranties

The Customer acknowledges that Aurizon Network has entered (or will enter) into the Access Agreement and this Deed in reliance upon the warranties in **clause Error! Reference source not found.**

4 Assignment

A Party must not assign its interests under the Access Agreement or the Rail Haulage Agreement (as applicable) to another person (**intended assignee**) unless the intended assignee has first executed and delivered to the other Party a deed of assumption, in a form acceptable to the other Party, acting reasonably, under which the intended assignee undertakes to be bound by the terms of this Deed.

5 General

5.1 Amendment

This Deed may only be varied or replaced by a written document executed by the Parties.

5.2 Entire understanding

- (a) This Deed and the Access Agreement contain the entire understanding and agreement between the Parties as to the subject matter of this Deed.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Deed are merged in and superseded by this Deed and are of no effect whatsoever. No Party is liable to any other Party in respect of those matters.
- (c) No oral explanation or information provided by any Party to another:

- (i) affects the meaning or interpretation of this Deed; or
- (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

5.3 Counterparts

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

5.4 Duty

- (a) The Customer as between the Parties is liable for and must pay all duty (including any fine or penalty except where it arises from default by another Party) on or relating to this Deed, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If a Party other than the Customer pays any duty (including any fine or penalty) on or relating to this Deed, any document executed under it or any dutiable transaction evidenced or effected by it, the Customer must pay that amount to the paying Party on demand.

5.5 GST

- (a) In this **clause 5.5**:
 - (i) words and expressions which are not defined in this Deed but which have a defined meaning in GST Law have the same meaning as in the GST Law;
 - (ii) GST Law has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- (b) If GST is or will be imposed on a supply made under or in connection with this Deed by a Party (Supplier), the Supplier may, to the extent that the consideration otherwise provided for that supply is not stated to include an amount in respect of GST on the supply:
 - (i) increase the consideration otherwise provided for that supply under this Deed by the amount of that GST; or
 - (ii) otherwise recover from the recipient of the supply the amount of that GST.
- (c) Subject to **clause 5.5(d)**, the recipient of the supply will pay the amount referred to in **clause 5.5(b)** in addition to, and at the same time that, the consideration for the supply is to be provided under this Deed.
- (d) The Supplier must deliver a tax invoice to the recipient of the supply before the Supplier is entitled to payment of any amount under **clause 5.5(b)**.

5.6 Legal costs

Except as expressly stated otherwise in this Deed, each Party must bear its own legal and expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Deed.

5.7 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a Party of a right relating to this Deed does not prevent any other exercise of that right or the exercise of any other right.

- (b) No failure or delay by either Party to exercise any right or remedy under this Deed may be construed or operate as a waiver or be evidence of delay, laches or acquiescence in equity or at law in respect of such right or remedy.
- (c) A waiver or consent by any Party of any default or breach of any term of this Deed does not constitute a waiver of later defaults or breaches of the same or any other term.
- (d) A Party's election not to exercise any rights under this Deed does not prejudice any other rights which that Party may have against the other Party arising out of any failure by the other Party to comply with this Deed.
- (e) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

5.8 Computation of time

Where time is to be calculated by reference to a day or event, that day or the day of the event is excluded.

5.9 Governing law and jurisdiction

- (a) This Deed is governed by, and is to be construed in accordance with, the law in force in Queensland.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

5.10 Liability

Subject to **clause 6**, an obligation of two or more persons binds them separately and together.

6 JV Participants and liability

6.1 Applicability

This **clause 6** only applies if Item 1 of Schedule 1 states that it applies.

6.2 Warranty

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

6.3 JV Participants and percentage interests

- (a) The percentage interest of the JV Participants in the Joint Venture will be as notified by the Customer to Aurizon Network from time to time.
- (b) As at the date the Customer executes and delivers this Deed, the respective percentage interests of the JV Participants in the Joint Venture are as specified in Item 3 of Schedule 1.

6.4 Liability of JV Participants

- (a) The liability of each JV Participant under this Deed will subject to **clause 6.4(c)**, be several in respect of Financial Obligations in proportion to their respective percentage interests.
- (b) Each JV Participant will be jointly and severally liable in respect of the performance of any obligations under this Deed that are not Financial Obligations.
- (c) Subject to **clause 6.4(e)**, if a JV Participant is in default of a Financial Obligation and the Customer has not given notice to Aurizon Network identifying the defaulting JV Participant within 5 Business Days after the date Aurizon Network notifies the Customer identifying the default, all JV Participants will be jointly and severally liable for the performance of the Financial Obligation.
- (d) Any notice given by the Customer under **clause 6.4(c)** is conclusive evidence that the JV Participant specified in the notice is the JV Participant that is in default and the notice binds all JV Participants.
- (e) If the Financial Obligation is a payment obligation which does not have a specified due date, then **clause 6.4(c)** comes into effect only if:
 - (i) Aurizon Network notified the JV Participants of the failure to comply with the Financial Obligation; and
 - (ii) the default is not remedied after a reasonable time (of at least 20 Business Days) from the date the JV Participants receive the notice under **clause 6.4(e)(i)**.

Execution

Executed as a deed

Executed by Aurizon Network Pty Ltd)
ABN 78 132 181 116:)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date

Executed by [insert]:)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date

Schedule 1

Joint Venture

1	Does clause 6.4 apply?	[yes/no]
2	Name of Joint Venture	[insert name of Joint Venture or "Not Applicable" if no Joint Venture]
3	JV Participants and percentage interests	Name of JV Participant Percentage Interest [insert name] [insert interest]% [insert name] [insert interest]% [insert name] [insert interest]%

Annexure 5 – Standard Train Operations Deed (mark-up)

Aurizon Network 2017 DAU Draft - 30 November 2016

Aurizon Network Pty Ltd

[Insert name of Operator]

Train Operations Deed – Coal

[QRC mark-up of provisions regarding changes to payload 17 February 2017](#)

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Date

Parties

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

The person specified in **item 1** of **schedule 1** (**Operator**)

Background

- A Aurizon Network must provide access to the Nominated Network in accordance with the Access Undertaking.
 - B Aurizon Network is a party to one or more access agreements under which Aurizon Network has granted Access Rights to Network Customers (as defined in the Access Agreement) for the operation of Train Services over the Nominated Network.
 - C The Access Holder has nominated the Operator in respect of all or part of the Access Holder's Access Rights as reflected in the Train Description.
 - D Aurizon Network has agreed that the Operator may operate Train Services over the Nominated Network and to provide Train Control for those Train Services on the terms and conditions of this Deed.
 - E The Parties may enter into separate agreements for the provision of services by Aurizon Network to the Operator other than the grant of the Operational Rights.
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1 Definitions and interpretation

1.1 Definitions

In this Deed:

Access has the meaning given in the Access Undertaking.

Access Agreement means the agreement between Aurizon Network and the Access Holder identified in **schedule 1**.

Access Charges has the meaning given in the Access Agreement.

Access Holder means the access holder identified in **item 3** of **schedule 1**.

Access Holder's Staff means the employees, contractors, volunteers and agents of the Access Holder and any other person under the control or supervision of the Access Holder involved in any Activity.

Access Rights means:

- (a) the rights of access to the Infrastructure granted to the Access Holder under the Access Agreement; and
- (b) for a Train Service Type, the "Access Rights" (as defined in paragraph (a))

of this definition) granted to the Access Holder in respect of the operation of Train Services for that Train Service Type.

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

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

Activities means any activity associated with the Train Services, including “railway operations” as defined under the Rail Safety Act.

Ad Hoc Train Service for a Train Service Type means:

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

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

Amendment Notice has the meaning given in **clause 17.1(a)**.

Ancillary Services means those services set out in **schedule 10** (if any) which Aurizon Network has agreed to provide to the Operator in addition to the grant of the Operational Rights.

Ancillary Services Charges means the ancillary services charges (if any) determined in accordance with **schedule 10** and any interest payable in relation to such charges under this Deed.

Applicable Safety Standards means:

- (a) in respect of the Operator, any Safety Standards identified in the IRMP as being applicable to the Operator; and
- (b) in respect of Aurizon Network, any Safety Standards identified in the IRMP as being applicable to Aurizon Network.

Applicable Safeworking Procedures means:

- (a) in respect of the Operator, any Safeworking Procedures identified in the IRMP as being applicable to the Operator; and
- (b) in respect of Aurizon Network, any Safeworking Procedures identified in the IRMP as being applicable to Aurizon Network.

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

Approved Derogation means, in respect of any Rollingstock or Rollingstock Configuration which does not comply with the Rollingstock Interface Standards, a departure from the Rollingstock Interface Standards which the IRMP identifies can be effectively managed by complying with measures specified in the IRMP in respect of such Rollingstock or Rollingstock Configuration.

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

Aurizon Network Land means each parcel of land on, under or above which the Nominated Network is situated and which is:

- (a) land that is owned, leased or controlled by Aurizon Network; or
- (b) land in respect of which entry is required to be given by Aurizon Network as part of the definition of Access.

Aurizon Network Representative means the Aurizon Network officer for the time being appointed pursuant to **item 2.2(b) of schedule 9**.

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

Authorisation Request Notice has the meaning given in **clause 16.2(a)**.

Authorised Parking has the meaning given in **clause Error! Reference source not found.**

Authorised Rollingstock means Rollingstock which is taken to be authorised Rollingstock under **clause 16.5(c)(i)** from time to time.

Authorised Rollingstock Configurations for a Train Service Type means Rollingstock Configurations for a Train Service Type which are taken to be authorised Rollingstock Configurations for that Train Service Type under **clause 16.5(c)(ii)** from time to time.

Authority has the meaning given in the Access Undertaking.

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

Authority to Travel means an authorisation issued by Aurizon Network which authorises the Operator to operate Train Services for a Train Service Type on the Nominated Network, for a specified period, using specified Authorised Rollingstock Configurations for that Train Service Type.

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

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

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

Category 1 Reduced Operational Rights has the meaning given in **clause Error! Reference source not found..**

Category 2 Reduced Operational Rights has the meaning given in **clause Error! Reference source not found..**

Certificate of Compliance means a certification issued by a Certifier under **clause 16.5(a)(vi)**.

Certifier means a person that Aurizon Network is reasonably satisfied is suitably qualified, experienced and competent to assess whether or not Rollingstock and Rollingstock Configurations comply with the Rollingstock Interface Standards subject to any Approved Derogations.

Change in Access Undertaking means:

- (a) any amendment to or replacement of the Access Undertaking or any successor undertaking to the Access Undertaking; or
- (b) any change in the interpretation or application, including by the exercise of delegated authority, of an Access Undertaking resulting from a decision of a court or other Authority.

Change in Control in relation to any entity (the first mentioned entity) means:

- (a) a change in the entity that Controls the first mentioned entity (other than if the Ultimate Holding Company of the first mentioned entity remains the same following the change);
- (b) an entity that Controls the first mentioned entity ceases to Control that entity (other than if the Ultimate Holding Company of the first mentioned entity remains the same following the change); or
- (c) if the first mentioned entity is not Controlled, another entity acquires Control of the first mentioned entity.

Change in Law has the meaning given in the Access Undertaking, except that the reference to “Commencing Date” is replaced with “Commencement Date” (as defined under this Deed).

Change in Relevant Taxes has the meaning given in the Access Undertaking.

Charge means:

- (a) any mortgage, charge, a general or special notarial bond, pledge, hypothec or lien; or
- (b) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Chargee has the meaning given in **clause Error! Reference source not found..**

Chargor has the meaning given in **clause Error! Reference source not found..**

Claim means any action, proceeding, claim, demand, damage, loss, cost, liability or expense, including the costs and expenses of defending or settling any action, proceeding, claim or demand.

Coal System has the meaning given in the Access Undertaking.

Collateral has the meaning given in the PPS Act.

Commencement Date means the date of this Deed.

Commitment Date means the earliest Train Service Commitment Date under this Deed.

Compliance Date means the earliest Train Service Compliance Date under this Deed.

Compliance Statement has the meaning given in **clause 16.3(b)**.

Confidential Information means the terms of this Deed and any information, data or other matter disclosed to a Recipient by or on behalf of the Discloser in relation to this Deed where:

- (a) the disclosure of the information, data or other matter by the Recipient might reasonably be expected to affect the commercial affairs of the Discloser; or
- (b) the information, data or matter is marked confidential by the Discloser when disclosed,

but excluding any such information, data or other matter which:

- (c) is already in the public domain or becomes available to the public through means other than a breach of the confidentiality undertaking by the Parties under this Deed;
- (d) was in the Recipient's lawful possession before the disclosure by the Discloser;
- (e) is received by the Recipient independently from a Third Party who is free to disclose such information, data or other matter to the Recipient; or
- (f) has ceased to retain its confidential nature, for example, where the disclosure of the information, data or other matter by the Recipient would no longer reasonably be expected to affect the commercial affairs of the Discloser.

Consequential Loss means:

- (a) any loss of revenue, loss of profits or loss of production;
- (b) any loss of whatever nature concerning the supply of product from a mine to any Third Party or to make product available to transport;
- (c) loss of business opportunities;
- (d) loss of or damage to reputation or goodwill;
- (e) any wasted overheads or demurrage;
- (f) loss of or damage to credit rating;

- (g) in respect of a breach of this Deed, loss or damage that does not naturally, according to the usual course of things, arise from the breach; and
- (h) loss or damage suffered or incurred by a Party arising out of a Claim against that Party by a Third Party, to the extent that the loss or damage would not be recoverable by the Third Party if the Party was not liable to the Third Party for “Consequential Loss” (as defined in this definition) in respect of the Claim by the Third Party,

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

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

Contaminating Materials means any material, substance, gas, liquid, chemical, biological substance, mineral or other physical matter which is toxic, flammable, harmful to the Environment (including any life form) or may cause pollution, contamination, harm to the Environment or otherwise cause damage.

Control has the meaning given in the Corporations Act.

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

Corresponding Suspension Event in respect of a Termination Event means the Suspension Event specified in the same row as that Termination Event in **schedule 8**.

Daily Train Plan means that document detailing the scheduled times for all Network Train Services operating on the Infrastructure and any Planned Possessions, Urgent Possessions and Emergency Possessions on a particular day on a specified part of the Infrastructure, in a form that indicates the

time/distance (location) relationship of all activities on that specific part of the Infrastructure.

Dangerous Goods means any substance or article prescribed as “Dangerous Goods” under the Dangerous Goods Code.

Dangerous Goods Code means the following codes (as amended or replaced from time to time) or any other codes developed to replace or supplement them (from time to time):

- (a) the *Australian Code for the Transport of Dangerous Goods by Road and Rail* (7th Edition);
- (b) the *Australian Code for the Transport of Explosives by Road and Rail* (3rd Edition); and
- (c) the *Code of Practice for the Safe Transport of Radioactive Material* (2008 Edition).

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

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

- (c) 2%; and
- (d) the Commonwealth Bank of Australia’s “Corporate Overdraft Reference Rate” (monthly charging cycle) quoted by the Commonwealth Bank of Australia on its public website for the last trading day of the previous Month (or in the event that such a rate is not so quoted at or in respect of any relevant date, such other similar rate as is quoted by a major commercial bank as agreed by the Parties or, failing agreement, as determined by an Expert under **clause 29.3**).

Depot for a Train Service Type means a depot, as specified in the Train Description for that Train Service Type.

Destination for a Train Service Type means the destination specified as such in the Train Description for that Train Service Type.

Discloser means a Party that discloses Confidential Information to the other Party.

Discretionary System Amendment has the meaning given in **clause 17.1(a)(iii)**.

Dispute has the meaning given in **clause 29.1**.

Dispute Notice has the meaning given in **clause 29.1**.

Disputed Aspect has the meaning given in **clause Error! Reference source not found.**

Effective Date has the meaning given in the Access Agreement.

Emergency Possession has the meaning given in the Access Undertaking.

Emergency Response Plan has the meaning given in **clause 14.1(a)(i)(B)**.

Emergency Procedures means the procedures developed and advised by Aurizon Network from time to time (as varied by Aurizon Network in accordance with this Deed) for dealing with a Network Incident including all actions to be

taken to prevent, mitigate or remedy any risks to the safety of persons, to property or to the Environment.

Environment has the meaning given in the Environmental Protection Act.

Environmental Authorities means:

- (a) a “development approval” or “registration certificate” for a chapter 4 activity or an “environmental authority”, as those terms are defined under the Environmental Protection Act; or
- (b) any approval (however described) which is deemed by the Environmental Protection Act to be a “development approval”, “registration certificate” or “environmental authority” referred to in **paragraph (a)** of this definition.

Environmental Harm has the meaning given in the Access Undertaking.

Environmental Incident means any:

- (a) release, spillage or leakage of any Contaminating Materials; or
- (b) any incident which results in Environmental Harm.

Environmental Law has the meaning given in the Access Undertaking.

Environmental Management Plan has the meaning given in **clause 14.1(g)**.

Environmental Protection Act means the *Environmental Protection Act 1994* (Qld).

Environmental Regulator means, in respect of an Environmental Law, the Authority administering that Environmental Law.

Environmental Risks means all risks to the Environment arising or potentially arising from the Operator’s Activities in connection with this Deed (including risks associated with the environmental management matters identified as part of an Interface Risk Assessment).

Expert has the meaning given in **clause 29.3**.

Expiry Date means the latest Train Service Expiry Date under this Deed.

FM Access Rights means the Access Rights for each Train Service Type which cannot be made available by Aurizon Network for the Operator to operate Train Services due to damage to, or the destruction of, a part of the Nominated Network referred to in **clause 30.6(a)** (assuming that part of the Nominated Network will not be repaired or replaced).

Force Majeure Event means any cause, event or circumstance, or combination of causes, events or circumstances which:

- (a) is beyond the reasonable control of the affected Party; and
- (b) by the exercise of due diligence the affected Party was not reasonably able to prevent or is not reasonably able to overcome,

and, provided that the requirements in paragraphs (a) and (b) of this definition are satisfied, includes:

- (c) compliance with a lawful requirement, order, demand or direction of an Authority or an order of any court having jurisdiction other than where that requirement, order, demand or direction results from any act or omission of the affected Party;

- (d) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the affected Party is a party to such industrial action or would be able to influence or procure the settlement of such industrial action;
- (e) act of God;
- (f) war, invasion, terrorist act, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade or civil commotion;
- (g) equipment failure or breakdown where such failure or breakdown could not have been prevented by Good Engineering Practices;
- (h) malicious damage or sabotage;
- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (j) failure of electricity supply from the electricity grid;
- (k) delay, restraint, restriction, embargo or other material adverse effect arising from any act or omission of any Authority;
- (l) fire, flood, storm surge, cyclone, tornado, earthquake, washaway, landslide, explosion, severe weather conditions or other catastrophe or natural calamity;
- (m) epidemic or quarantine restriction; and
- (n) delay of a supplier due to any of the foregoing whether any such cause of delay exists before or after the Commencement Date.

~~Foreseeable Costs and Detriments has the meaning given in clause 1.1(a).~~

Former Interface Risk Provisions has the meaning given in **clause Error! Reference source not found.**

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

GST has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Incident means any Network Incident involving the Activities of the Operator.

Incident Commander means a member of Aurizon Network's Staff who has been delegated responsibility for the direction and coordination of Aurizon Network's and the Operator's resources in the performance of their respective roles and tasks at the site of an Incident, recording events during the course of an Incident and liaison with Authorities.

Indicative Tonnage for a Train Service Type means the tonnage as specified as such in the Train Description for that Train Service Type.

Infrastructure has the meaning given to the term "Rail Infrastructure" in the Access Undertaking.

Infrastructure Enhancement has the meaning given in the Access

Undertaking.

Infrastructure Lease means any lease or sublease to Aurizon Network of any Infrastructure which forms part of the Nominated Network.

Infrastructure Lessor means any lessor or sublessor under an Infrastructure Lease.

Infrastructure Service Providers has the meaning given in the Access Undertaking.

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

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) a meeting is convened to pass a resolution to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within 10 Business Days or the resolution fails to pass;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within 10 Business Days after it is made;
- (d) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets if that appointment is not revoked within 10 Business Days after it is made;
- (e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement; or
- (f) any similar event occurs in respect of the Party under the laws of any jurisdiction other than Australia.

Interface Coordination Arrangements means the plan set out in **schedule 9** as updated from time to time which identifies the procedures to be followed and the responsible officers from each Party, in respect of all regular operational interfaces between the Parties that arise in the exercise by the Parties of their respective rights and the performance of their respective obligations under this Deed other than those specified in the Network Management Principles.

Interface Representative has the meaning given in **clause 23.3(a)**.

Interface Risk Assessment has the meaning given in the Access Undertaking.

Interface Risk Management Plan or **IRMP** has the meaning given in the Access Undertaking.

Interface Risk Provisions means:

- (a) the provisions of the Access Undertaking which include the details of:
 - (i) the Interface Risks, the Interface Risk Assessment and the IRMP (which, as at the Commencement Date, is Schedule C of the Access Undertaking); and
 - (ii) the Environmental Management Plan (which, as at the Commencement Date, is Schedule C of the Access Undertaking); and

- (b) any other provisions of the Access Undertaking which affect or relate to the Interface Risks, the Interface Risk Assessment, the IRMP and the Environmental Management Plan.

Interface Risks means all risks to the safety of persons or property arising or potentially arising from the interaction between the Operator's Activities in connection with this Deed and:

- (a) the Infrastructure;
- (b) any Land;
- (c) Activities on the Infrastructure or any Land (including other Network Train Services); or
- (d) persons on, using or near the Infrastructure or any Land.

Investigation means an investigation conducted in accordance with the Investigation Procedures.

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

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

Land means any:

- (a) parcel of land on, under or above which the Infrastructure is situated;
- (b) Aurizon Network Land; and
- (c) Third Party Land.

Law has the meaning given in the Access Undertaking.

Loading Facility for a Train Service Type means the loading facility located at the ultimate origin for that Train Service Type (whether located on the Nominated Network, an Adjoining Network or otherwise), as specified in the Train Description for that Train Service Type.

Maintenance Work has the meaning given in the Access Undertaking.

Major Periodic Maintenance has the meaning given in the Access Undertaking.

Material Change means a:

- (a) Change in Law;
- (b) Change in Access Undertaking; or
- (c) matter deemed to be a Material Change under **clause 38.17(d)**.

Maximum Allowable Gross Tonnage means the maximum allowable gross tonnage for a Wagon, other Rollingstock or Train as specified in an Authority to Travel or a Train Route Acceptance.

Maximum Desirable Gross Tonnage means the maximum desirable gross tonnage for a Wagon, other Rollingstock or Train as specified in an Authority to Travel or a Train Route Acceptance.

Maximum Gross Mass means the maximum gross mass for the Wagon or other Rollingstock as specified in **schedule** Error! Reference source not found..

Maximum Other Dwell Times for a Train Service Type means the maximum Other Dwell Times for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Payload for a Train Service Type means the maximum Payload for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Sectional Running Time for a Section for a Train Service Type means the maximum Sectional Running Times for Train Services for that Train Service Type operating on that Section as specified as such in the Train Description for that Train Service Type.

Maximum SRT means the sum of Maximum Sectional Running Time for all relevant Sections for the relevant Train Service Type except if it is the first or last movement of the relevant Train Service where the time to start and stop the Train Service is included (as specified in **appendix A** to **schedule 2** for the relevant Train Service Type).

Maximum Time at Depot for a Train Service Type means the maximum Time at Depot for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Time at Loading Facility for a Train Service Type means the maximum Time at Loading Facility for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Time at Unloading Facility for a Train Service Type means the maximum Time at Unloading Facility for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Month means calendar month.

Net Financial Effect on a Party of an event or circumstance means the net effect in financial terms of the occurrence of the event or circumstance on the Party in relation to performing its obligations and exercising its rights under this Deed including any increases in costs (whether capital or operating, fixed or variable) and other detriments incurred, or to be incurred, by the Party but deducting the amount of any savings or other benefits or advantages received, or to be received, by the Party, and on the basis that the Party uses reasonable endeavours to mitigate the net effect of the event or circumstance.

Network Incident has the meaning given in the Access Undertaking.

Network Interface Point means a location at which the Infrastructure meets an Adjoining Network.

Network Management Principles has the meaning given in the Access Undertaking.

Network Train Service means the running of a Train between specified origins and destinations by a Railway Operator (including any Stowage) on the Infrastructure.

New Authorisation has the meaning given in **clause 16.6**.

New Interface Risk Provisions has the meaning given in **clause Error! Reference source not found.**

Noise Code means:

- (a) unless and until a code of practice, guideline or other standard in relation to the management of railway noise (however described and whether or not a Law) is published by an Authority, the *CQCN Noise Management Guideline*; or

[**AN Note:** the QR Code of Practice has been repealed. It is now the CQCN Noise Management Guideline]

- (b) if a code of practice, guideline or other standard referred to in **paragraph (a)** of this definition is published by an Authority, that document.

Noise Levels means the levels for railway noise specified in the Noise Code.

Nominal Payload for a Train Service Type means the nominal Payload for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Nominated Monthly Operational Rights for a Train Service Type means the number of Train Services for that Train Service Type that the Operator is entitled to operate during any Month:

- (a) in the case of a Month that is 30 days, as specified in the Train Description for that Train Service Type; and
- (b) in the case of a Month that is longer or shorter than 30 days, a pro rata portion of the number of Train Services referred to in **paragraph (a)** of this definition (rounded to the nearest even number of whole Train Services provided that where the pro rata portion of the number of Train Services is a whole odd number, the number of Train Services will be rounded up to the nearest even number) to reflect the longer or shorter period,

as varied in accordance with this Deed.

Nominated Monthly Train Services has the meaning given in the Access Agreement.

Nominated Network means that part of the Infrastructure described in **item 1 of schedule 3**.

Nominated Network FM Reduction Notice has the meaning given in the Access Agreement.

Non-Charging Party has the meaning given in **clause Error! Reference source not found.**

Notice has the meaning given in **clause 37.1(a)**.

Notice of Intention ~~to Increase Nominal Payload~~ has the meaning given in **clause 1.1(a)**.

Obstruction means any circumstance relating to the whole or any part of the Infrastructure, including Rollingstock, debris or other objects on the Infrastructure, which has the potential to cause a disruption to or cancellation of Train Services or Train Movements, and includes any Network Incident but does not include an Operational Constraint imposed by Aurizon Network.

Operating Document means each of the following as in force from time to time:

- (a) this Deed;
- (b) the System Wide Requirements;
- (c) the IRMP;
- (d) the Operating Plan; and
- (e) each Authority to Travel and Train Route Acceptance issued by Aurizon Network to the Operator in respect of the operation of Train Services for a Train Service Type.

Operating Plan has the meaning given in **clause 14.1(a)(i)(A)**.

Operational Constraint has the meaning given in the Access Undertaking.

Operational Rights means the rights to operate Train Services on the Nominated Network granted to the Operator pursuant to this Deed.

Operator's Controller means the person for the time being nominated in that position pursuant to **item 1.2(h) of schedule 9**.

Operator's Incident Response Coordinator means the person appointed pursuant to **item 3.1 of schedule 9**.

Operator's Recovery Team Leader means the person appointed pursuant to **item 3.2 of schedule 9**.

Operator's Representative means the person for the time being appointed pursuant to **item 2.2(a) of schedule 9**.

Operator's Safety Management System has the meaning given in **clause 23.4**.

Operator's Staff means the employees, contractors, volunteers and agents of the Operator and any other person under the control or supervision of the Operator involved in any Activity associated with the Train Services.

Origin for a Train Service Type means the origin specified as such in the Train Description for that Train Service Type.

Other Dwell Times means, for any other permitted Activity, the time period commencing when a Train Service arrives at the specified point for that Activity and ending when it is ready to depart from that point and the relevant Train Controller has been advised accordingly.

Overload Detector means a weighing mechanism other than a Weighbridge and specified in **item 5.2 of schedule 3**.

Party means a party to this Deed, and **Parties** means the parties to this Deed. For the avoidance of doubt, the Access Holder is not a party to this Deed.

Passenger Priority Obligations has the meaning given in the Access Undertaking.

Payload of a Train Service means the weight of product loaded onto any Train used by the Operator in operating that Train Service.

Performance Levels means the performance levels which apply to the performance by the respective Parties of their obligations under this Deed are set out in **schedule 5**.

Plan means a plan developed and approved in accordance with the process outlined in **clause 14**.

Planned Dwell Times means each of Time at Loading Facility, Time at Unloading Facility, Time at Depot and Other Dwell Times specified in the Train Schedule.

Planned Possession has the meaning given in the Access Undertaking.

Possession has the meaning given in the Access Undertaking.

Possession Protocols means the protocols developed and advised by Aurizon Network from time to time (as varied in accordance with this Deed) for managing and scheduling Possessions.

PPS Act means the *Personal Property Securities Act 2009* (Cth).

Queensland Competition Authority or **QCA** means the Authority established under the *Queensland Competition Authority Act 1997* (Qld).

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

Rail Safety Regulator means the chief executive of the department administering the Rail Safety Act.

Railway Operator has the meaning given in the Access Undertaking.

Recipient means a Party that receives Confidential Information from the Discloser.

Recovery means action to be taken in respect of any derailed, malfunctioning or immobilised Rollingstock for which the Operator is responsible to enable prompt recommencement of Train Movements, but does not include the Retrieval of such Rollingstock.

Reduced Operational Rights has the meaning given in **clause 10.3(c)(iv)(A)(1)**.

Reference Tariff has the meaning given in the Access Undertaking.

Reference Tariff Provisions means:

- (a) the schedule of the Access Undertaking which includes the Reference Tariffs and the details of the application of the Reference Tariffs for a particular Reference Train Service (which, as at the Commencement Date, is Schedule F of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the application or calculation of Reference Tariffs or access charges (including any TOP Charge).

Reference Train Service has the meaning given in the Access Undertaking.

Regenerative Brake means an energy recovery system installed on Rollingstock which slows the Rollingstock by converting its kinetic energy into electrical energy, which can then be returned to the overhead electric traction system.

Related Body Corporate has the meaning given in the Corporations Act.

Relevant Collateral means Collateral which is the subject of a Security Interest granted under this Deed.

Relevant Rollingstock means any Rollingstock of the Operator with a minimum value of \$1 million and which has been specified as Relevant Rollingstock in **schedule 4**.

Required Information means any information in relation to any Operator's Staff engaged in Safety Related Work on the Infrastructure that Aurizon Network considers is reasonably required to be known by Aurizon Network to comply with its Accreditation and a Law.

Restoration means the removal of any Obstruction on the Infrastructure, the rectification of any Incident and the prompt recommencement of Train Movements including all requisite repairs to the Infrastructure, but does not include Recovery or Retrieval.

Retrieval means the subsequent removal of Rollingstock, from the Infrastructure and Land, following the Recovery of such Rollingstock.

Rollingstock means locomotives, carriages, Wagons, rail cars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicles which operate on or use a Track, and where used in respect of the Operator's Rollingstock includes Rollingstock which is owned, hired or leased by the Operator, supplied by a contractor of the Operator or is otherwise in the possession or control of the Operator.

Rollingstock Configuration has the meaning given in the Access Undertaking.

Rollingstock Interface Standards has the meaning given in the Access Undertaking.

Rollingstock Interface Standards Risk Assessment means, in respect of any Rollingstock or Rollingstock Configurations for a Train Service Type used, or proposed to be used, by the Operator in the operation of Train Services on the Nominated Network, means an assessment to:

- (a) for each non-compliance with the Rollingstock Interface Standards specified in a Compliance Statement for the Rollingstock or Rollingstock Configurations, identify all reasonably foreseeable Interface Risks and Environmental Risks arising from each non-compliance;
- (b) assess:
 - (i) the likelihood of those Interface Risks and Environmental Risks occurring;
 - (ii) the consequences (including commercial consequences) of those Interface Risks and Environmental Risks occurring; and
 - (iii) whether those Interface Risks and Environmental Risks can be effectively managed and, if so, any factors relevant to the effective management of those Interface Risks and Environmental Risks; and

- (c) if those Interface Risks and Environmental Risks can be effectively managed by complying with appropriate measures, identify the measures to be complied with in respect of such Rollingstock or Rollingstock Configurations to effectively manage those Interface Risks and Environmental Risks within a risk management framework.

Safety Law means a Law relating to the safety of persons or property, including the Rail Safety Act and the *Work Health and Safety Act 2011* (Qld).

Safety Regulator means, in respect of a Safety Law, the Authority administering that Safety Law.

Safety Related Work means:

- (a) “rail safety work” as defined under the Rail Safety Act; and
- (b) any other work notified by Aurizon Network to the Operator as safety related work.

Safety Standards means the:

- (a) standards relating to safety, including work health and safety, established in published guidelines, industry practice or Aurizon Network policies specified in Aurizon Network’s document entitled *Safety Standards* notified by Aurizon Network to the Operator (as amended and replaced from time to time); and
- (b) standards relating to safety, including work health and safety, prescribed by any Law.

Safeworking Procedures means the procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of worksites on the Infrastructure specified in Aurizon Network’s document entitled *Safeworking Procedures* as:

- (a) notified by Aurizon Network to the Operator; or
- (b) published on the Website,

(as amended and replaced from time to time).

Scheduled Time means the time of arrival or departure for a Train Movement at specified locations on the Nominated Network as set out in the Train Schedule or as amended by Aurizon Network from time to time on the day of operation in accordance with the Network Management Principles.

Schedules means the schedules attached to this Deed.

Section means a section of Track between two locations on the Nominated Network as shown in the diagram(s) in **schedule 3**.

Sectional Running Times means the time period measured from the time a Train Service passes the signal controlling entry into a Section until the time the Train Service arrives at the signal controlling entry into the next adjoining Section or the Adjoining Network (as applicable), and does not include an allowance for Planned Dwell Times.

Security Interest has the meaning given in **clause 38.20(a)**.

Signalling and Telecommunications Equipment means all electronic, electrical and other equipment, including signalling systems, safety devices and

communications facilities, installed on or as part of the Infrastructure or on Rollingstock, for the purpose of compliance with Safeworking Procedures and to facilitate Train Control.

Staff means Aurizon Network's Staff or the Operator's Staff (as applicable).

State means the State of Queensland.

Stowage has the meaning given in the Access Undertaking.

Supplier has the meaning given in **clause 34.3**.

Supply Chain Rights has the meaning given in the Access Agreement.

Suspension Event means any event or circumstance specified as such in **schedule 8**.

Suspension Notice has the meaning given under **clause 31.1, 31.2, 31.3** or **31.4**.

System Operating Parameters has the meaning given in the Access Undertaking.

System Rules has the meaning given in the Access Undertaking.

System Wide Requirements means the Possession Protocols, the Interface Coordination Arrangements, the Rollingstock Interface Standards, the Safeworking Procedures, the Safety Standards, the Emergency Procedures and the Investigation Procedures.

Tare Weight means the tare weight for a Wagon or other Rollingstock as specified in **Schedule 4**.

Term means the term of this Deed in accordance with **clause 2.1**.

Termination Event means any event or circumstance specified as such in **schedule 8**.

Third Party means a person other than the Operator or Aurizon Network.

Third Party Land has the meaning given in **clause 38.17(a)**.

Through-Running Train Service Type means a Train Service Type that has a Destination and/or Origin that is a Network Interface Point that is specified as such in the Train Description for that Train Service Type.

Time at Depot means the time period commencing when a Train Service arrives at the entry signal for a Depot and ending when it is ready to depart the Depot and the relevant Train Controller has been advised accordingly.

Time at Loading Facility means the time period commencing when a Train Service arrives at the entry signal for a Loading Facility and ending when it presents at the exit signal for the Loading Facility, is ready to depart the Loading Facility and the relevant Train Controller has been advised accordingly.

Time at Unloading Facility means the time period commencing when a Train Service arrives at the entry signal for an Unloading Facility and ending when it presents at the exit signal for the Unloading Facility, is ready to depart the Unloading Facility and the relevant Train Controller has been advised accordingly.

Track has the meaning given in the Access Undertaking.

Train has the meaning given in the Access Undertaking.

Train Control means the management and monitoring of all Train Movements and of all other operation of Rollingstock on the Infrastructure and of any activities affecting or potentially affecting such Train Movements or Rollingstock operation including:

- (a) recording Train running times on Train diagrams and in Aurizon Network's information systems;
- (b) reporting of Incidents occurring on the Infrastructure;
- (c) managing Incidents occurring on the Infrastructure from within a Train Control centre;
- (d) field Incident management;
- (e) yard control services; and
- (f) exchanging information with Railway Operators.

Train Control Direction means any instruction or direction (whether given orally or in writing or by means of signal or other similar device) issued by or on behalf of Aurizon Network acting reasonably relating to Train Movements.

Train Controller means the person nominated by Aurizon Network from time to time as the supervisor of Train Movements on the relevant part of the Nominated Network, and whose details are initially specified in **item 1.1 of schedule 9**.

Train Description for a Train Service Type means the description of, specifications for, and constraints on, the Access Rights for that Train Service Type specified in **schedule 2**.

Train List means the information required to be supplied by the Operator in accordance with **item 1.2(b)(vi) of schedule 9** in respect of each individual Train Service to be operated on the Nominated Network.

Train Movement has the meaning given in the Access Undertaking.

Train Operator has the meaning given in the Access Undertaking.

Train Route Acceptance means an authorisation issued by Aurizon Network which authorises the Operator to operate Train Services for a Train Service Type on the Nominated Network using specified Authorised Rollingstock Configurations for that Train Service Type.

Train Schedule means the train diagrams, yard schedules, terminal schedules and any other form of train timetable prepared by Aurizon Network before the day of operation in accordance with the Network Management Principles showing the programmed times of arrival or departure for Train Movements at specified locations on the Infrastructure.

Train Service for a Train Service Type means the running by the Operator, of a Train in one direction from the Origin to the Destination, or from the Destination to the Origin, for that Train Service Type (including any Stowage) in accordance with the Train Description for that Train Service Type.

Train Service Commitment Date for a Train Service Type means the date specified as such in the Train Description for that Train Service Type.

Train Service Compliance Date for a Train Service Type means the date specified as such in the Train Description for that Train Service Type.

Train Service Expiry Date for a Train Service Type means the date specified as such in the Train Description for that Train Service Type.

Train Service Type means each type of train service specified as such in **schedule 2**.

Transport Infrastructure Act means the *Transport Infrastructure Act 1994* (Qld).

Ultimate Holding Company has the meaning given in the Corporations Act.

Unloading Facility for a Train Service Type means the unloading facility located at the ultimate destination for that Train Service Type (whether located on the Nominated Network, an Adjoining Network or otherwise), as specified in the Train Description for that Train Service Type.

Unreasonable in respect of an IRMP, or any aspect of or amendment to an IRMP, determined by Aurizon Network under clause **14.1(c)(iii)** means no reasonable person in the position of Aurizon Network could have made that determination.

Urgent Possession has the meaning given in the Access Undertaking.

Wagon means any rollingstock (including a wagon bogie) designed to carry any load other than passengers.

Website has the meaning given in the Access Undertaking.

Weighbridge means a weighbridge or weightometer verified under the *National Measurement Act 1960* (Cth), as specified in **item 5.1 of schedule 3**.

Year means each year commencing on 1 July and ending on 30 June during the Term and, if applicable, includes:

- (a) the shorter period commencing on the first day of the Month in which the Commitment Date occurs and ending on the next 30 June; and
- (b) the shorter period commencing on the 1 July occurring prior to the date of expiration or termination of this Deed and ending on the date of expiration or termination of this Deed.

1.2 Interpretation

In this Deed, unless expressed to the contrary:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all other genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it; and
- (e) a reference to:
 - (i) a person includes a partnership, unincorporated association, corporation or other entity, government or statutory body;

- (ii) a person includes its legal personal representative, successors and assigns;
- (iii) conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
- (iv) conduct includes a benefit, remedy, discretion, authority or power;
- (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (vi) the words “include”, “includes” or “including” must be read as if they are followed by the words “without limitation”;
- (vii) writing includes:
 - (A) any mode of representing or reproducing words in tangible and permanently visible form, including fax transmission; and
 - (B) words created or stored in any electronic medium and retrievable in perceivable form;
- (viii) time is to local time in Brisbane, Queensland;
- (ix) “A\$”, “\$” or “dollars” is a reference to the lawful currency of Australia;
- (x) this or any other document or agreement includes the document or agreement as novated, amended or replaced from time to time and despite any changes in the identity of the parties;
- (xi) anything (including any amount) is a reference to the whole or part or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (xii) under a clause includes in accordance with that clause;
- (xiii) a clause or schedule is a reference to a clause or schedule (as applicable) in this Deed;
- (xiv) any legislation or any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (xv) any code, guideline, recommendation or policy, or any provision of any code, guideline, recommendation or policy, includes any modification of it, or the substitution of it or any of its provisions for others, unless otherwise specified or directed by Aurizon Network;
- (xvi) any Authority, association or body whether statutory or otherwise (**first body**) is, if the first body ceases to exist or is re-constituted, re-named or replaced or the powers or functions of the first body is transferred to any other Authority, association or body (**replacement body**), deemed to refer to the replacement body established or constituted in lieu of the first body or as nearly as may be succeeding to the powers or functions of the first body; and
- (xvii) access or access rights does not include rights granted by Aurizon Network to a Railway Operator under a train operations deed.

1.3 References to descriptors of Train Service Types

In this Deed, references to any descriptor of a Train Service or a Train Service Type (for example, 'Destination', 'Loading Facility', 'Nominated Monthly Train Services', 'Origin' and 'Unloading Facility') is to that descriptor as applicable to that particular Train Service or Train Service Type.

1.4 Material published on the Website

For the avoidance of doubt, material published on the Website includes material which is available to the Operator via secured, password-protected online access to the Website.

1.5 Headings

Headings do not affect the interpretation of this Deed.

1.6 Words and expressions defined in Access Undertaking

- (a) Subject to **clause 1.6(b)**, if a word or expression is defined in this Deed to have the meaning given in the Access Undertaking, then it will have the meaning given in the Access Undertaking in force as at the date of this Deed.
- (b) If a word or expression used in the Interface Risk Provisions which form part of this Deed under **clause 3** is defined in the Access Undertaking, then, it will have the meaning given in the Access Undertaking in force on the date the relevant Interface Risk Provisions commenced to form part of this Deed under **clause 3.1** or **3.2** (as applicable).

1.7 Inconsistency

- (a) If there is any inconsistency between the substantive terms of this Deed (comprising **clauses 1** to **38**) and the schedules of this Deed, the substantive terms of this Deed prevail to the extent of the inconsistency.
- (b) If there is any inconsistency between matters contained in the Access Undertaking (as amended by any Change in Access Undertaking) and this Deed, the provisions of this Deed prevail to the extent of the inconsistency unless expressly provided to the contrary.

2 Term

2.1 Term

This Deed commences on the Commencement Date and, unless earlier terminated in accordance with its terms, continues until the Expiry Date.

3 Access Undertaking

3.1 Incorporation

- (a) The Parties agree that, for the purposes of the Access Undertaking, the Operator is considered a Train Operator or a Railway Operator (as applicable).
- (b) Subject to **clause 3.2**, the Interface Risk Provisions (as in force as at the Commencement Date) form part of this Deed as if they were set out in full under this Deed.

- (c) For the avoidance of doubt, despite any other provision in the Access Undertaking:
 - (i) **clause 27** applies to any Claim in respect of a breach of the Interface Risk Provisions which form part of this Deed under this **clause 3**; and
 - (ii) **clause 29** applies in respect of any Dispute between the Parties in respect of any right or obligation (or in respect of the enforcement) of Interface Risk Provisions which form part of this Deed under this **clause 3**.

3.2 Changes in Access Undertaking

- (a) If there is a Change in Access Undertaking at any time which changes the Interface Risk Provisions, then this **clause 3.2** applies.
- (b) A Party (**Notifying Party**) may, within 20 Business Days from the date of the Change in the Access Undertaking (or such longer period as the Parties may agree) notify (**Amendment Notice**) the other Party (**Receiving Party**):
 - (i) that it elects to amend this Deed to replace the Interface Risk Provisions which form part of this Deed under **clause 3.1(b)** or this **clause 3.2 (Former Interface Risk Provisions)** with the Interface Risk Provisions as changed by the Change in Access Undertaking (**New Interface Risk Provisions**);
 - (ii) of any other changes to the other terms of this Deed (if any) which the Notifying Party requires as a consequence of, or to give full effect to the replacement of the Former Interface Risk Provisions with the New Interface Risk Provisions under this **clause 3.2**; and
 - (iii) of the date from which the changes become effective (and if any changes become effective from different dates, the dates applicable to each change) which must be on or after the date on which the Change in Access Undertaking became effective (**Change Date(s)**).
- (c) An Amendment Notice must include an amended version of this Deed, with the changes referred to in **clause 3.2(b)(i)** clearly identified.
- (d) Promptly following receipt of an Amendment Notice, the Receiving Party must notify the Notifying Party the extent to which the Receiving Party accepts or does not accept the drafting of the amendments to the terms of this Deed proposed in the Amendment Notice in accordance with **clause 3.2(b)(ii)**.
- (e) If the Receiving Party does not accept the drafting of the amendments to the terms of this Deed, then the Parties must promptly meet to negotiate and attempt to agree the changes to the terms of this Deed (if any) which are necessary as a consequence of, or to give full effect to, the replacement of the Former Interface Risk Provisions with the New Interface Risk Provisions under this **clause 3.2**.
- (f) If the Parties do not agree the amendments in respect of the matters outstanding under **clause 3.2(f)** by the Change Date(s), the matter must be referred to the QCA for determination in accordance with the

provisions of the Access Undertaking which provide for determination of disputes by the QCA.

- (g) On and from the Change Date(s) (or such other time as the QCA may determine):
 - (i) the New Interface Risk Provisions will form part of this Deed as if set out in full in this Deed;
 - (ii) the Former Interface Risk Provisions will cease to form part of this Deed; and
 - (iii) amendments to the terms of this Deed:
 - (A) accepted under **clause 3.2(d)**;
 - (B) agreed under **clause 3.2(e)**; or
 - (C) determined by the QCA under **clause 3.2(f)**,become effective.
- (h) Within 10 Business Days from the date that amendments to the terms of this Deed are accepted, agreed and/or determined (as applicable) under this **clause 3.2**, Aurizon Network must prepare and send to the Operator a copy of this Deed as modified.

4 Operational Rights

4.1 Grant of Operational Rights

On and from the Train Service Commitment Date for each Train Service Type until the Train Service Expiry Date for that Train Service Type, Aurizon Network grants, and must provide, to the Operator the Operational Rights for that Train Service Type in accordance with the Train Description on the terms and conditions of this Deed.

4.2 Nature and scope of Operational Rights

- (a) The Operational Rights granted under **clause 4.1** are non-exclusive contractual rights and do not give the Operator any right, title or interest of any proprietary nature in the Nominated Network.
- (b) The Operator must not:
 - (i) operate on, or use any part of, the Infrastructure that is not specifically included in the Nominated Network; or
 - (ii) use the Nominated Network for:
 - (A) carrying out any provisioning, inspection, testing or maintenance of Rollingstock;
 - (B) any marshalling, shunting or other relocation of Rollingstock;
 - (C) storage of Rollingstock; or
 - (D) any purpose other than the operation of Train Services,unless otherwise expressly:
 - (iii) permitted or required to do so under this Deed;
 - (iv) directed to do so by Aurizon Network in accordance with this Deed;

or

- (v) expressly permitted under another agreement with Aurizon Network.

4.3 Operation of Ad Hoc Train Service

- (a) If:
 - (i) the Access Holder (or the Operator at the request of the Access Holder) notifies Aurizon Network under the Access Agreement that it wishes to have the Operator operate an Ad Hoc Train Service; and
 - (ii) the Operator notifies Aurizon Network that it is able and willing to operate an Ad Hoc Train Service for a Train Service Type at the request of the Access Holder,then, to the extent permitted by the Network Management Principles, Aurizon Network:
 - (iii) must if required in accordance with clause 5.4(c) of Schedule G of the Access Undertaking; or
 - (iv) otherwise must use reasonable endeavours to, schedule the Ad Hoc Train Service for the Train Service Type in the Daily Train Plan.
- (b) On and from the time that the Ad Hoc Train Service is scheduled in the Daily Train Plan, the terms and conditions of this Deed apply to the Ad Hoc Train Service as if the Ad Hoc Train Service is a Train Service for the Train Service Type which the Operator is entitled to operate under this Deed.

5 Ancillary Services

In consideration of the Operator paying the Ancillary Services Charge, Aurizon Network must provide the Operator with the Ancillary Services (if any) in accordance with **schedule 10**.

6 Nomination of the Operator

6.1 Nomination

If at any time the Access Holder nominates the Operator in respect of all or part of the Access Holder's Access Rights, in accordance with the Access Agreement, then Aurizon Network must promptly provide to the Operator:

- (a) if not already provided by the Access Holder, a copy of the Access Agreement;
- (b) replacement Schedules (as relevant) amended to be consistent with the Access Holder's nomination of the Operator; and
- (c) details of the date on which those replacement Schedules take effect being the date Aurizon Network notifies the Access Holder under the Access Agreement that it accepts the Operator's nomination,

and this Deed is varied in accordance with those replacement Schedules with

effect on and from the date referred to under **clause 6.1(c)**.

6.2 Multiple Access Agreements

The Operator may not be nominated under more than one Access Agreement for the purposes of this Deed.

6.3 Variation of nomination of the Operator

- (a) If at any time:
- (i) the Access Holder notifies, or is deemed to have notified, Aurizon Network of a variation to the nomination of the Operator by the Access Holder in accordance with the Access Agreement; or
 - (ii) the Access Holder withdraws, or is deemed to have withdrawn, the Access Holder's nomination of the Operator under the Access Agreement (or this Deed),
- then:
- (iii) Aurizon Network must promptly provide to the Operator:
 - (A) a copy of the Access Holder's notice or withdrawal or, if no such notice or withdrawal has been given, details of the circumstances supporting the deeming of the notice or withdrawal;
 - (B) replacement Schedules (as relevant) amended consistent with the Access Holder's notice or withdrawal or deemed notice or withdrawal; and
 - (C) the date on which those replacement Schedules take effect; and
 - (iv) this Deed is varied in accordance with those replacement Schedules with effect on and from the date referred to under **clause 6.3(a)(iii)(C)**.
- (b) The Access Holder is deemed to have withdrawn its nomination of the Operator if the Access Agreement is terminated or expires.

7 Interaction of rights

- (a) The Parties acknowledge and agree that:
- (i) the Access Holder has contracted directly with Aurizon Network under the Access Agreement for the Access Rights:
 - (A) on the basis that the Access Rights will be used by one or more persons (such as the Operator) under agreements (such as this Deed) for the benefit of the Access Holder; and
 - (B) as such, the Access Holder has no direct above rail operational responsibilities in relation to Train Services for the Access Holder (unless it is also an "Operator" as defined in the Access Agreement); and
 - (ii) the Operator will have above rail operational obligations in respect of the Train Services that will be operated by it for the Access Holder.

- (b) The Operator has no right to renew, transfer (subject to **clauses 33.2 and 33.3**), vary or relinquish to Aurizon Network any part of the Operational Rights, whether under this Deed or the Access Undertaking. The right to seek a renewal, transfer, variation or relinquishment of Access Rights is solely a right of the Access Holder.

8 Billing and payments

8.1 Charges

The Operator must pay to Aurizon Network the Ancillary Services Charges and any other charges (if any) as calculated in accordance with this Deed.

8.2 Invoicing

- (a) As soon as reasonably practicable after the end of each Billing Period, Aurizon Network must give to the Operator an invoice for:
 - (i) the Ancillary Services Charges for that Billing Period; plus
 - (ii) any amounts payable but unpaid by the Operator to Aurizon Network under this Deed, and which have not previously been invoiced, as at the end of the Billing Period.
- (b) If **clause 8.6** applies, Aurizon Network must give the Operator an invoice under **clause 8.2(a)** after the end of a Billing Period even if no amount is required to be invoiced under **clause 8.2(a)** for that Billing Period.
- (c) Each invoice given under this **clause 8.2** must be accompanied by reasonable details of Aurizon Network's calculation of the amounts claimed in the invoice, including an itemised description of any other amounts (for the amounts deducted under **clause 8.6**, particulars must include the amounts against which the deduction is applied).

8.3 Payment

Subject to **clause 8.4**, the Operator must:

- (a) pay to Aurizon Network the amount claimed in an invoice given under **clause 8.2** within 10 Business Days after the invoice is given to the Operator; and
- (b) pay all amounts payable to Aurizon Network under this Deed:
 - (i) in Australian currency; and
 - (ii) by:
 - (A) direct deposit into the one or more bank account notified by Aurizon Network to the Operator in the invoice for this purpose (whether or not those bank accounts are in the name of Aurizon Network); or
 - (B) such other payment method as Aurizon Network specifies in the invoice (acting reasonably).
- (c) Any payment by the Operator of an amount payable under this Deed in accordance with this **clause 8.3** is taken to be a payment of such amount to Aurizon Network for the purpose of this Deed (whether or not such amount is paid into a bank account in the name of Aurizon Network).

8.4 Disputes

- (a) Any Disputes in connection with an amount claimed in an invoice:
 - (i) must be resolved in accordance with **clause 29**; and
 - (ii) which is not resolved in accordance with **clause 29.2**, may be referred by either Party to an Expert for determination in accordance with **clause 29.3**.
- (b) Despite **clause 8.4(a)**, if an amount claimed in an invoice given by Aurizon Network is Disputed, the Operator must pay to Aurizon Network:
 - (i) the portion of the amount claimed in the invoice that is not in Dispute; and
 - (ii) 50% of the portion of the amount claimed in the invoice that is in Dispute,within the time specified in **clause 8.3(a)**.
- (c) Upon resolution of any Dispute about an amount claimed in an invoice given by Aurizon Network, if the total amount which Aurizon Network was entitled to claim in the invoice (as resolved) is:
 - (i) more than the amount paid by the Operator, then the amount of the difference, together with interest on that amount calculated in accordance with **clause 8.5** (from the date when the amount in Dispute would have been due and payable under **clause 8.3(a)** but for **clause 8.4(b)**, until the date on which the difference, together with any interest, has been paid in full), must be paid by the Operator to Aurizon Network within 20 Business Days after the resolution of the Dispute; or
 - (ii) less than the amount paid by the Operator, then the amount of the difference, together with interest on that amount calculated in accordance with **clause 8.5** (from the date when the amount in Dispute was paid by the Operator until the date on which the credit is applied or the amount is paid (as applicable) under this **clause 8.4(c)(ii)**), must be:
 - (A) applied by Aurizon Network as credit in favour of the Operator against the amount claimed in the next invoice to be issued by Aurizon Network to the Operator after the resolution of the Dispute (and, if necessary, to subsequent invoices issued by Aurizon Network until the amount of the difference (including any interest) has been fully credited in favour of the Operator against amounts payable under invoices issued by Aurizon Network to the Operator under **clause 8.2**); or
 - (B) if there will be no further invoices issued by Aurizon Network to the Operator after the resolution of the Dispute or the last credit referred to in **clause 8.4(c)(ii)(A)**, paid by Aurizon Network to the Operator within 20 Business Days after resolution of the Dispute or the last credit referred to in **clause 8.4(c)(ii)(A)** (as applicable).

8.5 Interest on overdue payments and Disputed amounts

- (a) Without prejudice to the rights, powers and remedies of a Party under this Deed or otherwise at Law, if for any reason a Party does not pay an amount payable under or in connection with this Deed on or before the due date for payment, then that Party must pay interest on the outstanding amount calculated in accordance with this **clause 8.5**.
- (b) Interest accrues on outstanding amounts from the due date for payment until that amount, together with the interest on that amount, has been paid in full.
- (c) Interest under **clauses 8.4(c)(i), 8.4(c)(ii) and 8.5(b)** is calculated at the Default Rate. Any interest accrued but unpaid at the end of each Month is capitalised and, once capitalised, will itself bear interest.

8.6 Right of set-off

A Party may deduct from any amounts which are due and payable by the Party to the other Party under this Deed any amounts which are due and payable by the other Party to the Party under this Deed.

9 Accreditation

- (a) The Operator must, before the commencement of the first Train Services under this Deed, provide to Aurizon Network evidence of the Operator's Accreditation (including all conditions and/or variations).
- (b) Each Party must have and maintain Accreditation to the extent required to perform its obligations and exercise its rights under this Deed and, if requested to do so in writing by the other Party, provide to the other Party copies of documentation evidencing currency, renewal or amendment of its Accreditation within five Business Days after such request.
- (c) Each Party must notify the other as soon as possible of any notice from an Authority affecting, or likely to affect, its Accreditation, and must provide a copy of that notice to the other Party on request.
- (d) If:
 - (i) schedule 2 is varied to include an additional Train Service Type; or
 - (ii) the Train Description for an existing Train Service Type is varied, then before the Operator commences or continues (as applicable) to operate any Train Services for such Train Service Type, the Operator must:
 - (iii) if the Operator's Accreditation is required to be varied to address the operation of Train Services for such additional Train Service Type or the operation of Train Services in accordance with such varied Train Description (as applicable), provide Aurizon Network evidence of the Operator's Accreditation as varied; or
 - (iv) if the Operator reasonably determines that no variations to the Operator's Accreditation are required to address the operation of such Train Services, notify Aurizon Network of that determination and the reasons for that determination.

10 Operation of Train Services

10.1 Operation of Train Services

The Operator must not operate Train Services:

- (a) which do not comply with the applicable Train Description and this Deed, unless:
 - (i) acting under a Train Control Direction; or
 - (ii) with the prior written approval of Aurizon Network (which approval may specify terms in addition to or varying the terms of this Deed in respect of the Train Services or Ad Hoc Train Services to which the approval relates);
- (b) if clause 4.4 of the Access Agreement applies to those Train Services, unless an Access Interface Deed (as defined under the Access Agreement) has been executed by the relevant Customer and Aurizon Network; and
- (c) if the Access Holder does not hold, or does not have the benefit of, Supply Chain Rights for those Train Services.

10.2 Commencement of Train Services

- (a) Without limiting any other provision of this Deed, the Operator must only operate any Train Service if:

Category 1- Requirements for Train Services generally

- (i) an Operating Plan has been approved by Aurizon Network under **clause 14.1**;
- (ii) the Operator has submitted an Emergency Response Plan to Aurizon Network which complies with, or is taken to comply with, the requirements of **clause 14.1(a)(i)(B)**;
- (iii) the Operator has provided evidence to Aurizon Network of the Operator's Accreditation as required by **clause 9(a)**;
- (iv) an IRMP has been agreed or determined under the Interface Risk Provisions which form part of this Deed under **clause 3**;
- (v) the Operator has developed:
 - (A) the Operator's Safety Management System under **clause 23.4**;
 - (B) the Environmental Management Plan under **clause 14.1(g)**;
- (vi) the Operator has taken out the insurances, and provided evidence of those insurances to Aurizon Network, as required under **clause 25.3**;
- (vii) the Operator has complied with, or implemented any aspects of, the Operating Plan, Emergency Response Plan, the Operator's Accreditation, the IRMP, the Operator's Safety Management System and the Environmental Management Plan that are required to be complied with or implemented before the commencement of Train Services;

Category 2 – Requirement for specific Train Service Types

- (viii) the Operator has provided a Certificate of Compliance to Aurizon Network for all of the Rollingstock and/or Rollingstock Configurations which the Operator proposes to use in the operation of Train Services, and such Rollingstock and/or Rollingstock Configurations is Authorised Rollingstock and/or Authorised Rollingstock Configurations for each Train Service Type; and
 - (ix) Aurizon Network has given the Operator an Authority to Travel or a Train Route Acceptance.
- (b) Aurizon Network must use reasonable endeavours to cooperate with the Operator and act promptly to facilitate the Operator's compliance with **clause 10.2(a)**.
- (c) If the Operator has not complied with each of the requirements of **clause 10.2(a)** by:
- (i) the Compliance Date and Aurizon Network has a reasonable expectation that the Operator cannot commence the operation of Train Services by the Commitment Date; or
 - (ii) the Commitment Date,
- then, provided that the Operator's failure to comply with **clause 10.2(a)** was not due to Aurizon Network's breach of **clause 10.2(b)** Aurizon Network may give a notice to the Operator and the Access Holder requiring the Operator to comply with **clause 10.2(a)** within 20 Business Days after the date the notice is given to the Operator and specifying that it is a notice given under this **clause 10.2(c)**. For clarity, the Operator is not obliged to, and Aurizon Network may not require the Operator to, comply with **clause 10.2(a)** prior to the Commitment Date.
- (d) If Aurizon Network notifies the Operator and the Access Holder under **clause 10.2(c)** and the Operator fails to comply with the requirements set out in the notice then, subject to **clause 10.2(e)**, Aurizon Network may:
- (i) by notice to the Operator and the Access Holder reduce (as applicable):
 - (A) all of the Operational Rights (**Category 1 Reduced Operational Rights**); and
 - (B) the Operational Rights in respect of the affected Train Service Types only (**Category 2 Reduced Operational Rights**); or
 - (ii) if, as a result of such reduction, there will be no remaining Operational Rights, terminate this Deed.
- (e) Aurizon Network must allow the Access Holder to nominate an alternative "Operator" (as defined in the Access Agreement) to utilise the Category 1 Reduced Operational Rights and/or the Category 2 Reduced Operational Rights (as applicable).

10.3 Commencement of Train Services for Train Service Type

- (a) Without limiting any other provision of this Deed, if:
 - (i) **schedule 2** is varied or deemed to be varied to include an

additional Train Service Type; or

- (ii) the Train Description for an existing Train Service Type is varied or deemed to be varied (including under **clause 13.2**),

then the Operator must only operate or continue to operate (as applicable) any such additional or varied Train Services for that Train Service Type if:

- (iii) the Operator:
 - (A) if required under **clause 16.5**, has provided a Certificate of Compliance to Aurizon Network for all of the Rollingstock or Rollingstock Configurations which the Operator proposes to use in the operation of Train Services for that Train Service Type, and such Rollingstock is Authorised Rollingstock or such Rollingstock Configurations are Authorised Rollingstock Configurations for that Train Service Type;
 - (B) has amended the Emergency Response Plan to address the operation of those Train Services, or notified Aurizon Network of its determination that no such amendments are required, under **clause 14.2(a)**;
 - (C) has provided evidence to Aurizon Network of the Operator's Accreditation as varied to address the operation of those Train Services, or notified Aurizon Network of its determination that no such variations are required, under **clause 9(d)**;
 - (D) and Aurizon Network have jointly conducted a further Interface Risk Assessment, and amendments to the IRMP, to the extent required, have been agreed or determined, under **clause 14.2(e)**;
 - (E) if required under **clause 23.4**, has amended the Operator's Safety Management System to address any amendments to the IRMP and the operation of those Train Services; and
 - (F) if required under **clause 14.2**, has amended the Environmental Management Plan to address any amendments to the IRMP and the operation of those Train Services; and
 - (G) has complied with or implemented any aspects of the Operating Plan, Emergency Response Plan, the Operator's Accreditation, the IRMP, the Operator's Safety Management System and the Environmental Management Plan that are required to be complied with or implemented before the commencement of those Train Services;
- (iv) amendments to the Operating Plan to address the operation of those Train Services have been approved by Aurizon Network, or the Operator notified Aurizon Network of its determination that no such amendments are required, under **clause 14.2(a)**; and
- (v) Aurizon Network has given the Operator an Authority to Travel or a Train Route Acceptance authorising the Operator to operate Train

Services for that Train Service Type using the Authorised Rollingstock Configurations for that Train Service Type.

- (b) Aurizon Network must use reasonable endeavours to cooperate with the Operator and act promptly to facilitate the Operator's compliance with **clause 10.3(a)**.
- (c) If **clause 10.3(a)** applies and the Operator has not complied with **clause 10.3(a)** in respect of the Train Services for a Train Service Type by:
 - (i) if **clause 10.3(a)(i)** applies:
 - (A) the Train Service Compliance Date for that Train Service Type and Aurizon Network has a reasonable expectation that the Operator cannot commence the operation of those Train Services by the Train Service Commitment Date for that Train Service Type; or
 - (B) the Train Service Commitment Date for that Train Service Type; or
 - (ii) if **clause 10.3(a)(ii)** applies, the date the variation to the Train Description for the Train Service Type takes effect,

then, provided that the Operator's failure to comply with **clause 10.3(a)** was not due to Aurizon Network's breach of **clause 10.3(b)** and subject to **clause 10.3(d)**:

- (iii) Aurizon Network may give a notice to the Operator and the Access Holder requiring the Operator to comply with **clause 10.3(a)** within 20 Business Days after the date the notice is given to the Operator and the Access Holder; and
- (iv) if Aurizon Network gives a notice to the Operator and the Access Holder under **clause 10.3(c)(iii)** and the Operator fails to comply with **clause 10.3(a)** within 20 Business Days after the date that the notice is given to the Operator and the Access Holder, then:
 - (A) if **clause 10.3(a)(i)** applies:
 - (1) Aurizon Network may, by notice to the Operator and the Access Holder, reduce the Operational Rights by the Train Services for that Train Service Type by removing the variation (**Reduced Operational Rights**);
 - (2) if the Operational Rights of the Operator are reduced in accordance with **clause 10.3(c)(iv)(A)(1)**, Aurizon Network may allow the Access Holder to nominate an alternative "Operator" (as defined in the Access Agreement) to utilise the Reduced Operational Rights in accordance with the terms of the Access Agreement;
 - (3) Aurizon Network must provide to the Operator replacement Schedules amended consistent with any notice under **clause 10.3(c)(iv)(A)(1)** and this Deed is varied in accordance with those replacement Schedules with effect on and from the date that the

notice referred to in **clause 10.3(c)(iv)(A)(1)** is given to the Operator and the Access Holder; and

- (4) if there are no Operational Rights remaining following the issuance of a notice under **clause 10.3(c)(iv)(A)(1)**, Aurizon Network may terminate this Deed (without prejudice to those provisions which are stated to survive this Deed); or

(B) if **clause 10.3(a)(ii)** applies:

- (1) Aurizon Network may give the Operator and the Access Holder a notice specifying that the variation to the Train Description for the Train Service Type will cease to be of any effect; and
- (2) if Aurizon Network gives the Operator and the Access Holder a notice referred to in **clause 10.3(c)(iv)(B)(1)**, the Train Description for the Train Service Type will be taken not to have been varied (even if the relevant variation has taken effect) and the Train Description for the Train Service Type will be taken to be the Train Description for the Train Service Type in force immediately before the variation took effect.

- (d) For clarity, the Operator is not obliged to, and Aurizon Network may not require the Operator to, comply with **clause 10.3(a)** prior to the Commitment Date.

10.4 Power

- (a) If the operation of a Train Service consumes electricity supplied by Aurizon Network, in operating Train Services the Operator must not cause Aurizon Network to breach any reasonable and lawful requirements imposed on Aurizon Network by any supplier of electricity to Aurizon Network and which are notified by Aurizon Network to the Operator.
- (b) Aurizon Network must apply the same terms in respect of the consumption of electricity to all Train Operators.

10.5 Use of Regenerative Brakes

- (a) The Operator must obtain Aurizon Network's prior written consent to use Regenerative Brakes on any Rollingstock operated on the Nominated Network.
- (b) Aurizon Network must not unreasonably withhold its consent under this clause, but such consent may be given subject to conditions provided:
 - (i) Aurizon Network acts reasonably in imposing the conditions;
 - (ii) the conditions are required for Aurizon Network to comply with Aurizon Network's obligations under its electricity connection agreements; and
 - (iii) to the extent practicable, Aurizon Network imposes the same conditions on all Railway Operators utilising Regenerative Brakes.

11 Reduction of Nominated Monthly Train Services if

Maximum Payload exceeded

~~11.1 Reduction of Nominated Monthly Train Services under Access Agreement~~

~~(a) The Operator acknowledges that under the Access Agreement:~~

- ~~(i) Aurizon Network has the right under clause 10 to reduce the Nominated Monthly Train Services of the Access Holder for a Train Service Type if, at a point in time, the Average Annual Payload for that Train Service Type operated by the Operator exceeds the Maximum Payload for that Train Service Type; and~~
- ~~(ii) upon the reduction of the Nominated Monthly Train Services in accordance with the Access Agreement as a result of Average Annual Payload for a Train Service Type operated by the Operator exceeding the Maximum Payload for that Train Service Type, the Access Holder will be deemed to have given notice to Aurizon Network to reduce the number of Nominated Monthly Operational Rights the Operator has the right to operate for that Train Service Type utilising the Access Rights in accordance with that notice.~~

~~(b) Aurizon Network will notify the Operator if the Nominated Monthly Train Services are reduced under clause 10 of the Access Agreement and this Deed will be varied in accordance with the notice which the Access Holder is deemed to have given to Aurizon Network as contemplated under **clause 11.1(a)(ii)**.~~

11.211.1 Request for increased Maximum Payload

- (a) The Operator acknowledges that the Access Holder may, under clause ~~11~~ 10 of the Access Agreement, request that Aurizon Network consider increasing the Maximum Payload for a Train Service Type (or may be deemed to have given that request under clause 11 of the Access Agreement).
- (b) If the Maximum Payload for a Train Service Type is increased under clause ~~11~~ 10 of the Access Agreement, Aurizon Network will notify the Operator of any changes to:
 - (i) the Nominated Monthly Operational Rights;
 - (ii) the Maximum Payload for the relevant Train Service Type; and
 - (iii) the Nominal Payload for the relevant Train Service Type,as a result of the increase under clause ~~11~~ 10 of the Access Agreement and this Deed will be varied in accordance with that notice.

11.311.2 No prejudice to other rights

This **clause 11** does not prejudice Aurizon Network's other rights and remedies in respect of any non-compliance by the Operator with the Train Description for a Train Service Type.

QRC Note: Aurizon Network should only be able to require a change in Nominal Payload where approved by the QCA. We have proposed appropriate drafting to be incorporated into the Undertaking in our mark-up of the Standard

~~12 Reduction of Nominated Monthly Train Services if Nominal Payload increased~~

~~12.1 Notice of Intention to Increase Nominal Payload~~

- ~~(a) The Operator acknowledges that Aurizon Network may give the Access Holder a notice of Aurizon Network's intention to increase the Nominal Payload for a Train Service Type under the Access Agreement (**Notice of Intention to Increase Nominal Payload**).~~
- ~~(b) Aurizon Network will provide to the Operator a copy of any Notice of Intention to Increase Nominal Payload it gives to the Access Holder.~~

~~12.2 Estimate of Net Financial Effect~~

- ~~(a) Within:
 - ~~(i) 20 Business Days after Aurizon Network gives the Operator a copy of the Notice of Intention to Increase Nominal Payload; or~~
 - ~~(ii) if the Access Holder gives Aurizon Network a Dispute Notice under clause 12.4(a) of the Access Agreement, 20 Business Days after Aurizon Network has notified the Operator of the resolution of the dispute under the Access Agreement;~~~~

~~the Operator must give Aurizon Network a notice specifying the Operator's reasonable estimate of the Net Financial Effect (if any) on the Operator of the intended variations to the Nominal Payload, Maximum Payload and Nominated Monthly Operational Rights for the relevant Train Service Type under this **clause 12** (including reasonable details of all matters taken into account in determining such estimate).~~

- ~~(b) The Operator warrants in favour of Aurizon Network that any estimate given by the Operator in a notice under **clause 12.6(a)** is accurate on the basis of the information reasonably available to it and sufficiently detailed to enable Aurizon Network to reasonably assess the estimate.~~
- ~~(c) Within 10 Business Days after the Operator gives Aurizon Network a notice under clause 12.6(a), Aurizon Network may give the Operator a notice requesting the Operator to provide to Aurizon Network any further information and documentation Aurizon Network reasonably requires for the purposes of assessing an estimate given by the Operator in a notice under clause 12.2(a).~~
- ~~(d) Within 10 Business Days after Aurizon Network gives the Operator a notice under **clause 12.2(c)**, the Operator must:
 - ~~(i) provide to Aurizon Network the information and documentation requested in the notice; and~~
 - ~~(ii) if required by Aurizon Network, meet with Aurizon Network to discuss the estimate given by the Operator in a notice under **clause 12.2(a)**.~~~~

~~12.3 Withdrawal of Notice of Intention to Increase Nominal Payload~~

- ~~(a) The Operator acknowledges that, under the Access Agreement,~~

~~Aurizon Network may, in its absolute discretion, withdraw a Notice of Intention to Increase Nominal Payload at any time before the date which is 10 months before the Effective Date.~~

- ~~(b) If Aurizon Network withdraws a Notice of Intention to Increase Nominal Payload:~~
- ~~(i) Aurizon Network will notify the Operator of any such withdrawal; and~~
 - ~~(ii) the variations to the Nominal Payload, Maximum Payload and Monthly Nominal Train Services for the Train Service Type set out in the Notice of Intention to Increase Nominal Payload will not take effect.~~
- ~~(c) If Aurizon Network gives the Access Holder a Notice of Intention to Increase Nominal Payload in respect of a Train Service Type, then, unless the Notice of Intention to Increase Nominal Payload is withdrawn as contemplated in **clause 12.8(b)**, Aurizon Network will notify the Operator of any changes to:~~
- ~~(i) the Nominal Payload for the Train Service Type;~~
 - ~~(ii) the Maximum Payload for the Train Service Type;~~
 - ~~(iii) the Nominated Monthly Train Services for the Train Service Type,~~
- ~~in each case, as a result of the Notice of Intention to Increase Nominal Payload in respect of that Train Service Type.~~

12.4 Further estimate of Net Financial Effect

- ~~(a) No less than six months, but not more than seven months, after the Effective Date, the Operator must give Aurizon Network a notice specifying reasonable details of the Operator's reasonable estimate of the Net Financial Effect (excluding any Foreseeable Costs and Detriments) on the Operator of the variations to the Nominal Payload, Maximum Payload and Nominated Monthly Operational Rights for the relevant Train Service Type under the Access Agreement as contemplated in this **clause 12**, including:~~
- ~~(i) reasonable details of:
 - ~~(A) any increased costs and other detriments actually incurred by the Operator; and~~
 - ~~(B) any savings and other benefits and advantages actually received by the Operator;~~~~
 - ~~(ii) reasonable details of the Operator's reasonable estimate of:
 - ~~(A) any increased costs and other detriments to be incurred by the Operator; and~~
 - ~~(B) any savings and other benefits and advantages to be received by the Operator; and~~~~
 - ~~(iii) any Foreseeable Costs and Detriments.~~
- ~~(b) A notice given by the Operator under **clause 12.4(a)** must not include any increased costs and other detriments actually, or estimated to be, incurred~~

by the Operator which were not included in the notice given under ~~clause 12.2(a)~~ to the extent that, at the time of giving the notice under ~~clause 12.2(a)~~, the Operator ought to have reasonably anticipated that those costs and other detriments would, or would likely, be incurred ~~(Foreseeable Costs and Detriments)~~.

- ~~(c) The Operator warrants in favour of Aurizon Network that any estimate given by the Operator in a notice under clause 12.4(a) is accurate on the basis of the information reasonably available to it and sufficiently detailed to enable Aurizon Network to reasonably assess the estimate.~~
- ~~(d) Within 10 Business Days after the Operator gives Aurizon Network a notice under clause 12.4(a), Aurizon Network may give the Operator a notice requesting the Operator to provide to Aurizon Network any further information and documentation Aurizon Network reasonably requires for the purposes of assessing an estimate given by the Operator in a notice under clause 12.4(a).~~
- ~~(e) Within 10 Business Days after Aurizon Network gives the Operator a notice under clause 12.4(d), the Operator must:
 - ~~(i) provide to Aurizon Network the information and documentation requested in the notice; and~~
 - ~~(ii) if required by Aurizon Network, meet with Aurizon Network to discuss the estimate given by the Operator in a notice under clause 12.4(a).~~~~

~~12.5 — Dispute~~

- ~~(a) Within 10 Business Days after the later of the date that:
 - ~~(i) the Operator gives Aurizon Network a notice under clause 12.4(a);~~
 - ~~(ii) if Aurizon Network requests the Operator to provide any information and documentation under clause 12.4(d), the Operator provides Aurizon Network the requested information and documentation; and~~
 - ~~(iii) if Aurizon Network requires the Operator to meet with it under clause 12.4(e)(ii), the Operator meets Aurizon Network,~~Aurizon Network must, if Aurizon Network Disputes the amount of the estimate of the Net Financial Effect (excluding any Foreseeable Costs and Detriments) on the Operator specified in the notice given by the Operator under ~~clause 12.4(a)~~, give the Operator a Dispute Notice which disputes that estimate in accordance with ~~clause 30~~.~~
- ~~(b) If a Dispute referred to in clause 12.5(a) is not resolved in accordance with clause 30.2, then the Parties must refer the Dispute to an Expert to determine the Net Financial Effect (excluding any Foreseeable Costs and Detriments) on the Operator of the variations to the Nominal Payload, Maximum Payload and Nominated Monthly Operational Rights for the relevant Train Service Type under this clause 12.~~

~~12.6 — Payment of compensation~~

- ~~(a) Within 20 Business Days after the later of:
 - ~~(i) the dates referred to in clauses 12.5(a)(i), 12.5(a)(ii) and 12.5(a)(iii); and~~~~

~~(ii) — if Aurizon Network gives the Operator a Dispute Notice referred to in **clause 12.5(a)**, the date that the Dispute is resolved under **clause 30**;~~

~~Aurizon Network must pay to the Operator:~~

~~(iii) — if **clause 12.6(a)(ii)** applies, the amount which is agreed or determined under the Dispute resolution process to be the Net Financial Effect (excluding any Foreseeable Costs and Detriments) on the Operator of the variations to the Nominal Payload, Maximum Payload and Nominated Monthly Operational Rights for the relevant Train Service Type under this **clause 12**; or~~

~~(iv) — otherwise, the amount which is the Operator's estimate of the Net Financial Effect (excluding any Foreseeable Costs and Detriments) on the Operator of the variations to the Nominal Payload, Maximum Payload and Nominated Monthly Operational Rights for the relevant Train Service Type under this **clause 12** specified in the notice given by the Operator under **clause 12.4(a)**.~~

~~(b) The Parties agree that the amount payable by Aurizon Network to the Operator under **clause 12.6(a)** fully compensates the Operator for the Net Financial Effect on the Operator of the variations to the Train Description for the relevant Train Service Type under this **clause 12**, and, except for the payment of that amount, the Operator must not make any Claim against Aurizon Network in respect of the variations to the Nominal Payload, Maximum Payload and Nominated Monthly Operational Rights for the relevant Train Service Type under this **clause 12**.~~

13.12 Day to day Train Movements

13.12.1 Exclusive responsibility for Train Control

Aurizon Network must provide, and has exclusive responsibility for, Train Control in respect of the Nominated Network.

13.12.2 Train Control rights and obligations - Aurizon Network

- (a) Aurizon Network must exercise Train Control by the issue of Train Control Directions to the Operator and the Operator's Staff consistent with the Network Management Principles.
- (b) In exercising Train Control, Aurizon Network must act reasonably and have regard to the safe conduct of rail operations on the Infrastructure and may, acting reasonably:
 - (i) delay, alter or add a Train Service or other Network Train Services;
 - (ii) cancel, re-route or re-schedule a Train Service or other Network Train Services;
 - (iii) alter the Scheduled Times for Train Services or other Network Train Services in the Train Schedule; and
 - (iv) impose any Operational Constraint on the Nominated Network consistent with **clause 20.2**.

13.12.3 Train Control rights and obligations - Operator

Without limiting the rights of the Operator, the Operator must:

- (a) comply with Train Control Directions;
- (b) ensure the Operator's Staff comply with Train Control Directions;
- (c) ensure that its Train drivers are contactable by the Train Controller to receive Train Control Directions;
- (d) notify the Train Controller as soon as reasonably possible after the Operator becomes aware that:
 - (i) it is not possible for the Operator or the Operator's Staff to comply with a Train Control Direction; or
 - (ii) the Operator or the Operator's Staff have not complied with a Train Control Direction; and
- (e) notify the Train Controller as soon as reasonably possible after the Operator becomes aware of:
 - (i) any changes or delays in Train Services; or
 - (ii) any circumstances which have affected or may affect Train Control including the ability of any Train Service to conform to its Scheduled Times.

13.412.4 Train Control communications

The Operator must ensure all Trains are equipped with or have available means of communication to permit the Operator's Staff to comply with this Deed (including the Rollingstock Interface Standards and the Applicable Safeworking Procedures).

13.512.5 Removal at the end of Authorised Parking

- (a) To the extent that Aurizon Network has allowed any Train to be Stowed or directed or otherwise allowed any items of Rollingstock to be temporarily parked on the Nominated Network (in either case, **Authorised Parking**):
 - (i) the Operator must ensure that it ceases the Stowage or the temporary parking of the relevant Rollingstock on the Nominated Network on:
 - (A) the expiry of any permitted period specified by Aurizon Network in respect of such Authorised Parking; or
 - (B) if no such permitted period has been specified by Aurizon Network in respect of any such Authorised Parking, within 12 hours (or such longer period as may be specified by Aurizon Network) of notice from Aurizon Network requiring the cessation of Stowage or end to temporary parking of the relevant Rollingstock; and
 - (ii) without limiting any other rights which Aurizon Network may have, Aurizon Network may, subject to Aurizon Network using reasonable efforts to first consult with the Operator:
 - (A) take such action as Aurizon Network (acting reasonably) considers necessary in relation to the cessation of Stowage or end to temporary parking of the relevant Rollingstock (including removing the Train or the relevant Rollingstock) following the expiry of the relevant period referred to in

clause 12.5(a)(i); and

- (B) recover such reasonable costs incurred by Aurizon Network in doing so and, subject to **clause 8.4**, the Operator must, within 10 Business Days after receiving such demand, pay to Aurizon Network such reasonable costs incurred by Aurizon Network.
- (iii) Aurizon Network will not be liable for any damage to or loss of freight, Train or Rollingstock caused by any action referred to in **clause 12.5(a)(ii)** and the Operator is solely liable for, and releases, indemnifies and will keep indemnified Aurizon Network and its directors and Aurizon Network's Staff against all Claims of any nature suffered or incurred by, or made or brought against, Aurizon Network, its directors or Aurizon Network's Staff in respect of any exercise of Aurizon Network's rights under **clause 12.5(a)(ii)**.

14.13 Compliance

14.13.1 General requirements

- (a) To the extent relevant to the performance of its obligations under this Deed:
 - (i) each Party must observe and comply with:
 - (A) all applicable Laws;
 - (B) the conditions of its own Accreditation;
 - (C) the lawful requirements of relevant Authorities;
 - (D) Train Control Directions;
 - (E) the Applicable Safeworking Procedures and Applicable Safety Standards;
 - (F) the Network Management Principles;
 - (G) the Interface Coordination Arrangements;
 - (H) to the extent applicable, the Emergency Procedures;
 - (I) the IRMP; and
 - (J) the Access Undertaking (including, in Aurizon Network's case, its obligations in Part 3 of the Access Undertaking);
 - (ii) the Operator must observe and comply with:
 - (A) the Train Description for each Train Service Type (subject to the Network Management Principles);
 - (B) the description of the relevant Reference Train Service except as otherwise permitted by this Deed;
 - (C) the Operating Plan;
 - (D) the Emergency Response Plan;
 - (E) the Environmental Management Plan;
 - (F) subject to the provision of reasonable notice from Aurizon

Network specifying:

- (1) the relevant requirements of the Environmental Authorities held by Aurizon Network from time to time and the permits, approvals and licences in respect of facilities to which access is provided by Aurizon Network to the Operator, those relevant requirements;
 - (2) relevant Approvals affecting the operations of Aurizon Network and their applicability to the Operator, those Approvals;
- (G) the applicable requirements under the Noise Code; and
- (iii) Aurizon Network must observe and comply with:
- (A) the conditions of its Accreditation;
 - (B) all licences and permits affecting its operations, including any licences, permits and approvals in respect of facilities relevant to this Deed; and
 - (C) any Environmental Authorities it holds from time to time.

14.213.2 Non-compliance by Operator with Train Description

- (a) If:
- (i) Train Services operated by the Operator do not comply, in any material respect, with the Train Description for the Train Service Type, except where such non-compliance is attributable to another Railway Operator or Aurizon Network; and
 - (ii) the Operator fails to demonstrate to the reasonable satisfaction of Aurizon Network, within 20 Business Days of being requested to do so, that those Train Services will consistently comply with the applicable Train Description for the remainder of the Term,
- then, if following satisfaction by Aurizon Network of the requirements of clauses 15.3(a) and 15.3(b) of the Access Agreement, Aurizon Network continues to not be reasonably satisfied that the Operator will consistently comply with the Train Description for the remainder of the Term, Aurizon Network may, by giving the Operator and the Access Holder 20 Business Days' notice:
- (iii) vary the applicable Train Description to a level it reasonably expects to be achievable by the Operator for the remainder of the Term, having regard to the extent of previous compliance with the applicable Train Description (ignoring, for the purpose of assessing previous compliance, any non-compliance to the extent that the non-compliance was attributable to another Railway Operator or to Aurizon Network); and
 - (iv) reasonably vary any other provisions of this Deed to reflect the impact of the change in the applicable Train Description.
- (b) The Operator is entitled to dispute any variation by Aurizon Network under **clause 13.2(a)** and such dispute must be referred to an Expert for resolution in accordance with **clause 29.3**.

- (c) This **clause 13.2** does not prejudice Aurizon Network's other rights and remedies in respect of any non-compliance by the Operator with the Train Description for a Train Service Type.
- (d) If any variations under this **clause 13.2** affect the Train Description, then the commencement of those variations is subject to and conditional upon the Operator being notified by Aurizon Network that all necessary amendments (if any) to the Access Agreements have been made in respect of such matters and any relevant nomination of the Operator by the Access Holder in accordance with the Access Agreement has, if necessary, been varied.

14.313.3 **Certain matters to apply consistently to all Railway Operators**

Aurizon Network must ensure that as far as reasonably practicable:

- (a) the Network Management Principles;
- (b) the System Operating Parameters;
- (c) the System Rules;
- (d) the Safeworking Procedures and Safety Standards;
- (e) the Emergency Procedures; and
- (f) the Investigation Procedures,

will be applied consistently for all Railway Operators operating Network Train Services to destinations located in the same Coal System.

14.413.4 **Provision of information**

- (a) Aurizon Network must provide the Operator with:
 - (i) information relevant to the Operator's operation of Train Services if and when required to do so under the Network Management Principles; and
 - (ii) a copy of each Operating Document (which may be via publication on the Website).

1514 Plans

15.114.1 **Approval of Plans**

- (a) Before the commencement of any Train Services:
 - (i) the Operator must develop and submit to Aurizon Network for approval the following documents which must be, at all times during the Term, consistent with the terms of this Deed:
 - (A) a plan (**Operating Plan**) which:
 - (1) specifies reasonable details of the Operator's planned operations of Train Services; and
 - (2) without limiting **clause 14.1(a)(i)(A)**, addresses the matters required under Schedule C of the Access Undertaking;
 - (B) a plan (**Emergency Response Plan**) which:

- (1) contains the set procedures adequate for dealing with an Incident, including all actions to be taken to minimise or alleviate any threat or danger to any person or property or the environment;
 - (2) is compatible with the Emergency Procedures; and
 - (ii) the Parties must in accordance with the Interface Risk Provisions which form part of this Deed under **clause 3**:
 - (A) jointly with the Access Holder conduct an Interface Risk Assessment; and
 - (B) as soon as reasonably practicable after the completion of the Interface Risk Assessment (and in any event by not later than 20 Business Days after the completion), negotiate diligently and in good faith an IRMP, including any amendment to it.
- (b) As soon as possible and in any event by no later than 20 Business Days from the date of receipt of the Operating Plan or the Emergency Response Plan (as applicable), Aurizon Network must:
 - (i) notify the Operator whether or not it approves the Plan; and
 - (ii) if not, provide reasonable details of its reasons for withholding its approval.
- (c) Aurizon Network:
 - (i) may withhold its approval of the Operating Plan if it is not reasonably satisfied that the Operating Plan complies with **clause 14.1(a)(i)(A)**;
 - (ii) must notify the Operator if it is not reasonably satisfied that the Emergency Response Plan complies with **clause 14.1(a)(i)(B)** and the parties must meet to agree on a mutually acceptable course of action to address Aurizon Network's concerns within 10 Business Days after the notice is given;
 - (iii) must promptly determine, acting reasonably, the IRMP (including any amendment to it) and notify the Operator of its determination if the Parties are unable to agree an IRMP or any amendments to it under **clause 14.1(a)(ii)**.
- (d) If a dispute arises as a result of:
 - (i) Aurizon Network withholding its approval of the Operating Plan under **clause 14.1(c)(i)**;
 - (ii) the Parties failing to comply with the timeframe in **clause 14.1(c)(ii)**; or
 - (iii) the IRMP, or any aspect of or amendment to the IRMP, determined by Aurizon Network under **clause 14.1(c)(iii) (Disputed Aspect)** being Unreasonable,
 it must be resolved under **clause 29.2**, failing which **clause 29.3** applies.
- (e) If a dispute is referred to an Expert, then:
 - (i) the Expert is required to determine whether or not the Operating

- Plan or the Emergency Response Plan (as applicable) complies with the **clause 14.1(a)(i)**; and
- (ii) if the Expert determines (as applicable):
 - (A) the Operating Plan does not comply with **clause 14.1(a)(i)(A)**;
 - (B) the Emergency Response Plan is not compatible with the Emergency Procedures and otherwise complies with **clause 14.1(a)(i)(B)**; or
 - (C) that the Disputed Aspect of the IRMP is Unreasonable,
 then the Expert must determine (and specify in the report of its determination of the Dispute):
 - (D) if **clause 14.1(e)(ii)(A)** or **14.1(e)(ii)(B)** applies, how the non-compliance should be rectified and the Operator must rectify the Operating Plan or the Emergency Response Plan (as applicable) accordingly; or
 - (E) if **clause 14.1(e)(ii)(C)** applies, the amendments to the IRMP which the Expert reasonably considers, if made, would result in the Disputed Aspect ceasing to be Unreasonable.
 - (f) A Plan is effective only from the date:
 - (i) in respect of an Operating Plan or Emergency Response Plan, Aurizon Network notifies the Operator that it approves the Operating Plan or the Emergency Response Plan (as applicable);
 - (ii) in respect of an IRMP (including any amendments to it):
 - (A) the Parties agree in writing on the terms of the IRMP or the amendments to it; or
 - (B) if the Parties cannot agree, Aurizon Network determines the IRMP or the amendment to it and notifies the Operator;
 - (iii) if **clause 14.1(d)** applies in respect of any Plan, it is agreed or determined that the Plan complies with the relevant requirements under **clause 14.1(a)(i)** (as applicable).
 - (g) If it is agreed or determined through the Dispute resolution process that the Disputed Aspect of the IRMP is Unreasonable, then (unless otherwise agreed between the Parties through the Dispute resolution process):
 - (i) despite the Dispute, the IRMP, or the aspect of it or amendment to it, determined by Aurizon Network under **clause 14.1(c)(iii)** or **14.1(g)(ii)** (as applicable) is taken to be valid and binding; but
 - (ii) as soon as reasonably practicable (and in any event within 20 Business Days) after such agreement or determination, Aurizon Network must:
 - (A) determine, acting reasonably, the amendments to the IRMP (in the case of an Expert determination, having regard to the reasons for the Expert's determination and the amendments to the IRMP specified in the Expert's report of the determination of the Dispute) which result in the Disputed Aspect ceasing to be Unreasonable; and

- (B) notify the Operator of the amendments to the IRMP determined by Aurizon Network;
 - (C) the amendments to the IRMP, as determined by Aurizon Network, will take effect on the date notified to the Operator under **clause 14.1(g)(ii)(B)**; and
 - (D) if Aurizon Network does not notify the Operator of amendments to the IRMP by the time referred to in **clause 14.1(g)(ii)**, then the IRMP will be taken to be amended as specified in the Expert's report of the determination of the Dispute with effect immediately after the end of the time referred to in **clause 14.1(g)(ii)**.
- (h) The Operator must develop, implement and maintain a plan to address Environmental Risks (**Environmental Management Plan**) in accordance with the Interface Risk Provisions which form part of this Deed under **clause 3**.

15.214.2 Amendments to Plans

- (a) The Operator:
 - (i) may amend the Operating Plan or the Emergency Response Plan (as applicable) from time to time provided it complies with this **clause 14.2**;
 - (ii) must, to the extent reasonably required, amend:
 - (A) the Operating Plan and/or the Emergency Response Plan if:
 - (1) **Schedule 2** is varied to include an additional Train Service Type or the Train Description for an existing Train Service Type is varied, to address the operation of the Train Services before the Operator commences or continues (as applicable) to operate the Train Services for that Train Service Type; or
 - (2) they cease to be consistent with the terms of this Deed or any document that the Operator is required under this Deed to comply with, to address the inconsistency;
 - (B) the Operating Plan if at any time **clause 16.2(a)(ii)** applies, to address the proposal under the Authorisation Request Notice (assuming that the Rollingstock Configurations become Authorised Rollingstock Configurations for the Train Service Type); and
 - (iii) must notify Aurizon Network if it reasonably determines that no amendments to the Operating Plan and the Emergency Response Plan are required as a result of a variation to **Schedule 2**, including the reasons for that determination.
- (b) If Aurizon Network becomes aware of an inconsistency between the Operating Plan or the Emergency Response Plan and this Deed or any document that the Operator is required under this Deed to comply with, Aurizon Network must notify the Operator.

- (c) If the Operator intends or is required to amend the Operating Plan or the Emergency Response Plan (as applicable), it must submit to Aurizon Network for approval full details of each proposed amendment, including its reasons for the amendment.
- (d) **Clauses 14.1(b) to 14.1(e)** apply to any amendments to a Plan the Operator submits to Aurizon Network for approval.
- (e) If, at any time during the Term:
 - (i) a Party notifies the other Party that it believes that:
 - (A) the IRMP is no longer effective in managing an Interface Risk or Environmental Risk addressed in the IRMP; or
 - (B) an additional or varied Interface Risk or Environmental Risk exists, or is likely to exist, that is not addressed in the IRMP;
 - (ii) **Schedule 2** is varied to include an additional Train Service Type or the Train Description for a Train Service Type is varied; or
 - (iii) Aurizon Network notifies the Operator that the Rollingstock Interface Standards are varied and Aurizon Network considers that a further Interface Risk Assessment is required; or
 - (iv) a Certifier gives Aurizon Network a Compliance Statement, then:
 - (v) as soon as reasonably practicable after:
 - (A) a Party notifies the other Party under **clause 14.2(e)(i)(A) or 14.2(e)(i)(B)**; or
 - (B) Aurizon Network notifies the Operator under **clause 14.2(e)(iii)**; or
 - (C) the Certifier gives Aurizon Network the Compliance Statement; or
 - (vi) before the Operator commences or continues (as applicable) to operate any Train Services for a Train Service Type referred to in **clause 14.2(e)(ii)**;

the Parties must undertake a further Interface Risk Assessment and agree on amendments to the IRMP in accordance with **clauses 14.1(a)(ii) and 14.1(c)(iii)**.

~~16.15~~ 16.15 Train operations

~~16.15.1~~ 16.15.1 **Compliance with Scheduled Time**

- (a) The Operator must use reasonable endeavours to:
 - (i) operate Train Services in accordance with the relevant Daily Train Plan unless:
 - (A) otherwise permitted by the Network Management Principles;
 - (B) varied in the circumstances specified in this Deed;
 - (C) otherwise directed in a Train Control Direction; or

- (D) otherwise agreed between the Parties (such agreement not to be unreasonably withheld); and
- (ii) otherwise comply with all other Scheduled Times.
- (b) A Train Service is deemed to operate in accordance with its Scheduled Time if it is operated within three minutes before or after the Scheduled Time.

16.215.2 Alterations to Train Services

- (a) Without limiting the rights of the Operator, Aurizon Network must give the Operator a Train Control Direction as soon as reasonably practicable after it becomes aware that it is unable to make the Infrastructure available for the operation of a Train Service which is scheduled in the Daily Train Plan.
- (b) Unless Aurizon Network has already given the Operator a Train Control Direction under **clause 15.2(a)**, the Operator must notify Aurizon Network as soon as reasonably practicable after it decides not to, or becomes aware that it will be unable to, operate a Train Service which is scheduled in the Daily Train Plan and specify the Access Holder for that Train Service.
- (c) If **clause 15.2(a)** or **15.2(b)** applies, Aurizon Network must reschedule the relevant Train Service in accordance with the Network Management Principles.

16.315.3 Authorisation of other Train Movements

If:

- (a) the Operator gives Aurizon Network a notice in accordance with **clause 15.2(b)**;
- (b) Aurizon Network gives the Operator a Train Control Direction in accordance with **clause 15.2(a)**; or
- (c) for any reason, the Operator does not operate a Train Service at its Scheduled Time in the Train Schedule (including a revised Scheduled Time for that Train Service),

then Aurizon Network may authorise the operation of another Train Movement at that Scheduled Time.

16.415.4 Notification

- (a) Without limiting its obligations under **clause 1.3** of **Schedule 9**, Aurizon Network must notify the Operator's Controller (such notification to include, where relevant, the anticipated effect on the relevant Train Service) as soon as reasonably practicable after Aurizon Network becomes aware of any circumstances (including Obstructions) which:
 - (i) have materially affected, or could potentially materially affect, the ability of the Operator to operate any Train Service in accordance with its Scheduled Time; or
 - (ii) have affected, or could potentially affect, the security or safety of a Train Service or the Operator's Staff.

- (b) Aurizon Network must, as soon as reasonably practicable after becoming aware of the relevant changes, advise the Operator's Controller from time to time of changes to notices previously provided under **clause 15.4(a)**.
- (c) A Party must inform the other Party if it becomes aware of any failure by the Operator to comply with:
 - (i) any requirement specified in **clause 13.1**; or
 - (ii) the Authorised Rollingstock and Authorised Rollingstock Configurations for each Train Service Type.

16.515.5 Operator to supply information

- (a) The Operator must provide to Aurizon Network:
 - (i) and at all times maintain operable software, hardware and associated communication links to establish (to Aurizon Network's reasonable satisfaction) an interface with Aurizon Network's information systems; and
 - (ii) information in relation to each Train Service in accordance with **item 1.2 of Schedule 9** before the operation of that Train Service.
- (b) The Operator's interface with Aurizon Network's information systems are subject to any reasonable controls specified by Aurizon Network to protect the integrity and confidentiality of Aurizon Network's information systems and the information contained in them.
- (c) Aurizon Network must cooperate with the Operator to establish the Operator's interface with Aurizon Network's information systems.

16.615.6 Operation of Trains and Rollingstock

The Operator is responsible for the safe operation of its Rollingstock and must ensure that at all times the operation of such Rollingstock (including all loading and unloading of such Rollingstock) is undertaken in a manner that:

- (a) is consistent with the Rollingstock Interface Standards (subject to any Approved Derogations);
- (b) does not affect the safe operation of the Rollingstock or any other Train Movements; and
- (c) ensures that all items on or in the Operator's Rollingstock remain secured in position during transit.

17.16 Authorisation of Rollingstock and Rollingstock Configurations

17.16.1 Use of Rollingstock and Rollingstock Configuration

- (a) The Operator must only operate Train Services using Rollingstock or Rollingstock Configurations which:
 - (i) comply with the Rollingstock Interface Standards (subject to any Approved Derogations);
 - (ii) are Authorised Rollingstock;
 - (iii) are Authorised Rollingstock Configuration for that Train Service

Type; and

- (iv) comply with all applicable Laws.

17.216.2 Authorisation Request Notice

- (a) Subject to **clause 16.2(b)**, if, at any time during the Term, the Operator proposes to operate:
 - (i) Train Services using Rollingstock which are not Authorised Rollingstock; or
 - (ii) Train Services for a Train Service Type using Rollingstock Configurations which are not Authorised Rollingstock Configurations for that Train Service Type,

then the Operator may give Aurizon Network a notice (**Authorisation Request Notice**) of its proposal, specifying reasonable details of the proposed Rollingstock or Rollingstock Configurations (as applicable).

- (b) The Operator must not give Aurizon Network an Authorisation Request Notice in respect of a proposal to operate Train Services using Rollingstock Configurations which are not Authorised Rollingstock Configurations for the Train Service Type unless the proposed Rollingstock Configurations are only comprised of Rollingstock which, at the time of the notice, are Authorised Rollingstock.

17.316.3 Compliance Statement

If the Operator gives Aurizon Network an Authorisation Request Notice, then the Operator must procure a Certifier to:

- (a) assess whether or not the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Authorisation Request Notice comply with the Rollingstock Interface Standards; and
- (b) provide a statement (**Compliance Statement**) to Aurizon Network which specifies whether or not the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) comply with the Rollingstock Interface Standards and, if not, reasonable details of each non-compliance.

17.416.4 Rollingstock Interface Standards Risk Assessment

If the Operator gives Aurizon Network an Authorisation Request Notice, the Interface Risk Assessment required to be conducted under **clause 14.2(e)** will, unless otherwise required by Aurizon Network, be limited to a Rollingstock Interface Standards Risk Assessment in respect of the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Authorisation Request Notice.

17.516.5 Certificate of Compliance

- (a) If:
 - (i) the Operator gives Aurizon Network an Authorisation Request Notice; and
 - (ii) a Certifier provides Aurizon Network with a Compliance Statement in respect of the proposed Rollingstock or Rollingstock

Configurations for the Train Service Type (as applicable) specified in the Authorisation Request Notice,

then promptly after:

- (iii) the Parties have conducted an Interface Risk Assessment under **clause 16.4** in respect of such Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable); and
- (iv) any amendments to the IRMP have been agreed or determined in accordance with **clause 23** following such Interface Risk Assessment,

the Operator must procure a Certifier to:

- (v) assess whether or not the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) comply with the Rollingstock Interface Standards (subject to any Approved Derogations); and
 - (vi) if the assessment is positive, certify that such Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) comply with the Rollingstock Interface Standards (subject to any Approved Derogations).
- (b) If a Certifier provides a Certificate of Compliance under **clause 16.5**, the Operator must promptly (and in any event, within 10 Business Days) after being requested to do so by Aurizon Network provide (or procure the Certifier to provide) to Aurizon Network:
- (i) the Certificate of Compliance; and
 - (ii) any information or documentation (including reports on trials and/or commissioning tests) in relation to the Rollingstock or Rollingstock Configurations for a Train Service Type (as applicable) specified in that Certificate of Compliance;
- (c) If the Operator complies with **clause 16.5(b)**, then 20 Business Days after the date the Operator complies with **clause 16.5(b)**:
- (i) the Rollingstock specified in the Certificate of Compliance is taken to be Authorised Rollingstock; and/or
 - (ii) the Rollingstock Configurations for the Train Service Type specified in the Certificate of Compliance is taken to be Authorised Rollingstock Configurations for that Train Service Type,

unless within 20 Business Days of the date the Operator complied with **clause 16.5(b)**, Aurizon Network notifies the Operator that it is not satisfied that the Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Certificate of Compliance complies with the Rollingstock Interface Standards (subject to any Approved Derogations), and provide reasonable details of any non-compliance.

17.616.6 Disputes

- (a) If Aurizon Network gives the Operator a notice under **clause 16.5(c)** and the Operator disputes that notice, then the Operator may give a Dispute Notice to Aurizon Network under **clause 29.1**.

- (b) If a Dispute referred to in **clause 16.6(a)** is not resolved in accordance with **clause 29.2**, then the Operator may refer the Dispute to an Expert under **clause 29.3** to determine whether or not the Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Certificate of Compliance comply with the Rollingstock Interface Standards (subject to any Approved Derogations).

17.716.7 **Update of schedule 4** Error! Reference source not found. **as a consequence of New Authorisations**

If, at any time during the Term, any Rollingstock is taken to be Authorised Rollingstock (**New Authorisation**), then **item 1 of Schedule 4** is deemed to be amended to include:

- (a) the maximum gross mass for any Wagon or other Rollingstock for that New Authorisation; and
- (b) the tare weight for any Wagon or other Rollingstock for that New Authorisation,

at the time the Rollingstock is taken to be Authorised Rollingstock.

17.816.8 **Issue of Train Route Acceptance or Authority to Travel**

Within five Business Days after Rollingstock Configurations for a Train Service Type become Authorised Rollingstock Configuration for the Train Service Type, Aurizon Network must give the Operator a Train Route Acceptance or Authority to Travel (as applicable) for the Train Service Type.

1817 **Amendments to System Wide Requirements**

18.117.1 **Amendment Notice**

- (a) Aurizon Network may, acting reasonably, amend a System Wide Requirement by the issue of a notice (**Amendment Notice**) to the Operator:
 - (i) at any time to ensure the ongoing safe operation of the Nominated Network, provided it consults with the Operator before its implementation;
 - (ii) if required pursuant to a Material Change; or
 - (iii) in any other circumstance (**Discretionary System Amendment**), subject to:
 - (A) the Operator's agreement to such proposed amendment (such agreement not to be unreasonably withheld or delayed); or
 - (B) the other provisions of this **clause 17**.
- (b) An Amendment Notice must be reasonably in advance of the proposed implementation date for the proposed amendments and specify:
 - (i) such details of the proposed amendments as reasonably necessary to:
 - (A) properly inform the Operator of the terms of the proposed amendments; and

- (B) enable the Operator to assess the consequences for the Operator of the proposed amendments;
- (ii) whether the Amendment Notice is issued on the ground referred to in **clause 17.1(a)(i), 17.1(a)(ii) or 17.1(a)(iii)**; and
- (iii) details of the proposed implementation date for the proposed amendments.

18.217.2 Response to a Discretionary System Amendment

- (a) Within 20 Business Days (or such longer period as may be agreed between the Parties, such agreement not to be unreasonably withheld or delayed) after receiving an Amendment Notice in accordance with **clause 17.1(b)** which proposes a Discretionary System Amendment, the Operator must notify Aurizon Network whether:
 - (i) irrespective of any financial arrangements agreed or determined under **clause 17.4(c)**, the proposed amendments will materially impact the Operator's operations to such an extent as to fundamentally frustrate the Operator's operation of Train Services under this Deed over a sustained period of time; and/or
 - (ii) the Net Financial Effect on the Operator of the Discretionary System Amendment is equivalent to one percent or greater of the annual Access Charges payable by the Access Holder under the Access Agreement.

18.317.3 Discretionary System Amendment which frustrate operations

- (a) If the Operator notifies Aurizon Network under **clause 17.2(a)(i)**, Aurizon Network must, acting reasonably, assess the Operator's response and notify the Operator if it agrees or disagrees with the Operator's notice within 20 Business Days after receipt of that notice (or such longer period as may be agreed between the Parties).
- (b) If Aurizon Network agrees with the Operator's notice under **clause 17.2(a)(i)**, then Aurizon Network must:
 - (i) amend the proposed amendments to ensure that such amendments will not materially impact the Operator's operations to such an extent as to fundamentally frustrate the Operator's operation of Train Services under this Deed over a sustained period of time; and
 - (ii) within 5 Business Days of making the amendments under **clause 17.3(b)(i)** give the Operator a copy of its amendments to the proposed amendments.
- (c) If Aurizon Network disagrees with the Operator's notice under **17.2(a)(i)**, Aurizon Network may implement the proposed amendments from the later of:
 - (i) the date Aurizon Network notifies the Operator of its determination; and
 - (ii) if the Operator has notified Aurizon Network within the required timeframe under **clause 17.2(a)(ii)**, the date that the Parties comply with **clause 17.4**.

- (d) If the Operator disputes Aurizon Network's determination under **clause 17.3(b)**, then either Party may refer the dispute for determination by an Expert in accordance with **clause 29.3** and Aurizon Network must not implement the proposed amendments pending the Expert's determination.

18.417.4 Discretionary System Amendment with negative financial impact

- (a) If the Operator notifies Aurizon Network under **clause 17.2(a)(ii)**, the Operator must, within 20 Business Days after providing such notice (or such longer period as may be agreed between the Parties), provide to Aurizon Network details of such Net Financial Effect reasonably required by Aurizon Network to assess such Net Financial Effect, including estimates of any additional costs, savings, benefits or detriments to be obtained or suffered, or reasonably expected to be obtained or suffered, by the Operator as a direct result of Aurizon Network implementing the proposed amendments.
- (b) The Operator warrants that any estimates given by it under **clause 17.4(a)** are to its knowledge accurate on the basis of the information reasonably available to it.
- (c) Promptly after the Operator complies with **clause 17.4(a)**, the Parties must negotiate in good faith to seek to agree appropriate financial arrangements between them with respect to such Net Financial Effect and, failing agreement within a further 20 Business Days after the Operator provides the relevant details under **clause 17.4(a)**, either Party may refer the matter to an Expert in accordance with **clause 29.3** to determine an appropriate financial arrangement to compensate the Operator for the Net Financial Effect on the Operator of the Discretionary System Amendment. Aurizon Network must not implement the proposed amendments pending the Expert's determination.

18.517.5 Expert must have regard to certain matters

In making a determination referred to in **clause 17.3(d)** or **17.4(c)**, the Expert must have regard to, except in circumstances where consequences are otherwise provided under this Deed, the reasonable costs and benefits accruing to the Operator.

18.617.6 Costs of implementing amendments to a System Wide Requirement

- (a) The Operator must use all reasonable endeavours to minimise the Net Financial Effect on the Operator of any proposed amendments to a System Wide Requirement.
- (b) Despite **clause 17.4**, where any System Wide Requirement is varied to ensure the ongoing safe operation of the Network, each Party must fund its own costs of implementing the proposed amendments including the equipping of Rollingstock with new or additional equipment such as Signalling and Telecommunications Equipment or making any other modification to Rollingstock.
- (c) At any time before Aurizon Network implements any proposed amendments, Aurizon Network may elect not to proceed with the

proposed amendments provided it notifies the Operator within 1 Business Day of making such election.

- (d) The Parties must account to each other in respect of the contributions agreed or determined under **clause 17.4(c)** after completion of the implementation of the proposed amendments and subsequent modifications to the Operator's systems, equipment or Rollingstock as required by the amendments.

48.717.7 Implementation of amendments to System Wide Requirements

- (a) Where Aurizon Network implements the proposed amendments in accordance with this **clause 17**, the relevant System Wide Requirement will be altered as contemplated in the Amendment Notice following completion of the implementation of the proposed amendments.
- (b) The Parties must take all necessary action and make all necessary amendments to the IRMP, Environmental Management Plan, the Operating Plan and/or the Emergency Response Plan in response to the relevant amendments to the System Wide Requirements (including providing Aurizon Network with a further Certificate of Compliance where the Authorised Rollingstock or Rollingstock Configurations require modification as a result of a change to a System Wide Requirement).
- (c) Aurizon Network must allow a reasonable period for the Operator to amend its procedures and plans to comply with any such amended System Wide Requirement, except in the case of emergency circumstances for safety reasons where Aurizon Network may require immediate compliance.

49.18 Weighbridges and Overload Detectors

49.118.1 General

- (a) Where a Weighbridge or Overload Detector is located en route between an Origin and Destination for a Train Service Type:
 - (i) the Party responsible for that Weighbridge or Overload Detector (as specified in **item 5 of Schedule 3**) must use reasonable endeavours to ensure that such Weighbridge or Overload Detector is operational, calibrated and available to weigh Trains operated over such Weighbridge or Overload Detector; and
 - (ii) the Operator must use reasonable endeavours to operate its Trains over such Weighbridge or Overload Detector in a manner so that the Weighbridge or Overload Detector weighs the Operator's Trains.
- (b) Aurizon Network may vary at any time the numbers and locations of Weighbridges and Overload Detectors, subject to providing reasonable notice to the Operator.

49.218.2 Exceeding Maximum Allowable Gross Tonnage

- (a) The Operator must use reasonable endeavours to ensure that the gross mass of any Wagon or Train operated by it under this Deed does not exceed the relevant Maximum Allowable Gross Tonnage.

- (b) If any Wagon or Train operated by the Operator is determined by a Weighbridge or Overload Detector to be in excess of the relevant Maximum Allowable Gross Tonnage, then the Operator must reduce the gross mass to a level below the relevant Maximum Allowable Gross Tonnage:
 - (i) unless otherwise directed by Aurizon Network, if the Train has not entered the mainline, before the Train enters the mainline; and
 - (ii) if directed by Aurizon Network, at a specific siding or location directed by Aurizon Network.

19.318.3 Exceeding Maximum Desirable Gross Tonnage

If any Wagon or Train operated by the Operator is determined by a Weighbridge or Overload Detector to be in excess of the relevant Maximum Desirable Gross Tonnage, then Aurizon Network may impose any Operational Constraints which Aurizon Network considers to be reasonable in the circumstances.

19.418.4 Record keeping

Where the Operator's Trains or Wagons are weighed by a Weighbridge or Overload Detector, the Party responsible for the Weighbridge or Overload Detector as specified in **item 5 of Schedule 3** must use reasonable endeavours to ensure that:

- (a) if it is not the owner or operator of the Weighbridge or Overload Detector, it obtains all relevant records from the Weighbridge or Overload Detector including records of the gross mass of each loaded Wagon and Train;
- (b) whether or not it is the owner or operator of the Weighbridge or Overload Detector, it keeps a record of the gross mass of each loaded Wagon and Train;
- (c) the records referred to in **clauses 18.4(a)** and **18.4(b)** (as applicable) are provided to:
 - (i) the Party or other person loading the Trains; and
 - (ii) the other Party within 10 Business Days after the end of each Month.

19.518.5 Verification

- (a) If the Party that is not responsible for the Weighbridge or Overload Detector reasonably believes that any Weighbridge or Overload Detector may be inaccurate, that Party may by notice to the other Party require the other Party to procure the testing of the accuracy of such Weighbridge or Overload Detector.
- (b) As soon as reasonably practicable after being given a notice under **clause 18.5(a)**, the Party responsible for the Weighbridge or Overload Detector must use reasonable endeavours to procure a suitably qualified person to:
 - (i) test the calibration of the relevant Weighbridge or Overload Detector (as applicable); and
 - (ii) make any adjustments required to correct the calibration of the Weighbridge or Overload Detector (as applicable).

- (c) Subject to **clause 18.5(e)**, the relevant Weighbridge or Overload Detector (as applicable) is deemed to have malfunctioned from the date the notice is given under **clause 18.5(a)** until the testing referred to in **clause 18.5(b)** has been carried out and, if required, the Weighbridge or Overload Detector has been recalibrated. Until such testing has been carried out and the Weighbridge or Overload Detector has been recalibrated, the mass of the relevant Train or Wagon which would otherwise have been measured by that Weighbridge or Overload Detector is the Maximum Desirable Gross Tonnage for the Train or Wagon, as applicable.
- (d) Except in the case of manifest error or fraud, the determination of the person conducting the test in accordance with **clause 18.5(b)** is final and binding on the Parties.
- (e) Where the person conducting the test in accordance with **clause 18.5(b)** determines that the Weighbridge or the Overload Detector is measuring within the tolerances specified in **item 5 of Schedule 3**, the Weighbridge or the Overload Detector (as applicable) will be treated as having been measuring accurately from the date on which the relevant notice was given under **clause 18.5(a)**.
- (f) The cost of conducting the test and making adjustments in accordance with **clause 18.5(b)** must be borne by:
 - (i) the Party responsible for the Weighbridge or Overload Detector as specified in **item 5 of Schedule 3** if the Weighbridge or Overload Detector is determined to be not measuring within the tolerances specified in **item 5 of Schedule 3**; or
 - (ii) the Party giving notice under **clause 18.5(a)** if the Weighbridge or Overload Detector is determined to be measuring within the tolerances specified in **item 5 of Schedule 3** (and, to the extent that the Party responsible for the Weighbridge or Overload Detector has paid any costs of conducting the test, subject to **clause 8.4**, the Party giving the notice must reimburse the Party responsible for the Weighbridge or Overload Detector such reasonable costs of conducting the test).

19.618.6 **No Claim**

- (a) Despite any other provision in this Deed, neither Party (**first Party**) is liable to the other Party for any damage, loss, cost or expense that the other Party may suffer or incur as a result of the first Party, in good faith, acting on the basis of any mass determined in accordance with this Deed.
- (b) Despite any other provision in this Deed, neither Party has any Claim against the other Party as a result of, or arising from, any delay to or cancellation of Train Services as a result of the operation of this **clause 18**.

2019 Performance Levels

20.19.1 Consequences of failure to comply with Performance Levels

- (a) A failure by either Party to achieve the relevant Performance Level does not constitute a breach of this Deed and the only consequences of such failure as between the Parties are the consequences set out in this **clause 19**.

20.219.2 Review of Performance Levels

- (a) The Parties must, if requested by either Party, meet to review the Performance Levels subject to such review not occurring within six Months after the Commitment Date or any previous review of the Performance Levels.
- (b) If either Party notifies the other that it considers that the Performance Levels are no longer appropriate, the Parties must use reasonable endeavours to agree, but only with the written consent of the Access Holder, on varied Performance Levels and any associated variations to this Deed (including the applicable Train Descriptions).
- (c) If the Parties and the Access Holder are unable to agree to such variations then the existing Performance Levels will continue to apply unless varied by Aurizon Network in accordance with **clause 13.2(a)(iv)**.

2120 Infrastructure management

21.120.1 Management and control of the Nominated Network

Aurizon Network is responsible for the management of the Nominated Network and retains control over all activities on the Nominated Network.

21.220.2 Maintenance of the Nominated Network

- (a) Aurizon Network must carry out Maintenance Work on the Nominated Network such that, subject to any criteria or derogations for the Nominated Network specified in the IRMP and the Network Management Principles:
 - (i) the Infrastructure is consistent with the Rollingstock Interface Standards; and
 - (ii) the Operator can operate Train Services in accordance with their Scheduled Times.
- (b) Aurizon Network may impose (either temporarily or permanently) such Operational Constraints as it considers necessary, acting reasonably, for the protection of any person or any property (including the Infrastructure) or to facilitate the carrying out of Maintenance Work or Infrastructure Enhancements provided that, in exercising its rights under this **clause 20.2(b)**, Aurizon Network must:
 - (i) use its reasonable endeavours to minimise disruption to Train Services (including giving as much notice as possible and, where possible, providing alternative Scheduled Times having regard to the reasonable requirements of the Operator); and
 - (ii) comply with the relevant procedures specified in the Interface Coordination Arrangements.

- (c) The Operator must notify Aurizon Network as soon as is reasonably practicable of any damage to, or disrepair or failure in operation or function of, any part of the Infrastructure of which the Operator becomes aware.
- (d) The Operator must provide reasonable cooperation to Aurizon Network in relation to the timetabling of Planned Possessions provided that any such Planned Possessions are consistent with the Network Management Principles and implemented in accordance with the Possession Protocols.
- (e) Subject to the Possession Protocols, Aurizon Network must use its reasonable endeavours to carry out:
 - (i) Emergency Possessions within seven days after the detection of the fault giving rise to the need for the Emergency Possession; and
 - (ii) Urgent Possessions within between seven days and three Months after the detection of the fault giving rise to the need for the Urgent Possession.

22.21 Incident management

22.21.1 Compliance

- (a) If requested by Aurizon Network from time to time, the Operator must demonstrate to Aurizon Network's reasonable satisfaction that:
 - (i) procedures are in place which ensure compliance by the Operator with any reporting requirements in the Emergency Response Plan and, to the extent relevant, the Emergency Procedures; and
 - (ii) the Operator is complying with such procedures and reporting requirements.
- (b) The Operator must ensure that, at all times:
 - (i) sufficient members of the Operator's Staff are appropriately qualified to participate in Investigations; and
 - (ii) the names and positions of those members of the Operator's Staff are maintained in the Emergency Response Plan.

22.21.2 Obstructions

- (a) Unless permitted under this Deed or authorised by Aurizon Network, the Operator must not cause any Obstruction or permit any Obstruction caused by the Operator to continue.

22.21.3 Notification

- (a) The Operator must notify the Train Controller as soon as reasonably practicable after the Operator or the Operator's Staff discover or become aware of:
 - (i) any Obstruction (including all Incidents) or any breach or suspected breach of Safeworking Procedures;
 - (ii) anything which the Operator or the Operator's Staff observe which may reasonably be considered to cause or contribute to the occurrence of an Incident or Obstruction; or
 - (iii) any harm to the Environment caused or contributed to by the

Operator's operation of Train Services on the Nominated Network, which the Operator knows would result in a breach by Aurizon Network of the terms of any environmental authority it holds in connection with the Nominated Network.

- (b) Aurizon Network must notify the Operator of all Incidents involving the Operator's Rollingstock.

22.421.4 Management of Incident response

- (a) Aurizon Network is responsible for the overall coordination and management of the response to an Incident (including notifying all relevant emergency services) so that Restoration and Recovery are effected as soon as practicable.
- (b) If an Incident occurs
 - (i) the Operator:
 - (A) is, subject to **clause 21.4(c)**, responsible for effecting Recovery and Retrieval;
 - (B) must:
 - (1) make arrangements to effect Recovery and Retrieval within three hours after the Incident occurred;
 - (2) cooperate with and assist Aurizon Network in Restoration;
 - (3) effect timely Recovery and Retrieval within 12 hours after the Incident occurred (or within such other period as the Parties may agree) in accordance with the Emergency Response Plan;
 - (4) as soon as reasonably practicable, notify Aurizon Network;
 - (5) take action as soon as reasonably practicable in respect of an Incident to prevent or minimise injury to any person or damage to any property (including harm to the Environment) where there is an imminent risk of such injury or damage, but otherwise take no action without the prior approval of Aurizon Network (not to be unreasonably withheld); and
 - (6) comply with the directions of Aurizon Network in respect of the coordination and management of Recovery, Retrieval and Restoration.
- (c) If an Incident occurs and Aurizon Network reasonably believes that it will be able to effect Recovery more quickly than the Operator, then Aurizon Network may, subject to using reasonable efforts to consult with the Operator:
 - (i) take such action as is reasonably necessary (including the use of a Railway Operator's Rollingstock to clear the Operator's Rollingstock) to effect Recovery; and
 - (ii) recover such reasonable costs incurred by Aurizon Network in

doing so. Subject to **clause 8.4**, the Operator must, within 10 Business Days after receiving such demand, pay to Aurizon Network such reasonable costs incurred by Aurizon Network.

- (d) Subject to **clause 21.4(e)**, each Party must use all reasonable endeavours to ensure that any property damage, actual or potential harm to the Environment or delays to the recommencement of Train Movements arising from Restoration or Recovery are minimised.
- (e) Aurizon Network may, subject to Aurizon Network using its best efforts to first consult with the Operator about such action, take such action (including to give directions to the Operator and the Operator's Staff and to remove or require the Operator to remove any of its Rollingstock from the Nominated Network) as Aurizon Network considers reasonably necessary to recommence Train Movements as soon as practicable and, subject to **clause 21.4(k)(i)**, Aurizon Network will not be liable for any damage to or loss of freight or Rollingstock caused by such action.
- (f) Where:
 - (i) Aurizon Network seeks to remove, or require the Operator to remove, any Relevant Rollingstock from the Nominated Network under **clause 21.4(e)**; and
 - (ii) such removal would reasonably be expected to cause material damage to or materially increase the damage to the Relevant Rollingstock,

then Aurizon Network and the Operator must:

- (iii) use reasonable endeavours to consult and agree on the removal of the Relevant Rollingstock as soon as reasonably practicable and, in any event, within six hours after the occurrence of the Incident or such longer period as the Parties may agree; and
 - (iv) if the Parties do not consult or reach agreement within the period referred to in **clause 21.4(f)(iii)**, then the Parties must refer the decision to their representatives with authority to make the necessary decisions who must in good faith seek to agree a course of action within two hours of the referral to them or such longer period as the Parties may agree.
- (g) If Aurizon Network's and the Operator's representatives with authority to make the necessary decisions do not consult or do not agree within the specified period in **clause 21.4(f)(iv)**, then Aurizon Network must refer its proposed course of action with respect to the removal of the Relevant Rollingstock to an Expert who must determine in accordance with **clause 29.3** whether or not, having regard to:
- (i) the potential to further damage the Relevant Rollingstock or cause damage to any property (including harm to the Environment);
 - (ii) the impact on Aurizon Network's ability to effect Restoration; and
 - (iii) the time critical nature of the decision,
- the course of action proposed by Aurizon Network is reasonable.

- (h) Following completion of the process set out in **clauses 21.4(f) and 21.4(g)** (as applicable), Aurizon Network may progress with the proposed course of action unless the Expert determines that Aurizon Network's proposed course of action is not reasonable.
- (i) Aurizon Network may, where it is reasonable and practicable in the circumstances to do so, issue a Train Control Direction to the Operator to provide assistance with clearing any Network Incident including providing Rollingstock, where appropriate, for use by or under the direction of Aurizon Network and undertaking any variation in the operation of a Train Service (including coupling its Rollingstock with Rollingstock of Aurizon Network or another Railway Operator). The Operator must comply with any such Train Control Direction. The Operator may recover from Aurizon Network such reasonable costs incurred in complying with this **clause 21.4(i)** as agreed or, failing agreement within 20 Business Days after notice by the Operator to Aurizon Network, as determined by an Expert in accordance with **clause 29.3**.
- (j) The assessment of the costs to be recovered under **clause 21.4(c)** or **clause 21.4(i)** for the use of Rollingstock must have regard to any industry or other agreement covering such costs and any payments facilitated by such agreement.
- (k) Except as otherwise provided in this Deed, Aurizon Network is not liable to the Operator and the Operator must not make any Claim against Aurizon Network, Aurizon Network's director and/or Aurizon Network's Staff for:
 - (i) any damage to or loss of freight or Rollingstock caused by a course of action permitted in accordance with **clause 21.4(e)**, except to the extent:
 - (A) such damage or loss is caused by the negligent act or omission or wilful default or misconduct of Aurizon Network or Aurizon Network's Staff; or
 - (B) the Expert determines that Aurizon Network's course of action is not reasonable; and
 - (ii) any delays, cancellation of Train Services or Claims suffered or incurred by, or made or brought by or against, the Operator as a result of complying with a request by Aurizon Network pursuant to **clause 21.4(i)**.
- (l) The Operator is solely liable for, and releases, indemnifies and will keep indemnified Aurizon Network and its directors and Aurizon Network's Staff against all Claims of any nature suffered or incurred by, or made or brought against, Aurizon Network, its directors or Aurizon Network's Staff in respect of any course of action permitted in accordance with **clause 21.4(h)**.

22.5 **21.5** **Investigations**

- (a) If an Incident occurs, an Investigation into the Incident must be:
 - (i) commenced as soon as practicable unless otherwise agreed between the Parties; and
 - (ii) conducted in accordance with the Investigation Procedures.

- (b) Each Party must cooperate, and ensure that Aurizon Network's Staff or the Operator's Staff (as applicable) cooperate, fully with any Investigation.
- (c) The Parties must consult in good faith in relation to the implementation of any recommendations arising from an Investigation in accordance with the Investigation Procedures.

22.621.6 Management of Environmental Incidents

- (a) If:
 - (i) the Operator's Activities in connection with this Deed have caused or contributed to an actual or potential Environmental Incident and Aurizon Network reasonably considers that action is required to prevent, mitigate or remedy that Environmental Incident; or
 - (ii) Aurizon Network is given a direction, notice or order by an Environmental Regulator that some action is required to prevent, mitigate or remedy any actual or potential Environmental Incident caused or contributed to, or likely to be caused or contributed to, by the Operator's Activities in connection with this Deed,then:
 - (iii) Aurizon Network may notify the Operator of the actions which are required; and
 - (iv) the Operator must, at its cost and as soon as reasonably practicable after receiving such notice from Aurizon Network, ensure such actions are implemented.
- (b) If **clause 21.6(a)(ii)** applies, a notice given under **clause 21.6(a)(iii)** must be accompanied by a copy of the direction, notice or order given by the Environmental Regulator (if given in writing) provided that Aurizon Network can redact from the copy of the document any information which relates to the Activities of a person other than the Operator or Aurizon Network.
- (c) If any actions which Aurizon Network could require the Operator to implement under **clause 21.6(a)** ought best be undertaken by Aurizon Network, then Aurizon Network may elect to undertake such actions and the Operator must pay to Aurizon Network the reasonable costs and expenses incurred by Aurizon Network in doing so.
- (d) If the Operator disputes any actions taken by Aurizon Network under this **clause 21.6**, either Party may refer the dispute to an Expert in accordance with **clause 29.3** and if the Expert determines the dispute in favour of the Operator, then Aurizon Network must reimburse the Operator for the costs incurred by the Operator as a result of the actions implemented by the Operator at Aurizon Network's request (or, if applicable, Aurizon Network must bear the costs and expenses incurred by Aurizon Network in accordance with **clause 21.6(b)** and is not entitled to recover those costs from the Operator) to the extent determined by the Expert.

22.721.7 Environmental Incident reporting

- (a) The Operator must notify:

- (i) Aurizon Network as soon as reasonably practicable after becoming aware of the occurrence of an Environmental Incident occurring on the Nominated Network caused, or contributed to, by the Operator.
- (ii) all relevant Environmental Regulators of the occurrence of any Environmental Incident which is caused, or contributed to, by the Operator in accordance with the Operator's obligations under Environmental Laws.
- (b) Aurizon Network may report the occurrence of the Environmental Incident to any relevant Environmental Regulator provided it first consults with the Operator about the proposed content of any such report.
- (c) In the event that an Environment Regulator requires information, or undertakes an investigation, in relation to an Environmental Incident, the Operator and Aurizon Network must cooperate with the Environmental Regulator and provide appropriate resources to comply with any lawful requirements of the Environmental Regulator in relation to the Environmental Incident.

23.22 Operator's staff

23.122.1 Safety of Operator's Staff

The Operator is fully responsible and liable for the health and safety of the Operator's Staff and the personal property of the Operator's Staff, and, subject to **clause 26**, indemnifies and releases Aurizon Network to the extent permitted by Law from any liability in relation to the Operator's Staff except to the extent that such liability is caused or contributed to by the breach of this Deed by Aurizon Network or any negligent act or omission of Aurizon Network or Aurizon Network's Staff.

23.222.2 Qualifications of Operator's Staff

The Operator must:

- (a) ensure that:
 - (i) all risks associated with Safety Related Work (including the competence of all Operator's Staff to safely and properly discharge their duties related to the exercise of the Operator's rights or performance of its obligations under this Deed) are addressed in the Interface Risk Assessment;
 - (ii) all Operator's Staff:
 - (A) hold and keep current all qualifications and accreditations required under any Law and as specified in the IRMP; and
 - (B) undertake any additional training from time to time in order to keep current such qualifications and accreditations;
- (b) meet all costs of any training and/or testing required to meet the requirements of this **clause 22.2**; and
- (c) keep Aurizon Network advised of any Required Information in relation to all of the Operator's Staff engaged in Safety Related Work on the Nominated Network and ensure that all Safety Related Work is performed only by those Operator's Staff whose details have been provided to

Aurizon Network in accordance with this **clause 22.2** and who satisfy the requirements of this **clause 22.2**.

23.322.3 Entry onto Aurizon Network Land

The Operator must ensure that the Operator's Staff do not enter upon the Aurizon Network Land in a manner inconsistent with the Interface Coordination Arrangements, the IRMP or the Emergency Response Plan without the prior written approval of Aurizon Network and that, in the event such approval is given, the relevant Operator's Staff comply with all conditions of the approval and hold the necessary qualifications and accreditations.

24.23 Interface and environmental risk management

24.123.1 Compliance with Interface Risk Management Plan

Each Party must advise the other Party of any failure to comply with the IRMP as soon as reasonably practicable after the Party becomes aware of such non-compliance, including details of the nature of the non-compliance and how the Party has rectified or intends to rectify the non-compliance.

24.223.2 Environmental consultant

The Parties must, at the Operator's cost (unless otherwise agreed between the Parties), engage suitably qualified persons (reasonably acceptable to both Parties) to undertake any specialist assessments required for the purpose of identifying and assessing Environmental Risks as part of an Interface Risk Assessment.

24.323.3 Interface representative

- (a) Prior to the commencement of any Train Services, each Party must nominate one or more appropriately qualified representatives (by identifying the name, title, experience (including length of experience) and qualifications of each representative) (**Interface Representative**) who is or are (as applicable) to be responsible for:
 - (i) making decisions in relation to interface and environmental issues that arise in connection with this Deed;
 - (ii) liaising and cooperating with representatives of the other Party on those interface and environmental issues; and
 - (iii) meeting with representatives of the other Party at locations, times and by means (including in person) specified by Aurizon Network from time to time.
- (b) Each Party must ensure that any representative it nominates under this **clause 23.3** is available to efficiently and effectively perform the responsibilities of the Interface Representative specified in **clause 23.3(a)** and that it has nominated an Interface Representative under this **clause 23.3** at all times during the Term.

24.423.4 Operator's Safety Management System

The Operator must develop, implement and maintain a safety management system (**Operator's Safety Management System**) which must specify (as a minimum):

- (a) the Interface Risks identified in the IRMP from time to time and the measures for managing those Interface Risks specified in the IRMP from time to time which the Operator is responsible for implementing, complying with, ensuring compliance with and/or ensuring the ongoing effectiveness of; and
- (b) processes for ensuring that the Operator, its Rollingstock, Rollingstock Configurations and Train Services at all times comply with the requirements of this Deed, including the IRMP from time to time.

24.523.5 Aurizon Network's Safety Management System

Before the commencement of any Train Services, Aurizon Network must incorporate into its safety management system any measures for managing Interface Risks specified in the IRMP from time to time which Aurizon Network is responsible for implementing, complying with, ensuring compliance with and/or ensuring the ongoing effectiveness of.

24.623.6 Aurizon Network's environmental management system

Before the commencement of any Train Services, Aurizon Network must incorporate into its environmental management system any measures for managing Environmental Risks specified in the IRMP from time to time which Aurizon Network is responsible for implementing, complying with, ensuring compliance with and/or ensuring the ongoing effectiveness of.

24.723.7 Carriage of Dangerous Goods on Train Services

- (a) If Dangerous Goods are to be carried on a Train Service, the Operator must ensure that:
 - (i) all requirements of the Dangerous Goods Code in relation to the Train Service are fully complied with (including placement of relevant, accurate and current documentation on Trains);
 - (ii) Aurizon Network is advised of the details of the Dangerous Goods (including a description of them and the applicable Dangerous Goods United Nations (UN) Number) as part of the Train List before the operation of the Train Service; and
 - (iii) any authorisation or prior approvals required under the Dangerous Goods Code in relation to the Train Service have been obtained and are available for inspection by Aurizon Network (if requested).
- (b) Before any Dangerous Goods can be carried on a Train Service, the Operator must ensure that the Emergency Response Plan prepared in accordance with **clause 14.1(a)(i)(B)** includes procedures for responding to an Incident involving Dangerous Goods of the type to be carried on the Train Service.

24.823.8 Noise management during Train Services

- (a) In addition to any noise attenuation or noise management measures which may form part of or be identified in the IRMP or the Environmental Management Plan, the Operator must contribute to the reasonable costs, as reasonably determined by Aurizon Network, incurred by Aurizon Network in undertaking reasonable noise abatement measures on or adjacent to the Nominated Network where the Noise Levels are (or, but

for the taking of these measures by Aurizon Network, would be) exceeded during the Term.

- (b) If, during the Term, the Noise Levels are varied (reduced) such that noise from the Nominated Network exceeds the reduced Noise Levels, then Aurizon Network may elect, acting reasonably, to implement reasonable noise abatement measures on the Nominated Network to ensure compliance with the reduced Noise Levels. The Operator must contribute to Aurizon Network's reasonable costs of those noise abatement measures as reasonably determined by Aurizon Network.
- (c) If the Operator disputes any determination made by Aurizon Network under this **clause 23.8** regarding the contribution of costs, then the Operator may refer that dispute to an Expert for determination in accordance with **clause 29.3**.

~~24.9~~23.9 **Community liaison and environmental complaint procedures**

- (a) Before the commencement of any Train Services the Operator must take all steps necessary to comply with all relevant community liaison requirements required by Law, any Authority or reasonably required by Aurizon Network.
- (b) The Operator must invite Aurizon Network to be represented at any community meetings related to the operation of the Train Services under this Deed organised by the Operator.
- (c) If Aurizon Network or the Operator receives noise complaints or other complaints dealing with Environmental issues in relation to the Nominated Network, then both Aurizon Network and the Operator must:
 - (i) inform each other of those complaints as soon as reasonably practicable; and
 - (ii) cooperate in investigating and responding to those complaints.

~~24.10~~23.10 **Audit and review**

- (a) The Operator must, if requested by Aurizon Network, promptly provide to Aurizon Network copies of those parts of any environmental audits undertaken by or on behalf of the Operator in respect of its Train Services operated on the Nominated Network.
- (b) Aurizon Network must provide the Operator with copies of those parts of Aurizon Network's environmental audits that are relevant to the operation of the Operator's Train Services operated on the Nominated Network.
- (c) Without limiting **clause 14.2**, if Aurizon Network becomes aware of any inadequacy of the IRMP or the Operator's Environmental Management Plan due to:
 - (i) any change in Environmental Laws of relevance to the operation of Train Services on the Nominated Network; or
 - (ii) any Activities of the Operator in connection with this Deed which cause or contribute to, or are to likely cause or contribute to, an Environmental Incident,

then Aurizon Network can give the Operator a notice under **clause 14.2** notifying the Operator that it requests that the IRMP be reviewed.

~~24.11~~23.11 **Notification**

- (a) The Operator must notify Aurizon Network of any failure by the Operator to comply with the Environmental Management Plan or its obligations under any Safety Law or Environmental Law which are directly relevant to the Operator's Activities under this Deed as soon as reasonably practicable after the Operator becomes aware of such failure and provide details of how it intends to address the non-compliance.
- (b) Without limiting any other provisions of this Deed, the Operator must remedy such non-compliance as soon as reasonably practicable having regard to, without limitation, the nature of the non-compliance and any action required by any Safety Regulator or any Environmental Regulator.
- (c) The Operator must comply with all notices given by Aurizon Network requiring the Operator to cease conduct which is causing or threatening to cause:
 - (i) a risk to the safety of persons or property; or
 - (ii) harm to the Environment.
- (d) A Party must promptly provide to the other Party any notices, directions or orders relating to the operation of Train Services under this Deed that it receives from any Safety Regulator or Environmental Regulator.
- (e) Aurizon Network must notify the Operator of any changes to any Environmental Authorities held by Aurizon Network or variations to any other environmental information provided by Aurizon Network to the Operator relevant to the operation of Train Services.

~~25~~24 **Inspection and audit rights**

~~25.1~~24.1 **Right of inspection by Operator**

- (a) Subject to **clause 24.1(b)**, the Operator may, before the initial commencement of Train Services for any Train Service Type, at its cost and risk, inspect the Infrastructure comprising the Nominated Network, including fencing and level crossing protection, in order to satisfy itself as to the standard of the Infrastructure and assess the operational, environmental and safety risks associated with the operation of Train Services on the Nominated Network.
- (b) Any inspection by the Operator under **clause 24.1(a)**:
 - (i) is subject to:
 - (A) the Operator providing reasonable notice to Aurizon Network of its requirement to inspect the Infrastructure and conducting that inspection at reasonable times;
 - (B) any such inspection being conducted in the presence of a representative of Aurizon Network; and
 - (C) such other reasonable conditions as may be imposed by Aurizon Network on such inspection, including compliance

- with any Safeworking Procedures and Safety Standards; and
- (ii) must be conducted by the Operator in a manner which does not cause any disruption to any Train Movements or to the carrying out of Maintenance Work or Infrastructure Enhancements.

25.224.2 Right of inspection of Trains and Rollingstock by Aurizon Network

- (a) If Aurizon Network reasonably believes that Rollingstock or Rollingstock Configurations for a Train Service Type used in the operation of Train Services do not comply with:
 - (i) the Authorised Rollingstock or the Authorised Rollingstock Configurations for the Train Service Type;
 - (ii) the Rollingstock Interface Standards (subject to any Approved Derogations);
 - (iii) the IRMP; or
 - (iv) any applicable Laws relevant to the Operator's Train Services, and Aurizon Network cannot otherwise reasonably determine whether this is the case, then Aurizon Network may inspect any Trains or Rollingstock which is utilised, or intended to be utilised, in the operation of Train Services, or require the Operator to have an inspection conducted, and for this purpose Aurizon Network or Aurizon Network's Staff will be entitled at any time to enter and ride on the Operator's Trains or Rollingstock.
- (b) Subject to Aurizon Network notifying the Operator, if required, under **clause 24.2(a)**, Aurizon Network may require any of the Operator's Rollingstock (either loaded or empty) to be available at such location as Aurizon Network may reasonably require, including locations on the Infrastructure but not on the Nominated Network, for weighing, measurement or other inspection at any reasonable time specified by Aurizon Network. The Operator must comply with any of Aurizon Network's requirements under this **clause 24.2(b)**.
- (c) Any inspection by Aurizon Network under **clause 24.2(b)** is subject to:
 - (i) Aurizon Network providing reasonable notice to the Operator of its requirement to inspect the Rollingstock and conducting that inspection at reasonable times; and
 - (ii) any such inspection being conducted in the presence of a representative of the Operator.
- (d) Despite **clause 18**, if any of the Operator's Rollingstock is loaded in excess of the limits specified in an Authority to Travel or a Train Route Acceptance or reasonably considered by Aurizon Network to be loaded in an unsafe or insecure manner, then Aurizon Network may at any time:
 - (i) require the Operator to discontinue the Train Service until such time that the Rollingstock is loaded in accordance with this Deed and Aurizon Network gives the Operator a Train Control Direction authorising it to recommence the operation of the Train Service; and/or

- (ii) after notifying the Operator, require the Operator to remove the excess or adjust the load at the Operator's expense.
- (e) If the Operator fails to remove the excess or adjust the load as soon as reasonably practicable after Aurizon Network notifies the Operator under **clause 24.2(d)(ii)**, then Aurizon Network may arrange for its removal or adjustment and the Operator must, within 10 Business Days after receiving such demand, reimburse to Aurizon Network all reasonable costs incurred by Aurizon Network. The Operator must comply with any of Aurizon Network's requirements under this **clause 24.2(e)**.

25.324.3 Parties' obligations

An inspection or audit by a Party under this Deed does not relieve the other Party of its obligations under this Deed or at Law.

2625 Insurance by Operator

26.125.1 Maintain insurance policies

Before the commencement of Train Services under this Deed, the Operator must, at its expense, take out and subsequently maintain current at all times during the Term insurance with a corporation (as defined in the Corporations Act) licensed to conduct insurance business in Australia (or otherwise reasonably acceptable to Aurizon Network) those policies of insurance required by this Deed.

26.225.2 Required insurance policies

The Operator must effect and maintain insurance for the risks and on the terms specified in **schedule 7**.

26.325.3 Disclosure of insurance policies

The Operator must provide to Aurizon Network evidence of the insurance policies effected and maintained pursuant to this **clause 25** (including evidence that the cover provided under those insurance policies complies with this **clause 25** and of the currency of those insurance policies) to Aurizon Network's reasonable satisfaction:

- (a) at least 10 Business Days before the commencement of Train Services under this Deed;
- (b) within 10 Business Days after renewal of each insurance policy during the Term; and
- (c) within 10 Business Days after being requested to do so in writing by Aurizon Network.

26.425.4 Failure to disclose insurance policies

Without prejudice to Aurizon Network's other rights and remedies in respect of such default, if the Operator, whenever required to do so under this Deed, fails to produce to Aurizon Network evidence to the reasonable satisfaction of Aurizon Network of insurances that have been effected or maintained by it and does not remedy that default within 10 Business Days after Aurizon Network gives notice to the Operator requiring that default to be remedied, Aurizon Network may effect and maintain the insurance and pay the premiums and any amount so paid will be a debt due from the Operator to Aurizon Network.

26.525.5 Minimum terms of policies

Each of the policies of insurance effected in accordance with this Deed must, to the extent permitted by Law:

- (a) note the interests of the Operator, any contractor of the Operator engaged by the Operator in relation to the performance of the Operator's obligations under this Deed and Aurizon Network;
- (b) not contain any exclusions, endorsements or alterations to the accepted policy wording that adversely amends the cover provided without the written consent of Aurizon Network (not to be unreasonably withheld or delayed); and
- (c) include the terms and be for the amounts referred to in **schedule 7**.

26.625.6 Operator not to render policy void

The Operator must not render any of the insurances effected in accordance with this **clause 25** void or voidable or liable to refusal of any claim.

26.725.7 Compliance

The Operator must at all times comply with the terms and conditions of all insurance policies effected pursuant to this **clause 25**.

26.825.8 Notice of potential claims

In addition to any other obligation on the Operator under this Deed, the Operator must:

- (a) notify Aurizon Network as soon as practicable after the making of any Claim under any insurance policy required by this Deed;
- (b) notify Aurizon Network of the Claim in reasonable detail; and
- (c) keep Aurizon Network informed of subsequent developments concerning any Claim,

to the extent that such Claim is in connection with this Deed.

26.925.9 Operator to pay all excess/eductibles

- (a) The Operator must in respect of any Claims by it or any other insured for which it is responsible, pay and bear all excesses/deductibles provided for in any insurances effected in accordance with this **clause 25**.
- (b) If the Operator fails to pay any excesses/deductibles provided for in any insurances effected in accordance with this **clause 25**, Aurizon Network may pay the relevant excesses/deductibles and any amount so paid will be a debt due from the Operator to Aurizon Network.

26.1025.10 Settlement of claims

If:

- (a) Aurizon Network makes a Claim against the Operator for damage to the Infrastructure;
- (b) the Claim is in respect of the same matter as the Operator claims under a policy required by this Deed for damage to Infrastructure; and
- (c) the Operator has not disputed Aurizon Network's Claim,

then upon settlement of the Operator's claim, under such policy, the portion of monies owed by the Operator to Aurizon Network must be paid to Aurizon Network from the monies received by the Operator under the policy against which the Operator made a claim.

27.26 Indemnities

27.426.1 Indemnity for personal injury and property damage

Subject to **clause 27**, each Party is solely liable for, and releases, indemnifies and will keep indemnified the other Party, its directors and Staff against, all Claims of any nature suffered or incurred by, or made or brought against, the other Party, its directors or Staff in respect of:

- (a) any loss of, damage to or destruction of property (including property of the other Party); or
- (b) personal injury to or death of any person,

in each case caused by or contributed to (to the extent of the contribution) by:

- (c) any breach of this Deed by the Party; or
- (d) any negligent act or omission of, the Party or the Party's Staff in connection with this Deed.

27.226.2 Indemnity by Operator for certain liabilities to Third Parties

Subject to **clause 27**, the Operator is solely liable for, and releases, indemnifies and must keep indemnified Aurizon Network, Aurizon Network's directors and Aurizon Network's Staff against, all Claims of any nature made or brought against, Aurizon Network, Aurizon Network's directors or Aurizon Network's Staff by a Third Party in respect of:

- (a) any loss of, damage to or destruction of real or personal property; or
- (b) personal injury to or death of any person,

where such person or property is being transported on a Train Service except to the extent that such damage, loss, injury or death is caused by or contributed to (to the extent of the contribution) by:

- (c) any breach of this Deed by Aurizon Network; or
- (d) any negligent act or omission of Aurizon Network or Aurizon Network's Staff.

27.326.3 Duty to mitigate

Each Party must use all reasonable endeavours to mitigate the damage, loss, cost, liability or expense in respect of which an indemnity in this Deed applies.

27.426.4 General provisions regarding indemnities

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the Parties and survives the expiry or termination of this Deed.
- (b) It is not necessary for a Party to incur expense or make a payment before enforcing any indemnity in this Deed.

28.27 Limitations and exclusions of liability

28.127.1 Exclusion of Consequential Loss

Except as expressly provided otherwise in **clause 31.6(c)** or the Interface Risk Provisions which form part of this Deed under **clause 3**, neither Party is liable to the other under or in connection with this Deed (including under an indemnity) for any Consequential Loss however caused (including any breach of this Deed or negligent act or omission of a Party).

28.227.2 Time limit and minimum threshold on Claims

Neither Party (**first Party**) is liable for, and the other Party must not make any Claim against the first Party under or in connection with this Deed unless:

- (a) notice of the Claim has been given to the first Party within 12 Months after the other Party becomes aware of the occurrence of the event or circumstance giving rise to the Claim; and
- (b) the amount of the Claim exceeds \$100,000 in respect of any one event or cause of action or series of related events or causes of action, provided that if this condition is satisfied then the other Party may proceed for the full amount of the Claim and not only the amount in excess of \$100,000.

28.327.3 Claims and exclusions in respect of Infrastructure standard

Despite any other provision of this Deed, Aurizon Network, its directors and Aurizon Network's Staff are not liable to the Operator for any Claim, and the Operator must not make any Claim against Aurizon Network, its directors and/or Aurizon Network's Staff, in respect of any:

- (a) loss of or damage to real or personal property, including property of the Operator;
- (b) personal injury to or death of any person; or
- (c) any other damage, expense, injury, cost or loss whatsoever,

arising out of or in connection with the standard of the Infrastructure or any failure of or defect in the Infrastructure, except to the extent that such loss, damage, injury or death, cost or expense results directly from the failure of Aurizon Network to perform its obligations under **clause 20.2(a)** or Aurizon Network's negligence in performing those obligations.

28.427.4 Claims and exclusions in respect of non-provision of Operational Rights

- (a) Subject to **clause 27.4(b)(i)** only and despite any other provision of this Deed, Aurizon Network, its directors and Aurizon Network's Staff are not liable to the Operator for any Claim, and the Operator must not make any Claim against Aurizon Network, Aurizon Network's directors and/or Aurizon Network's Staff, in respect of any failure by Aurizon Network to provide the Operational Rights by making the Infrastructure available for the Operator to operate a Train Service at the Scheduled Time in the Train Schedule.
- (b) Aurizon Network is liable to the Operator in respect of any failure by Aurizon Network to provide the Operational Rights by making the Infrastructure available to enable the Operator to operate a Train Service

at the Scheduled Time in the Train Schedule if (and then only to the extent that):

- (i) Aurizon Network did not reschedule the relevant Train Service in accordance with **clause 15.2** or **15.3** if required to do so under **clause 15.2** or **15.3**; and
- (ii) the failure by Aurizon Network to make the Infrastructure available was caused by or was the result of an Operational Constraint, that Operational Constraint resulted from a breach of this Deed by Aurizon Network or the negligence of Aurizon Network; and
- (iii) the failure by Aurizon Network to make the Infrastructure available was not permitted under the Access Agreement or this Deed or was attributable to a breach of this Deed by, or negligent act or omission of, Aurizon Network; and
- (iv) the failure by Aurizon Network to make the Infrastructure available was not attributable to:
 - (A) the Operator or the Operator's Staff;
 - (B) the Access Holder or the Access Holder's Staff;
 - (C) another Railway Operator (other than Aurizon Network) or any employees, contractors, volunteers or agents of another Railway Operator (other than Aurizon Network);
 - (D) a Force Majeure Event;
 - (E) Major Periodic Maintenance of, or Infrastructure Enhancements to, the Infrastructure scheduled in a manner consistent with the Network Management Principles;
 - (F) the circumstances described in clause 21.4(b)(iv)(F) of the Access Agreement existing;
 - (G) a breach of an Infrastructure Lease by an Infrastructure Lessor or any negligent act or omission of an Infrastructure Lessor; or
 - (H) any action taken by Aurizon Network, acting reasonably, in response to an emergency or a genuine safety risk; and
- (v) either:
 - (A) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of **clause 19** and the total number of Train Services (expressed as a percentage) cancelled in a Billing Period as a result of a failure by Aurizon Network to make the Infrastructure available (other than any failure by Aurizon Network to make the Infrastructure available which is attributable to an event or circumstance specified in **clauses 27.4(b)(iv)(A)** to **27.4(b)(iv)(H)**) exceeds five percent of the total number of Train Services scheduled in the Daily Train Plan for that Billing Period; or
 - (B) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of

clause 19, but the failure to make the Infrastructure available is of a magnitude which is beyond the scope of that performance and adjustment regime.

28-527.5 **Claims and exclusions in respect of delays to Train Movements**

Despite any other provision of this Deed, a Party (**Defaulting Party**) is not liable to the other Party (**Affected Party**) for any Claim, and the Affected Party must not make any Claim against the Defaulting Party, in respect of delays to Train Movements unless (and then only to the extent that):

- (a) the delay was a result of a breach of this Deed by the Defaulting Party, or negligent act or omission on the part of the Defaulting Party; and
- (b) if the delay was caused by or the result of an Operational Constraint:
 - (i) where Aurizon Network is the Affected Party, the Operational Constraint resulted from a breach of this Deed by the Operator; or
 - (ii) where the Operator is the Affected Party, the Operational Constraint was not permitted under the Access Agreement or this Deed or resulted from a breach of this Deed by, or negligent act or omission of, Aurizon Network; and
- (c) the delay is not attributable to:
 - (i) the Affected Party or where the Affected Party is:
 - (A) Aurizon Network - Aurizon Network's Staff; or
 - (B) the Operator - the Operator's Staff, the Access Holder or the Access Holder's Staff;
 - (ii) another Railway Operator (other than the Defaulting Party) or any employees, contractors, volunteers or agents of another Railway Operator (other than the Defaulting Party);
 - (iii) a Force Majeure Event;
 - (iv) Major Periodic Maintenance of, or Infrastructure Enhancements to, the Infrastructure scheduled in a manner consistent with the Network Management Principles;
 - (v) a breach of an Infrastructure Lease by an Infrastructure Lessor or any negligent act or omission of an Infrastructure Lessor; or
 - (vi) any action taken by Aurizon Network, acting reasonably, in response to an emergency or a genuine safety risk; and
- (d) either:
 - (i) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of **clause 19**; or
 - (ii) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of **clause 19**, but the delays are of a magnitude which is beyond the scope of that performance and adjustment regime.

28.627.6 Defence of Claims by Third Parties

- (a) Each Party must provide such reasonable assistance as requested by the other Party in the defence of any Claim made against the other Party by a Third Party arising out of any Incident or other event giving rise to the Claim.
- (b) The Party that requested assistance under **clause 27.6(a)** must, within five Business Days after a demand is made, pay to the other Party any costs and expenses reasonably incurred by the other Party in providing the assistance requested under **clause 27.6(a)**.

29.28 Determination of liability and loss adjustment

29.128.1 Determination of liability

In the event of an Incident involving the Operator or any other event which results or could result in a Claim by or against the Operator or Aurizon Network, liability as between the Operator and Aurizon Network is determined, for the purposes of **clauses 26** and **27.3**:

- (a) as agreed between the Parties;
- (b) subject to **clause 28.1(c)**, failing such agreement within one Month of either Party giving notice to the other requiring agreement on liability, by a loss adjuster appointed under **clause 28.2**; or
- (c) where the amount of the Claim exceeds \$200,000 and either Party is dissatisfied with the report of the loss adjuster, by a court of competent jurisdiction.

29.228.2 Loss Adjuster

Subject to **clause 36**, where a matter is to be referred to a loss adjuster in accordance with **clause 28.1**:

- (a) the loss adjuster:
 - (i) must be appointed by the Parties; or
 - (ii) in default of such appointment within 10 Business Days after the need to appoint a loss adjuster, is to be nominated at either Party's request by the President of The Australasian Institute of Chartered Loss Adjusters;
- (b) if the loss adjuster is to be nominated under **clause 28.2(a)(ii)** and the President of The Australasian Institute of Chartered Loss Adjusters declines to nominate a person as the loss adjuster but provides a list of people that could be appointed as the loss adjuster, then:
 - (i) the first person specified in that list will be taken to be nominated as the loss adjuster;
 - (ii) if the first person specified in that list does not accept the appointment as the loss adjuster, the next person specified in that list will be taken to be the first person specified in that list and will be nominated as the loss adjuster; and
 - (iii) the process specified in **clause 28.2(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is

- taken to be nominated as the loss adjuster accepts the appointment as the loss adjuster;
- (c) the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated loss adjuster (including providing relevant indemnities and paying any charges or fees (which charges or fees must be borne equally by the Parties)) that must be satisfied or complied with as a condition of the President of The Australasian Institute of Chartered Loss Adjusters agreeing to nominate a loss adjuster;
 - (d) the loss adjuster must:
 - (i) be a Fellow of the Australasian Institute of Chartered Loss Adjusters or have equivalent qualifications and experience;
 - (ii) have no interest or duty which conflicts or may conflict with the loss adjuster's function as a loss adjuster (the loss adjuster being required to fully disclose any such interest or duty before their appointment); and
 - (iii) not be, or have been in the last five years, an employee of the Access Holder, the Operator, any other contracted operator of the Access Holder utilising the Access Rights or Aurizon Network or of a Related Body Corporate of any of them;
 - (e) the loss adjuster appointed under this **clause 28.2**:
 - (i) is not permitted to act until the loss adjuster has given written notice of the acceptance of the appointment to both Parties;
 - (ii) is required to undertake to keep confidential all matters coming to the loss adjuster's knowledge by reason of their appointment and the performance of their duties; and
 - (iii) is deemed to be and act as an expert and not an arbitrator, and the Law relating to arbitration, including the *Commercial Arbitration Act 2013* (Qld), does not apply to the loss adjuster or their determination or the procedures by which they may reach a determination.

29.328.3 Parties to assist loss adjuster

- (a) Each Party must ensure to the best of its ability that the loss adjuster appointed under **clause 28.2** is given the opportunity to interview any employee, agent or contractor involved in, or with knowledge of, the Incident or event giving rise to the Claim or with any other relevant information that may be of use to the loss adjuster.
- (b) Each Party must make available to the loss adjuster appointed under **clause 28.2** any files, documents, data, recordings or other information in the possession or control of the Party that may be of use to, or is requested by, the loss adjuster for the purposes of their investigation.

29.428.4 Decision of the loss adjuster

- (a) The loss adjuster appointed under **clause 28.2** must determine the quantum of the relevant Claim and the liability of the Operator and/or Aurizon Network in respect of such Claim and must provide a copy of their

report on such matters to each of the Parties within a reasonable time after their appointment.

- (b) In the absence of manifest error, the decision of the loss adjuster is final and binding upon the Parties where the total claims arising from the Incident or event giving rise to the Claim are equal to or less than \$200,000.

29.528.5 Costs of the loss adjuster

The costs of the loss adjuster must be borne by the Parties in such proportions as liability is determined by the loss adjuster, or where the liability is ultimately determined by a court of competent jurisdiction, in such proportions as liability is determined by the court.

30.29 Disputes

30.129.1 Method

If any claim, dispute or question (**Dispute**) arises under this Deed, then unless otherwise expressly provided to the contrary in this Deed, such Dispute must be resolved in accordance with this **clause 29** and either Party may give to the other Party a notice in writing (**Dispute Notice**) specifying the Dispute and requiring that it be dealt with in accordance with this **clause 29**.

30.229.2 Authorised representative resolution

- (a) Except as otherwise provided in this Deed, within five Business Days after a Dispute Notice is given, the Dispute must be referred for resolution to an authorised representative of each of the Parties with authority to settle the Dispute on behalf of the relevant Party.
- (b) Within 10 Business Days after a Dispute Notice is given, the officers referred to in **clause 29.2(a)** must meet to resolve the Dispute.
- (c) Meetings referred to in **clause 29.2(b)** may be held in person or by telephone, video conference or other means of instantaneous communication.
- (d) If the Dispute is not resolved within 10 Business Days (**Resolution Period**) after:
 - (i) the date that authorised representatives first meet to resolve the Dispute in accordance with **clause 29.2(b)**; or
 - (ii) if the authorised representatives do not meet within the time required under **clause 29.2(b)**, the date the Dispute Notice is given,then the relevant Dispute may, by agreement between the Parties within 10 Business Days of expiration of the Resolution Period, be referred for determination by an Expert in accordance with **clause 29.3** or by arbitration in accordance with **clause 29.4**.
- (e) If the Parties fail to agree, within 10 Business Days of expiration of the Resolution Period, whether to refer the Dispute to an Expert or to arbitration, either Party may refer the Dispute to the courts of the State in accordance with **clause 29.6**.

30.329.3 Expert

Subject to **clause 36**, where any matter may be referred to an expert (**Expert**) pursuant to **clause 29.2(d)**, or is expressly required by this Deed to be referred to an Expert, then except as otherwise provided for in this Deed:

- (a) an Expert must be appointed by agreement between the Parties, or in default of such appointment within 10 Business Days of the requirement or right (as applicable) to refer the matter to an Expert, then that person is to be nominated at either Party's request by:
 - (i) if the Parties agree the Dispute is purely of:
 - (A) a financial or accounting nature; or
 - (B) a technical nature,the President (for the time being) of the Resolution Institute in Australia; or
 - (ii) in any other case, the President (for the time being) of the Queensland Law Society Inc;
- (b) if the Expert is to be nominated by a person referred to in **clause 29.3(a)** and that person declines to nominate a person as the Expert but provides a list of people that could be appointed as the Expert, then:
 - (i) the first person specified in that list will be taken to be nominated as the Expert;
 - (ii) if the first person specified in that list does not accept the appointment as the Expert, then the next person specified in that list will be taken to be nominated as the Expert; and
 - (iii) the process specified in **clause 29.3(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the Expert accepts the appointment as the Expert;
- (c) subject to **clause 29.3(b)**, if the Expert is to be nominated by a person referred to in **clause 29.3(a)** and the person nominated as the Expert does not accept appointment as the Expert, then an alternative person is to be nominated as the Expert at either Party's request by the same person referred to in **clause 29.3(a)**;
- (d) if the Expert is to be nominated by a person referred to in **clause 29.3(a)** the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees (which charges or fees must be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person agreeing to nominate an Expert;
- (e) the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated Expert (including providing relevant indemnities and paying any charges or fees (which charges or fees must be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person accepting the appointment as an Expert;

- (f) the Expert must:
 - (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (ii) have no interest or duty which conflicts or may conflict with their function as Expert, the Expert being required to fully disclose any such interest or duty by notice to the Parties before their appointment;
 - (iii) not be, or have been in the last five years, an employee of the Operator, any other contracted operator of the Access Holder utilising the Access Rights or the Access Holder in respect of the Access Rights which are the subject matter of the Dispute, or Aurizon Network or of a Related Body Corporate of any of them;
 - (iv) not be permitted to act until the Expert has given notice to the Parties that the Expert is willing and able to accept the appointment;
 - (v) have regard to the provisions of this Deed and consider all submissions (including oral submissions by either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter provided to the Expert by the Parties;
 - (vi) provide both Parties with a copy of the Expert's determination in the form of a report setting out reasonable details of the reasons for the Expert's determination within a reasonable time after their appointment; and
 - (vii) be required to undertake to keep confidential all matters coming to their knowledge by reason of their appointment and performance of their duties (including, if required by a Party, by entering into a confidentiality agreement in favour of the Parties);
- (g) the Expert is deemed to be and must act as an expert and not an arbitrator and the Law relating to arbitration (including the *Commercial Arbitration Act 2013* (Qld)) will not apply to the Expert or the determination or the procedures by which the Expert may reach a determination;
- (h) in the absence of manifest error, the decision of the Expert is final and binding upon the Parties;
- (i) the costs of the Expert (and the costs of any advisers to the Expert) must be borne, severally (and not jointly and severally), by the Parties in equal shares, with each Party bearing its own costs of participating in the dispute resolution process (unless otherwise agreed by the Parties);
- (j) the expert determination must be conducted in accordance with the expert determination rules adopted by the Resolution Institute from time to time, except that to the extent of any inconsistency between those rules and this Deed, the terms of this Deed prevail;
- (k) any determination made by an Expert must be consistent with the provisions of this Deed; and
- (l) the Parties must:
 - (i) procure the Expert to use reasonable endeavours to make its

determination or finding in respect of the Dispute within 2 Months from the date the initial statement regarding the Dispute is submitted by the claimant to the Expert; and

- (ii) do everything reasonably requested by the Expert to assist the Expert in determining the Dispute, including providing or making available to the Expert, as soon as reasonably practicable, all information and materials in their possession or control requested by the Expert and attending any hearing convened by the Expert.

30.429.4 Arbitration

- (a) Subject to **clause 36**, the Parties may agree to refer any Dispute to arbitration by a single arbitrator sitting in Brisbane agreed upon between the Parties and, failing agreement upon such arbitrator within 10 Business Days after the date of notice from one Party to the other requiring the appointment of an arbitrator, by an arbitrator appointed by the President of the Resolution Institute. Every such reference will be an arbitration within the meaning of the *Commercial Arbitration Act 2013* (Qld), and subject to the provisions relating to arbitration contained in that Act.
- (b) If the Resolution Institute declines to nominate a person as the arbitrator but provides a list of people that could be appointed as the arbitrator, then:
 - (i) the first person specified in that list will be taken to be nominated as the arbitrator;
 - (ii) if the first person specified in that list does not accept the appointment as the arbitrator, then the next person specified in that list will be taken to be nominated as the arbitrator; and
 - (iii) the process specified in **clause 29.4(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the arbitrator accepts the appointment as the arbitrator;
- (c) subject to **clause 29.4(b)**, if the person nominated as the arbitrator under **clause 29.4(a)** does not accept appointment as the arbitrator, then either Party may request that the Resolution Institute appoints an alternative person as the arbitrator.

30.529.5 Queensland Competition Authority (QCA)

Subject to **clause 36** the Parties may agree to refer, and where required by this Deed must refer, any Dispute to the QCA.

30.629.6 Determination by Court

If any Dispute is not:

- (a) resolved in accordance with **clause 29.2**;
- (b) referred to an Expert in accordance with **clause 29.3**; nor
- (c) referred to the QCA in accordance with **clause 29.5**,

then either Party may refer the Dispute to the courts of the State.

31.30 Force Majeure

31.130.1 Notice of Force Majeure

- (a) If, by reason of a Force Majeure Event affecting a Party, that Party (**Affected Party**) is prevented or hindered (or likely to be prevented or hindered) from carrying out, whether wholly or in part, its obligations under this Deed (other than an obligation to pay money), then:
 - (i) if the Affected Party is Aurizon Network and the Force Majeure Event also affects the Access Agreement, Aurizon Network must provide a copy of each notice it gives to the Access Holder in respect of that Force Majeure Event to the Operator; and
 - (ii) if **clause 30.1(a)** does not apply, that Party must, as soon as reasonably practicable after it becomes aware of the Force Majeure Event, give to the other Party and the Access Holder prompt (and in any event within 5 Business Days after it becomes aware of the event or circumstance causing the Force Majeure Event) notice (which may be provided in electronic form) of the Force Majeure Event including:
 - (A) details of the Force Majeure Event and (if applicable) that part of the Nominated Network affected or likely to be affected; and
 - (B) details of the obligations affected or likely to be affected.
- (b) The Affected Party must provide the other Party with a further notice as soon as reasonably practicable but in any event within 2 Business Days of the notice provided under clause 29.1(a) if the notice provided in **clause 30.1(a)** is either in electronic form or does not include the following information:
 - (i) the information in **clause 30.1(a)**; and
 - (ii) full particulars of all relevant matters including:
 - (A) details of the action that the Affected Party has taken to remedy the situation and details of the action that the Affected Party proposes to take to remedy the situation (to the extent they are known); and
 - (B) a reasonable estimate of the time during which the Affected Party will be (or is likely to be) prevented or hindered from carrying out, whether wholly or in part, its obligations under this Deed due to the Force Majeure Event.
- (c) Without prejudice to its rights under this **clause 30.1**, the Affected Party may issue further notices in respect of the Force Majeure Event as the Affected Party considers reasonably necessary to update the other Party and the Access Holder as to each of the matters set out in this **clause 30.1**.
- (d) Aurizon Network must:
 - (i) include the Operator (and the Access Holder or Customer, if any) in any meeting which Aurizon Network may have in respect of the Force Majeure Event; and

- (ii) provide a copy of any notice given to the Operator to the Access Holder or Customer, if any.

31.230.2 Suspension of obligations

- (a) Subject to compliance with the requirements of **clause 30.1**, the obligations of the Affected Party under this Deed are suspended during the time and to the extent that the Affected Party's performance of its obligations is prevented or hindered by the Force Majeure Event.
- (b) If the notice is not provided in accordance with **clause 30.1(a)** or **30.1(b)**, then the obligations of the Affected Party under this Deed will be suspended on and from the later of the time the notice requirements of **clauses 30.1(a)** and **30.1(b)** are satisfied.

31.330.3 Duty to mitigate

- (a) Subject to **clause 30.3(b)**, a Party must use all reasonable endeavours to remedy or overcome the effect of the Force Majeure Event affecting the Party's obligations under this Deed as soon as possible and must attempt to:
 - (i) mitigate the effect of the Force Majeure Event; and
 - (ii) in the case of a Force Majeure Event affecting Aurizon Network, identify alternative viable means of providing the Operational Rights affected (if applicable).
- (b) The Affected Party is not obliged to settle any strike, lockout or other labour dispute other than on terms acceptable to it.

31.430.4 End of period of Force Majeure

Subject to **clauses 30.6** and **30.7**, the suspension of the obligations of the Parties due to a Force Majeure Event ends when, but only to the extent that, the Affected Party is able to resume performance of its obligations under this Deed, at which time it must promptly:

- (a) notify the other Party and the Access Holder advising the extent to which it is recommencing the performance of its obligations; and
- (b) recommence the performance of its obligations to the extent outlined in the notice.

31.530.5 Reduction of Access Rights

- (a) If:
 - (i) any part of the Nominated Network specified in item 2 of Schedule 3 is damaged or destroyed by a Force Majeure Event; and
 - (ii) in Aurizon Network's reasonable opinion the cost of repairing such damage or destruction or replacing that part of the Nominated Network is not economic on the basis of the then and committed future utilisation of that part of the Nominated Network,then Aurizon Network may, by notice, advise the Operator, the Access Holder (and its Customer, if applicable), other affected Access Holders, each affected Railway Operator and the QCA of:

- (iii) the estimated cost of effecting the necessary repairs or replacement;
 - (iv) the level of insurance available to effect the necessary repairs and replacement;
 - (v) a detailed explanation as to why the cost of repairing or replacing is not economic; and
 - (vi) Aurizon Network's intention to not repair or replace the relevant part of the Nominated Network unless the Operator (or the Access Holder or its Customer, as applicable) using that part of the Nominated Network pay the difference between the amount of insurance available to effect the necessary repairs or replacement and the actual anticipated cost to effect those repairs or replacements.
- (b) If the Operator (or the Access Holder or its Customer, as applicable) notifies Aurizon Network that:
- (i) it agrees to bear the whole incremental cost of necessary repairs or replacement (after the amount of insurance available has been applied); or
 - (ii) it agrees to bear that part requested by Aurizon Network of the incremental cost of necessary repairs or replacement (and subject to Aurizon Network being satisfied that all other relevant Access Holders (or their Customers or Railway Operators, as applicable) have also agreed to bear their respective part of such costs) (after the amount of insurance available has been applied),

then Aurizon Network will proceed with the repairs or replacement within a reasonable time after:

- (iii) if **clause 30.5(b)(i)** applies, receipt by Aurizon Network from the Operator (or the Access Holder or its Customer) of payment of the relevant amount; and
 - (iv) if **clause 30.5(b)(ii)** applies, receipt by Aurizon Network from the Operator (or the Access Holder or its Customer) of the last payment of the relevant amount.
- (c) If the Operator (or the Access Holder or its Customer, as applicable) pays to Aurizon Network any of the costs under **clause 30.5(b)**, on completion of the necessary repairs or replacement:
- (i) Aurizon Network must, within a reasonable time, refund to the party who made such payment any amount by which the amount paid that party exceeds the actual cost; or
 - (ii) the Operator (or the Access Holder or its Customer, if applicable) must, within a reasonable time, pay to Aurizon Network the amount by which the actual cost exceeds proportionately the amount agreed to be paid by that party (as applicable).

If, within 40 Business Days after receipt of a notice from Aurizon Network under **clause 30.5(a)**, the Operator (or Access Holder or Customer, as applicable) has not given notice to Aurizon Network under **clause 30.5(b)**, then Aurizon

Network may, by giving not less than 20 Business Days' notice to the Access Holder (**Nominated Network FM Reduction Notice**), reduce the FM Access Rights, in which case, the FM Access Rights will cease to form part of the Access Rights of the Access Holder on and from the date specified in the Nominated Network FM Reduction Notice (which must be at least 20 Business Days from the date of the Nominated Network FM Reduction Notice).

31.630.6 Effect of Nominated Network FM Reduction Notice on Operator nomination

- (a) If a Nominated Network FM Reduction Notice is given under the Access Agreement, then the FM Access Rights will cease to form part of the Access Rights on and from the date specified in the notice (which must be at least 20 Business Days from the date of the notice).
- (b) As soon as practicable after the expiry of the period set out in clause 25.4(a) of the Access Agreement, Aurizon Network must issue a notice to the Operator summarising, in respect of each Train Service Type affected by the FM Access Rights, the changes to the "Nominated Monthly Operational Rights (for a 30 day Month)" in **Schedule 2**.

31.730.7 Termination after extended Force Majeure Event

If the Affected Party is wholly prevented or hindered from carrying out its obligations under this Deed (other than an obligation to pay money) for a period of more than three consecutive Months, then:

- (a) the Parties must meet to endeavour to identify any alternative viable means to perform the suspended obligations; and
- (b) failing any alternative means being agreed within one Month after the end of the three Month period, the other Party may terminate this Deed by 20 Business Days notice to the Affected Party and the Access Holder and **clauses 30.4 and 30.5** apply without prejudice to any of the rights of the Parties which accrued before the date of such termination.

3231 Suspension

32.131.1 Suspension of Train Services for a Train Service Type

If a Suspension Event specified in **part A of schedule 8** occurs in respect of a Train Service Type, Aurizon Network may, by notice in writing to the Operator and the Access Holder (which must be given before or immediately after the suspension) (**Suspension Notice**), suspend the right of the Operator to operate some or all of the Train Services for that Train Service Type on the Nominated Network.

32.231.2 Suspension of Train Services generally

If a Suspension Event specified in **part B of schedule 8** occurs, Aurizon Network may, by notice in writing to the Operator and the Access Holder (which must be given before or immediately after the suspension) (also a **Suspension Notice**), suspend the right of the Operator to operate some or all of the Train Services (for any one or more Train Service Types) on the Nominated Network.

32.331.3 Suspension of certain Rollingstock or Rollingstock Configurations

- (a) If:

- (i) Rollingstock or Rollingstock Configurations used by the Operator in the operation of Train Services:
 - (A) are not Authorised Rollingstock or Authorised Rollingstock Configurations for that Train Service Type; or
 - (B) do not comply with:
 - (1) applicable Laws; or
 - (2) the Rollingstock Interface Standards (subject to any Approved Derogations); or
 - (ii) the Operator otherwise fails to comply with the Rollingstock Interface Standards,
- and
- (iii) the Operator fails to rectify such non-compliance within a reasonable period of time (being at least 20 Business Days) notified by Aurizon Network to the Operator; or
 - (iv) such non-compliance creates a risk to the safety of any person or a material risk to property,

then Aurizon Network may, by notice in writing to the Operator and the Access Holder (which must be given before or immediately after the suspension) (also a **Suspension Notice**), suspend the right of the Operator to operate Train Services using such Rollingstock or Rollingstock Configurations.

32.431.4 Suspension due to suspension under Access Agreement

If any of the Access Holder's rights under the Access Agreement are suspended under the Access Agreement for any reason, then Aurizon Network may, by notice in writing to the Operator (which must be given before or immediately after the suspension) (also a **Suspension Notice**), suspend the right of the Operator to operate Train Services for a Train Service Type, which would otherwise be operated utilising the Access Holder's Access Rights which have been suspended.

32.531.5 Details of suspension

A Suspension Notice given by Aurizon Network to the Operator and the Access Holder under **clause 31.1, 31.2, 31.3 or 31.4** must set out:

- (a) the rights of the Operator which are affected by the suspension; and
- (b) the reason for the suspension; and
- (c) except for a suspension under **clause 31.4**, the actions the Operator must take to have the suspension lifted.

32.631.6 Effect of suspension

- (a) If Aurizon Network exercises a right of suspension under this **clause 31**, then the Operator and the relevant Operator's Staff must immediately cease to operate:
 - (i) the relevant Train Services; or
 - (ii) the Train Services using the relevant Rollingstock or Rollingstock Configurations,

as applicable, until such time as the suspension is lifted by Aurizon Network.

- (b) The suspension of any rights under this **clause 31** does not affect or suspend any other obligation of the Operator under this Deed, and is without prejudice to Aurizon Network's other rights and remedies in respect of that or any other default.
- (c) Where Aurizon Network suspends the Operator's right to operate some or all of the Train Services:
 - (i) Aurizon Network will only be liable to the Operator in respect of loss or damage (including damages for Consequential Loss) arising from the suspension if, and only if, no reasonable person in Aurizon Network's position could have formed the view that the stated grounds for the suspension existed, provided that the Operator must use all reasonable endeavours to mitigate the loss or damage arising from the suspension; and
 - (ii) Aurizon Network bears the burden of establishing that a reasonable person in Aurizon Network's position could have formed that view.
- (d) Notwithstanding **clause 31.6(c)**, Aurizon Network will not be liable to the Operator for any Third Party claim (including a claim for Consequential Loss), made against the Operator in relation to a suspension where the Third Party is the Access Holder and the Access Holder has a direct contractual relationship with Aurizon Network in respect to the Access Rights to which the suspension relates.

32.731.7 Duration of suspension

- (a) The suspension of any rights under **clause 31.1, 31.2 or 31.3** continues until such time as the Operator has remedied the relevant default or non-compliance notified in the Suspension Notice.
- (b) The suspension of any rights under **clause 31.4** continues until such time as the relevant suspension of the Access Holder's rights under the Access Agreement is lifted.

33.32 Termination

33.132.1 Termination of Train Services for a Train Service Type by Aurizon Network

- (a) Subject to **clause 32.1(b)** and without limiting any rights of termination contained elsewhere in this Deed, Aurizon Network may, by notice in writing to the Operator and the Access Holder, reduce the Operational Rights by the Train Services for a Train Service Type if a Termination Event specified in **part A of schedule 8** occurs in relation to that Train Service Type.
- (b) If there is a Corresponding Suspension Event in respect of the Termination Event referred to in **clause 32.1(a)**, then Aurizon Network may only exercise its rights under **clause 32.1(a)** if it has first exercised its right of suspension in respect of the Corresponding Suspension Event under **clause 31**.

33.232.2 Termination of Agreement

- (a) Subject to **clause 31.2(b)** and without limiting any rights of termination contained elsewhere in this Deed, Aurizon Network may, by notice in writing to the Operator and the Access Holder, terminate this Deed if a Termination Event specified in **part B of schedule 8** occurs.

If there is a Corresponding Suspension Event in respect of the Termination Event referred to in **clause 32.2(a)**, then Aurizon Network may only exercise its rights under **clause 32.2(a)** if it has first exercised its right of suspension in respect of the Corresponding Suspension Event under **clause 31**.

33.332.3 Termination by the Operator

Without limiting any rights of termination contained elsewhere in this Deed, the Operator may, by notice in writing to Aurizon Network and the Access Holder, terminate this Deed if any of the following occurs:

- (a) an Insolvency Event in relation to Aurizon Network occurs and continues for a period of 40 Business Days;
- (b) Aurizon Network's Accreditation is suspended, cancelled or amended such that it cannot perform its obligations generally under this Deed, and such default continues for at least 20 Business Days after the Operator gives Aurizon Network notice of the default;
- (c) Aurizon Network fails to pay when due any amount payable under this Deed, and such default continues for at least 20 Business Days after the Operator gives Aurizon Network notice of the default; or
- (d) Aurizon Network is in default of the due performance of any other obligation under this Deed, and such default continues for at least 40 Business Days after the Operator gives Aurizon Network notice of the default.

33.432.4 Grounds for termination to be specified

A notice given under **clause 32.1, 32.2 or 32.3** must set out the grounds for the termination.

33.532.5 Obligations and other rights upon termination or expiry

- (a) Neither termination of this Deed by a Party under this **clause 32** nor expiry of this Deed prejudices:
 - (i) a Party's right to make a Claim, recover damages or avail itself of other remedies under this Deed or at law; or
 - (ii) either Party's rights to recover money due to it under this Deed.
- (b) On termination of this Deed, Aurizon Network and the Operator are released from all further obligations or liabilities under this Deed, except for:
 - (i) rights which accrued on or before termination, including for any breach of this Deed which occurred before termination. Any liability in respect of such prior breach will be limited in the manner provided in this Deed; or
 - (ii) any provisions which are expressed as surviving the expiry or

termination of this Deed.

33.632.6 Removal of Rollingstock following termination

- (a) Immediately on expiry of the Term, and within 12 hours (or such other period as the Parties may agree) after termination of this Deed for any other reason, the Operator must, at the Operator's cost, remove all of the Operator's Rollingstock operated under this Deed from the Nominated Network.
- (b) If the Operator fails to remove the Operator's Rollingstock from the Nominated Network, then Aurizon Network may give a notice to the Operator demanding the removal of the Rollingstock within a further 12 hours (or such longer period as the Parties may agree).
- (c) If the Operator fails to remove any of the Operator's Rollingstock from the Nominated Network the subject of the notice under **clause 32.6(b)** within the time required under **clause 32.6(b)**, then Aurizon Network is entitled to remove the Rollingstock and recover the reasonable costs of removal from the Operator, provided it notifies the Operator reasonably in advance of its intention to exercise the rights under this clause.
- (d) Subject to **clause 27.1**, the Operator is liable for, and indemnifies Aurizon Network against, any costs reasonably incurred by Aurizon Network in relation to any damage or obstruction caused to the Infrastructure or the Nominated Network by the Operator in removing any Rollingstock in accordance with this **clause 32.6**.
- (e) The Operator must comply with all reasonable directions issued by Aurizon Network in relation to the removal of the Rollingstock in accordance with this **clause 32.6**.

34.33 Assignment

34.133.1 Assignment by Aurizon Network

- (a) Aurizon Network may Assign the whole or any part of its rights or obligations under this Deed without the prior consent of the Operator, provided that:
 - (i) the Assignee is Accredited; and
 - (ii) Aurizon Network procures that the Assignee covenants with the Operator by deed to be bound by and to perform the obligations of Aurizon Network under this Deed to the extent of the rights and obligations Assigned to the Assignee.
- (b) On the Assignee entering into the deed referred to in **clause 33.1(a)**, Aurizon Network is released and discharged from further liability under this Deed in respect of the obligations which the Assignee has undertaken under that deed to be bound by and to perform.

34.233.2 Assignment by the Operator

- (a) The Operator may not Assign its rights or obligations under this Deed other than in accordance with this **clause 33.2**.

- (b) The Operator may, provided it is not in default in the performance or observance of any of its obligations under this Deed, Assign the whole of its rights and obligations under this Deed to:
 - (i) a Related Body Corporate of the Operator which is Accredited to operate Train Services and is otherwise capable of performing the obligations of the Operator under this Deed, provided that:
 - (A) the Operator remains liable for the performance of the duties, responsibilities and obligations assumed by the Assignee; and
 - (B) the performance by the Assignee will (to the extent of such performance) discharge the Operator's liability for the performance of the duties, responsibilities and obligations Assigned; or
 - (ii) a person other than a Related Body Corporate of the Operator with the prior written consent of Aurizon Network which must not be unreasonably withheld if Aurizon Network is satisfied that such person is:
 - (A) financially sound;
 - (B) Accredited to operate Train Services; and
 - (C) otherwise capable of performing the obligations of the Operator under this Deed.
- (c) Any Assignment by the Operator of its rights and obligations under this Deed is conditional on and will not take effect until:
 - (i) Aurizon Network has been provided with written evidence of the Access Holder's consent to the Assignment;
 - (ii) the Assignee covenants with Aurizon Network by deed, in such terms as Aurizon Network may reasonably require, to be bound by and to perform the obligations of the Operator under this Deed.
- (d) Subject to **clause 33.2(e)**, if a Change in Control of the Operator occurs without Aurizon Network's prior written consent, the occurrence of the Change in Control will be taken to be an Assignment of the Operator's rights and obligations under this Deed which is not permitted under this **clause 33.2**.
- (e) **Clause 33.2(d)** does not apply to a Change in Control where:
 - (i) the Operator or its Ultimate Holding Company is listed on a recognised stock exchange;
 - (ii) the Change in Control is a result of a Change in Control of that listed entity; and
 - (iii) that listed entity remains listed on that recognised stock exchange both before and after that Change in Control.

34.333.3 Charging

A Party (**Chargor**) may create a Charge over all of its rights under this Deed in favour of a recognised financial institution (**Chargee**) to secure financial accommodation provided to the Chargor in relation to its obligations under this

Deed, provided that the Chargee must first covenant in writing in favour of the other Party (**Non-Charging Party**), pursuant to a deed in such terms as the Non-Charging Party may reasonably require, that in relation to the exercise of any power of sale or other right or remedy under the Charge granted to the Chargee, the Chargee and any person (including any receiver or receiver and manager or agent) claiming through the Chargee must comply with the provisions of this **clause 33** as if it were originally a party to this Deed, and must not exercise any power of sale of the rights and/or obligations of the Chargor under this Deed except in accordance with this **clause 33**.

35.34 GST

35.134.1 Construction

In this **clause 34**:

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

35.234.2 Consideration GST exclusive

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

35.334.3 Payment of GST

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

35.434.4 Timing of GST payment

The recipient must pay the amount referred to in **clause 34.3** in addition to, and at the same time that, the consideration for the supply is to be provided under this Deed.

35.534.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under **clause 34.3**. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

35.634.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Deed, the amount payable by the recipient under **clause 34.3** must be recalculated to reflect the adjustment event and a payment must be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.

35.734.7 Reimbursements

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

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

36.35 Confidentiality

36.135.1 Confidentiality

Subject to **clause 35.2**, the Recipient must:

- (a) keep confidential, and must not disclose to any Third Party, any Confidential Information disclosed to the Recipient by the Discloser; and
- (b) not use the Confidential Information for any purpose other than for the purposes of this Deed or, if Aurizon Network is the Recipient, for the purposes of:
 - (i) capacity assessment and capacity modelling;
 - (ii) investigation and planning of Maintenance Work;
 - (iii) planning Infrastructure Enhancements; and
 - (iv) complying with its obligations under the Access Undertaking.

36.235.2 Permitted disclosures

The Recipient may disclose Confidential Information disclosed to it by the Discloser to a Third Party where:

- (a) the Recipient has obtained the prior written approval of the Discloser to such disclosure. The Discloser must not unreasonably withhold such approval if the Recipient has procured a confidentiality undertaking in respect of the information from such Third Party in favour of both Parties on terms and conditions satisfactory to both Parties, acting reasonably; or
- (b) disclosure is:
 - (i) required or compelled by any order of a court of competent jurisdiction;
 - (ii) required or compelled by any Law;
 - (iii) required or compelled by notice validly issued by any Authority;
 - (iv) necessary for the conduct of any legal proceedings, including any dispute resolution process under this Deed;
 - (v) reasonably required for the performance of Train Control functions;
 - (vi) required under any stock exchange listing requirement or rule;
 - (vii) required by the Rail Safety Regulator or an Environmental Regulator;

- (viii) to the Access Holder provided that:
 - (A) the Disclosure is:
 - (1) required by the terms of this Deed;
 - (2) reasonably necessary for the performance of obligations or the exercise of rights under this Deed or the Access Agreement; or
 - (3) reasonably necessary in connection with the safe operation of the Nominated Network; and
 - (B) the Discloser must ensure that the Access Holder keeps the Confidential Information confidential on terms no less onerous than this **clause 35**;
- (ix) to the Recipient's banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the Discloser;
- (x) to an expert for the purposes of a dispute resolution process, or an auditor for the purposes of an audit, under a "User Funding Agreement" (as defined in the Access Undertaking), if such expert or auditor has executed a legally enforceable confidentiality deed in favour of the Discloser;
- (xi) to legal practitioners and accountants of the Recipient or a Related Body Corporate of it:
 - (A) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;
 - (B) who are under a duty of confidentiality to the Recipient; and
 - (C) who have been advised of the confidential nature of the Confidential Information; or
- (xii) otherwise permitted or required in accordance with this Deed or the Access Undertaking (as amended by any Change in Access Undertaking).

36.335.3 Discloser may give certain directions

On expiry or termination of this Deed, the Discloser may direct the Recipient to do any combination of the following in respect of some or all of the Confidential Information disclosed by the Discloser to the Recipient:

- (a) subject to the lawful requirements of the Recipient to retain copies of Confidential Information for business records and document control registers, to immediately deliver to the Discloser the Confidential Information specified by the Discloser;
- (b) to immediately destroy the Confidential Information specified by the Discloser; and
- (c) where the Recipient has disclosed the Confidential Information to any Third Party, to procure the compliance by that Third Party with the requirements of this **clause 35.3** as if that Third Party were the Recipient.

36.435.4 PPS Act

In addition to the obligations imposed under this **clause 35**, each Party agrees to not disclose any information of the kind described in section 275(1) of the PPS Act, including:

- (a) information about this Deed including a copy of it;
- (b) information about the amount or the obligation secured by any Security Interest created by or under this Deed and the terms of such payment or performance at any time; or
- (c) information about Relevant Collateral at any time.

36.535.5 Survival

Without limiting **clause 38.1**, this **clause 35** survives the destruction or return of Confidential Information in accordance with this Deed.

36.635.6 Injunctive relief

The Recipient acknowledges and agrees that a breach of this **clause 35** would be harmful to the business interests of the Discloser and that, as a result, the Discloser may seek urgent injunctive relief, specific performance or a similar remedy to prevent the occurrence or continuance of any breach or suspected breach of this **clause 35** in addition to any other remedies available at law or in equity under or independently of this Deed.

3736 Relationship with Access Agreements

- (a) Prior to any referral of a matter to a loss adjuster, expert, arbitrator or the QCA (**Adjudicator**) in accordance with **clause 28.1** or **29**, either Party may notify the other Party that the Access Holder should be a party to that referral and, if such a notice is given, then the Party which has given the notice must:
 - (i) notify the Access Holder of the matter to be referred to the Adjudicator; and
 - (ii) provide the Access Holder with a copy of the provisions of this Deed governing the referral of a matter to, the determination of a matter by, and the payment of the costs of, the Adjudicator.
- (b) If the Access Holder is given a notice under **clause 36(a)**, then:
 - (i) where the Adjudicator is to be a loss adjuster, expert or arbitrator, the Parties are deemed not to have agreed the appointment of the loss adjuster, expert or arbitrator unless the Access Holder has also agreed to the appointment of that loss adjuster, expert or arbitrator;
 - (ii) the Parties must comply with **clause 28.127.1** or **28**, as applicable, in respect of the Access Holder as though the Access Holder was a Party to this Deed for the purposes of the matter referred to the Adjudicator; and
 - (iii) the Adjudicator in addition to determining the matter between the Parties must also determine any claim, dispute, question or liability involving the Access Holder and the Access Agreement arising in connection with any of the events or facts the subject of the matter

referred to the Adjudicator (unless that claim, dispute, question or liability has already been agreed by Aurizon Network and the Access Holder or otherwise determined).

- (c) If the Operator is notified of a matter to be referred to an Adjudicator in accordance with the Access Agreement, then the Operator:
 - (i) must comply with the provisions of that agreement governing the referral of a matter to, the determination of a matter by, and the payment of the costs of, an Adjudicator;
 - (ii) must provide the Adjudicator with a copy of this Deed;
 - (iii) agrees that **clauses 28.1 and 29** do not apply to any claim, dispute, question or liability involving the Operator and this Deed arising in connection with the matter referred to the Adjudicator; and
 - (iv) agrees that, for the avoidance of doubt, the decision of the Adjudicator, in the absence of manifest error, will be final and binding upon the Operator.

38.37 Notices

38.137.1 Form of Notice

- (a) Any notice, demand, invoice, certification, process or other communication authorised or required to be given by a Party to another under this Deed (other than a Train Control Direction or a direction from the Incident Commander) (**Notice**) must be in writing and signed by an authorised officer of that Party and may, if agreed by the Parties, be in electronic form.
- (b) If a Party gives a Notice under this Deed, that Party must promptly notify the Access Holder. Such notification may be in electronic form.

38.237.2 Method of service

Subject to **clause 37.5**, a Notice may be given by being:

- (a) personally delivered to a Party;
- (b) left at the Party's current address for service;
- (c) sent to the Party's current address for service by pre-paid ordinary mail;
- (d) sent by facsimile transmission to the Party's current facsimile number for service; or
- (e) if agreed by the Parties, sent by email to the Party's current email address for service.

38.337.3 Deemed Notice

Subject to **clause 37.5**, a Notice given in accordance with this **clause 37** is deemed to be given if:

- (a) personally delivered, upon delivery;
- (b) posted to an address in Australia, three Business Days after posting;
- (c) posted to an address outside Australia, 10 Business Days after posting;

- (d) sent by facsimile, on the next Business Day after being sent if following transmission the sender receives a transmission report indicating that the facsimile was sent to the addressee's facsimile number; or
- (e) sent by email, on the next Business Day after being sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

38.437.4 Addresses for notices

- (a) Each Party's address for notices is as set out in **item 2** of **schedule 1**.
- (b) A Party may from time to time change its particulars for service by giving notice of that change to the other Party.

38.537.5 Train Control Direction or Incident Commander's direction

- (a) A Train Control Direction is deemed to have been given at the time the direction is given, issued or made.
- (b) A direction from the Incident Commander is deemed to have been given at the time the direction is communicated by the Incident Commander.

39.38 General

39.138.1 Survival

This **clause 38** and **clauses 7, 18.6, 25, 27, 28, 29, 32, 34, 35** and **37** survive the expiration or termination of this Deed.

39.238.2 Amendment

- (a) Except as otherwise provided in this Deed, any variation or amendment to this Deed must be in writing signed by:
 - (i) both Parties; and
 - (ii) except where the amendment solely relates to operational matters that do not have consequential impacts on the Access Holder's Access Rights, the utilisation of the Access Holder's Access Rights or Access Agreement, the Access Holder.
- (b) The Operator must provide the Access Holder with a copy of any written agreement to variations or amendments to this Deed.

39.338.3 Entire agreement

- (a) This Deed, the Schedules and other documents referred to in the Schedules constitute the entire understanding and agreement between the Parties as to the subject matter of this Deed.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Deed are merged in and superseded by this Deed and are of no force or effect whatever, and no Party is liable to any other Party in respect of those matters.
- (c) Neither Party has relied on any representations made by the other Party relating to the subject matter of this Deed or otherwise.
- (d) No oral explanation or information provided by any Party to another:

- (i) affects the meaning or interpretation of this Deed; or
- (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

39.438.4 Counterparts

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

39.538.5 Non-merger

Each representation, covenant and obligation under this Deed continues in full force and effect until such representation, obligation or covenant is satisfied or completed.

39.638.6 Authority to enter into agreement

- (a) Each Party warrants to the other Party that, in respect of itself, it has full power to enter into and perform its obligations under this Deed, and that this Deed constitutes valid and binding obligations on it, enforceable in accordance with its terms.
- (b) If this Deed is executed by an attorney, the attorney states, by such execution, that as at the time of such execution the attorney has received no notice of the revocation of the power of attorney pursuant to which the attorney has executed this Deed.

39.738.7 Consents and approvals

Unless otherwise stated in this Deed, if a Party has a right to accept, reject, decide, determine, consent or make any decision or exercise any discretion or decide to give any notice under this Deed, the Party may do so conditionally or unconditionally at its discretion.

39.838.8 Relationship

The relationship between the Parties is entirely contractual. Nothing in this Deed creates, or is to be taken to create, any partnership, joint venture or relationship of employer and employee between the Parties or any of them.

39.938.9 Certificate

A certificate signed by any duly authorised officer of Aurizon Network as to a matter or as to a sum payable to Aurizon Network in connection with this Deed is prima facie evidence of the matter stated in it or the sum payable.

39.1038.10 Costs

Subject to any express provision in this Deed to the contrary, each Party bears its own legal and other expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Deed.

39.1138.11 Duty

- (a) The Operator is, as between the Parties, liable for and must duly pay all stamp duty (including any fine or penalty) on or relating to this Deed and any document executed under or in connection with it.
- (b) If Aurizon Network pays any stamp duty (including any fine or penalty) on or relating to this Deed, or any document executed under or in connection with it, the Operator must, within 10 Business Days after receiving such demand, reimburse Aurizon Network the amount paid.

~~39.12~~38.12 **Waiver and exercise of rights**

- (a) A single or partial exercise or waiver of a right relating to this Deed does not prevent any other exercise of that right or the exercise of any other right.
- (b) No failure or delay by either Party to exercise any right or remedy under this Deed may be construed or operate as a waiver or be evidence of delay, laches or acquiescence in equity or at law in respect of such right or remedy.
- (c) A waiver or consent by any Party of any default or breach of any term of this Deed does not constitute a waiver of later defaults or breaches of the same or any other term.
- (d) A Party's election not to exercise any rights under this Deed does not prejudice any other rights which that Party may have against the other Party arising out of any failure by the other Party to comply with this Deed.

~~39.13~~38.13 **Computation of time**

Where time is to be calculated by reference to a day or event, that day or the day of the event will be excluded.

~~39.14~~38.14 **Severance of invalid or illegal terms**

- (a) If any term of this Deed, or its application to any Party, person or circumstance, is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatever, then:
 - (i) that term, or its application to such Party, person or circumstance, is severed from this Deed;
 - (ii) the remainder of this Deed, excluding the severed part, remains in force, and any term which includes the severed part applies to such Party, person or circumstance without reliance on the part severed; and
 - (iii) to the extent permissible by Law, the Parties must agree to replace the severed term, effective from the date of severance, with a valid and enforceable term which so far as possible achieves the same purpose, object or effect as the invalid, void, voidable or otherwise unenforceable term was intended to achieve and does not cause any substantial reduction in the benefits of either Party or material re-allocation of risks between the Parties.
- (b) The Parties must act reasonably and in good faith in seeking an agreement under this **clause 38.14** as to a replacement term.
- (c) If the Parties cannot agree upon a replacement term, this Deed is continued in accordance with **clauses 38.14(a)(i)** and **38.14(a)(ii)**.

~~39.15~~38.15 **Rights cumulative**

Subject to any express provision in this Deed to the contrary, the rights of any Party under this Deed are cumulative and are in addition to any other rights of that Party.

~~39.16~~38.16 **Approvals and consents**

Subject to any express provision in this Deed to the contrary, a Party may conditionally or unconditionally give or withhold any consent to be given under this Deed.

~~39.17~~38.17 **Third Party Land**

The Operator acknowledges that:

- (a) the land specified in **item 4 of Schedule 3 (Third Party Land)** is not owned or controlled by Aurizon Network; and
- (b) entry onto that Third Party Land is not included within the definition of Access,

and agrees that in respect of that Third Party Land:

- (c) the Operator must comply with the requirements of the person that owns or controls that Third Party Land (**Landowner**) in relation to that Third Party Land as notified to the Operator by Aurizon Network from time to time;
- (d) if, after the Commencement Date, there is a change in the costs incurred by Aurizon Network due to the requirements of the Landowner in respect of that Third Party Land, then that change is deemed to be a Material Change for the purposes of the Access Agreement; and
- (e) if Aurizon Network's rights in respect of that Third Party Land are terminated for any reason other than the default of Aurizon Network of any agreement that affects Aurizon Network's use of that Third Party Land or other than by agreement with the Landowner, then Aurizon Network may, by notice to the Operator, suspend and/or terminate the Access Rights insofar as they relate to that part of the Nominated Network which is situated on that Third Party Land.

~~39.18~~38.18 **Implementation of agreement**

Each Party must promptly execute all documents and do all such acts and things as are necessary or desirable to implement and give full effect to the provisions of this Deed.

~~39.19~~38.19 **Governing law and jurisdiction**

- (a) This Deed is governed by, and is to be construed in accordance with, the law in force in the State.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State, and any courts which have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.

~~39.20~~38.20 **PPS Act**

- (a) If a Party (**first party**) reasonably determines that this Deed contains a "Security Interest" for the purposes of the PPS Act (**Security Interest**), the other Party (**second party**) agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the first party (after consultation with the second party) reasonably asks and considers necessary for the purposes of:

- (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
 - (ii) enabling the first party to apply for any registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the first party; or
 - (iii) enabling the first party to exercise rights in connection with the Security Interest.
- (b) A Party is not required to give any notice under the PPS Act to the other Party or any other person and each Party waives the right to receive any such notice (including a notice of Verification Statement) unless the notice is required by the PPS Act and that obligation cannot be excluded.
- (c) To the extent that this Deed gives rise to a Security Interest, the Parties agree that for the purposes of section 115 of the PPS Act, the following sections of the PPS Act will not apply to any Relevant Collateral:
- (i) section 95 (notice by Secured Party of removal of Accession);
 - (ii) section 121(4) (notice by Secured Party of enforcement of Security Interest in liquid assets);
 - (iii) section 125 (obligation of Secured Party to dispose of or retain Collateral after seizure);
 - (iv) section 130, to the extent that it requires a party to give any notice to the other party (notice by Secured Party of disposal of Collateral);
 - (v) section 132(3)(d) (obligation of Secured Party to show amounts paid to other Secured Parties in statement of account);
 - (vi) section 132(4) (statement of account by Secured Party if it does not dispose of Collateral within prescribed period);
 - (vii) section 135 (notice by Secured Party of retention of Collateral);
 - (viii) section 142 (redemption of Collateral); and
 - (ix) section 143 (reinstatement of Security Agreement).

Execution

Executed as a deed and delivered on the date shown on the first page.

Executed by Aurizon Network Pty Ltd)
ABN 78 132 181 116:)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date

Executed by [the Operator] ABN)
[insert]:)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date

Schedule 1

Reference schedule

Item	Description	Details
Operator details		
1	Operator	Name: [insert] ABN: [insert]
Particulars for Notices		
2	Address for Notices	Aurizon Network Address: [insert] Facsimile: [insert] Email: [insert] Attention: [insert] Operator Address: [insert] Facsimile: [insert] Email: [insert] Attention: [insert]
Access Agreement		
3	Access Holder	Name: [insert] ABN: [insert]
4	Date of Access Agreement	[insert]

Schedule 2

Train Descriptions

Part A – Matters applicable to specific Train Service Types

1 Train Service Type #1

1.1 Key characteristics of Train Service Type

Details of dates	
Train Service Compliance Date	[insert]
Train Service Commitment Date	[insert]
Train Service Expiry Date	[insert]
General details	
Commodity	Coal
Coal System	[insert]
Reference Train Service	[yes /no]
Details of route and facilities	
Origin	[insert]
Destination	[insert]
Loaded distance from Origin to Destination (km)	[insert]
Empty distance from Destination to Origin (km)	[insert]
Loading Facility	[insert]
Unloading Facility	[insert]
Depot	[insert]
Though-Running Train Service Type	[yes /no]
Details of maximum dwell times	
Maximum Time at Loading Facility (hours)	[insert]
Maximum Time at Unloading Facility (hours)	[insert]
Maximum Time at Depot (hours)	[insert]
Maximum Other Dwell Times (hours)	[insert]

Maximum Sectional Running Times

Maximum Sectional Running Times	The Maximum Sectional Running Time for a Section for the Train Service Type are set out in appendix A to this schedule 2 .
---------------------------------	--

Nominated Monthly Operational Rights

Nominated Monthly Operational Rights	The Nominated Monthly Operational Rights for the Train Service Type is set out in appendix B to this schedule 2 .
--------------------------------------	---

Maximum Payload

Maximum Payload	The Maximum Payload for the Train Service Type is set out in appendix B to this schedule 2 .
-----------------	--

1.2 Special operating restrictions

Without limiting the special operating restrictions which are specified in **item 1.2** of **Part B** of **schedule 2** as being applicable to all Train Service Types, in scheduling Train Services for the Train Service Type in accordance with the Network Management Principles, Aurizon Network must comply with the following special operating restrictions (if any):

Item	Special operating restriction
1	[insert]
2	[insert]

1.3 Cycle description

Subject to:

- (a) any Train Control Direction given to the Operator in respect of a Train Service;
- (b) any exceptions which are specified in **part B** of this **schedule 2** as being applicable to all Train Service Types; and
- (c) any exceptions specified in the table below,

the Operator must operate Train Services for the Train Services Type over the most direct route on the Nominated Network between the Origin and Destination and Destination and Origin (as applicable).

Item	Exceptions
1	[insert]
2	[insert]

Where there is duplicated Track or multiple roads (eg yards), Aurizon Network must have the ability to schedule the Train Service over any of the Tracks or roads.

1.4 Permitted Train Movements on the Nominated Network

Item	Permitted Movements
1	[Insert any permitted Train Movements by the Operator on the Nominated Network other than direct corridor travel of the Train Service in accordance with the specified Sectional Running Times and Dwell Times.]
2	[insert]

Part B – Matters applicable to all Train Service Types

1 Matters applicable to all Train Service Types

1.1 Overview

The matters set out in this **part B** of **schedule 2** are applicable to all Train Service Types and form part of the Train Description for all Train Service Types.

1.2 Special operating restrictions

Without limiting the special operating restrictions for a Train Service Type which are specified in **item 1.2** of **Part A** of **schedule 2** (if any), in scheduling Train Services in accordance with the Network Management Principles, Aurizon Network must comply with the following special operating restrictions:

Item	Special operating restriction
1	[insert]
2	[insert]

1.3 Cycle description

Subject to the exceptions set out in the table below, Train Services cycle description is the most direct route over the Nominated Network between the Origin and Destination and Destination and Origin (as applicable).

Item	Exceptions
1	[insert]
2	[insert]

1.4 Stowage

Item	Stowage requirements
1	[Insert short term Stowage requirements additional to that provided in the relevant Reference Tariff Provisions (as defined in the Access Agreement).]
2	[insert]

Appendix A to Schedule 2

Sectional Running Times

1 Train Services that are Reference Train Services

[Drafting note: This item will set out the Maximum Sectional Running Times for Train Services that a Reference Train Services.]

Maximum Sectional Running Times: Reference Train Services

		Empty (mins)	Loaded (mins)

Standard Sectional Running Times: Reference Train Services

		Empty (mins)			Loaded (mins)		
		Pass to Stop	Start to Pass	Start to Stop	Pass to Stop	Start to Pass	Start to Stop

2 Train Services that are not Reference Train Services

[Drafting note: If a Train Service for a Train Service Type is a not a Reference Train Service, the Maximum Sectional Running Times for Train Services for that Train Service Type for each Section will be specifically set out in this item.]

Maximum Sectional Running Times: Non- Reference Train Services

		Empty (mins)	Loaded (mins)

Standard Sectional Running Times: Non-Reference Train Services

		Empty (mins)			Loaded (mins)		
		Pass to Stop	Start to Pass	Start to Stop	Pass to Stop	Start to Pass	Start to Stop

Appendix B to Schedule 2

Nominated Monthly Operational Rights

1 Train Service Type #1

Nominated Monthly Operational Rights (for a 30 day Month)	[insert]
Maximum Payload	[insert] tonnes
Nominal Payload	[insert] tonnes
Indicative Tonnage (for a 30 day Month)	[insert] tonnes

Note for information purposes only: The Nominated Monthly Operational Rights (for a 30 day Month) for a Train Service Type is the number of Train Services calculated in accordance with the following formula:

$$\text{NMTS} = 2 \times \text{Loaded Train Services}$$

where:

NMTS = the Nominated Monthly Operational Rights (for a 30 day Month) for the Train Service Type

Loaded Train Services = IT/AAP (rounded to the nearest whole Train Service on the basis that where the first decimal place is greater than three, the number of Train Services is to be rounded up to the nearest number of whole Train Services and, where the first decimal place is three or less, the number of Train Services is to be rounded down to the nearest number of whole Train Services)

IT = the Indicative Tonnage (for a 30 day Month) for the Train Service Type

AAP = the Nominal Payload for the Train Service Type as specified in the relevant Notice of Intention to Increase Nominal Payload

Schedule 3

Nominated Network

1 Nominated Network

The Nominated Network is that part of the Infrastructure described by reference to the diagrams and/or tables set out below, but does not include any freight terminals, railway stations, passenger facilities, workshops or maintenance depots (including provisioning facilities).

[Insert line diagram(s) depicting the Nominated Network]

2 Parts of Nominated Network subject to clause 30.5

For the purpose of **clause 30.5**, the specified parts of the Nominated Network are those parts of the Nominated Network described by reference the diagrams and/or tables set out below:

[Insert line diagram(s) depicting the Nominated Network]

[Drafting note: Aurizon Network may specify parts of the Nominated Network for the purpose of **clause 30.5** which are life expired, obsolete and/or only used by a single user.]

3 Train Control centres and signal cabins

The movement of the Operator's Trains while on the Nominated Network will be controlled by the Train Control centres and signal cabins at locations to be notified by Aurizon Network from time to time.

4 Third Party Land

[Insert diagram(s)/table(s) (if applicable)]

5 Weighbridges and Overload Detectors

5.1 Weighbridges

Location	Party responsible for Weighbridge	Tolerance
[insert]	[insert]	[The tolerances required to achieve verification under the <i>National Measurement Act 1960</i> (Cth)]

5.2 Overload Detectors

Location	Party responsible for	Tolerance
----------	-----------------------	-----------

	Overload Detector	
[insert]	[insert]	+/- [insert] %

Schedule 4

Rollingstock and Rollingstock Configurations

[Operator to include all of its Rollingstock]

1 Maximum Gross Mass and Tare Weight

Rollingstock	Maximum Gross Mass (tonnes)	Tare Weight (tonnes)
Wagons		
[Wagon type]	[insert]	[insert]
Other Rollingstock		
[Rollingstock type]	[insert]	[insert]

2 Relevant Rollingstock

[To be inserted as applicable]

Schedule 5

Performance Levels

1 Development of Performance Levels

- 1.1 The Parties must meet as soon as practicable after the Commencement Date to negotiate in good faith to endeavour to agree the Aurizon Network Performance Level (other than the Aurizon Network Performance Levels set out in **item 2.1** of this **schedule 5** which are already agreed between the Parties) and the Operator Performance Level within twelve Months (or such longer period as the Parties may agree) after the Commencement Date.
- 1.2 The Performance Levels may involve financially based incentives and sanctions and, unless otherwise agreed, will be applicable for the Term.
- 1.3 A failure to agree the Performance Levels is not a Dispute for the purposes of **clause 29**.
- 1.4 On and from the date the Performance Levels are implemented by the Parties, the Parties must monitor, record and assess the performance of their respective obligations under this Deed against the Performance Levels. Each Party must comply with the reporting and assessment requirements (if any) set out in this **schedule 5**.

2 Aurizon Network Performance Levels

2.1 Average Below Rail Transit Time Threshold

The Average Below Rail Transit Time Factor for a Train Service Type for a Year must not exceed the Average Below Rail Transit Time Threshold for that Train Service Type specified in the table below:

Train Service Type	Average Below Rail Transit Time Threshold (%)
[insert]	[insert]
[insert]	[insert]

3 Operator Performance Levels

[To be inserted when agreed]

Appendix to Schedule 5

Calculation of Below Rail Transit Time

The **Below Rail Transit Time** (as defined in the Access Undertaking) for a Train Service for Train Service Type which has been operated is calculated in accordance with the following formula:

BRTT = SRT – Non BR Start Stop Time + BR Delays

where:

SRT = The lesser of Actual SRT and Standard SRT for the relevant Train Service

Actual SRT = The actual time it takes the relevant Train Service to traverse all relevant Sections for the relevant Train Service

Standard SRT = The sum of:

- (a) the Maximum SRT for all relevant Sections for the relevant Train Service Type; and
- (b) where a movement of the relevant Train Service over a relevant Section requires time to start or stop for a dwell, stop at the Destination or start at the Origin, the sum, for each relevant Section, of the additional time, taken to start or stop (as specified in **appendix A of schedule 2** for the relevant Train Service Type)

Non BR Start Stop Time = The time it takes the relevant Train Service to start after a non-below rail dwell or stop for a non-below rail dwell for all non-below rail delays incurred for all relevant Sections for that Train Service

BR Delay

Delays to the relevant Train Service from its scheduled time in the Daily Train Plan, where that delay can be attributed directly to Aurizon Network including:

- (a) the time taken in crossing other Trains (to the extent that such time is not contributed to by a Railway Operator or a Force Majeure Event and is not otherwise included in the Maximum Sectional Running Times for all relevant Section for the relevant Train Service Type); and
- (b) delays due to Operational Constraints caused or contributed to by Aurizon Network (to the extent of such contribution) or due to a fault or deficiency in the Infrastructure provided such delays are not contributed to by a Railway Operator or Force Majeure Events and are not otherwise included in paragraphs (d), (e) or (f) specified below,

but excluding:

- (c) cancellations;
- (d) delays resulting from compliance with a Passenger Priority Obligation;
- (e) delays due to a Possession and Major Periodic Maintenance where, the Possession Protocols have been followed;
- (f) delays resulting from a Force Majeure Event; and
- (g) delays to the relevant Train Service from its scheduled time in the Daily Train Plan, where that delay can be attributed the Access Holder (including delays attributable to a failure to load the Train at the Loading Facility for the relevant Train Service Type within the Maximum Time at Loading Facility, or to unload the Train at the Unloading Facility for the relevant Train Service Type within the Maximum Time at Unloading Facility, as specified in the Train Description for the relevant Train Service Type).

Schedule 6

High visibility clothing and Emergency Procedures

1 High visibility clothing

1.1 High visibility clothing

- (a) The Operator may specify the form of high visibility clothing that the Operator's Staff and the Operator's visitors may adopt, having regard to the requirements of Aurizon Network's safety standard for High Visibility Clothing (SAF/STD/0032/SWK/NET) as amended from time to time and provided to the Operator in the manner specified in **item 5 of schedule 9**.
- (b) The colour and materials for the high visibility clothing referred to in **item 1.1(a)** of this **schedule 6** must conform to the requirements of AS/NZS 1906.4:2010 *Retroreflective materials and devices for road traffic control purposes: Part 4: High-visibility material for safety garments and AS/NZS4602:2011 High Visibility Safety Garments* (as amended from time to time).

1.2 Compliance

Without limiting the Operator's obligations under this Deed, the Operator must ensure that the Operator's Staff and the Operator's visitors are instructed in relation to, and comply with, the provisions of this **item 1 of schedule 6**, the Applicable Safeworking Procedures and Aurizon Network's safety management system.

2 Emergency Procedures

Aurizon Network must provide the Operator with a copy of the Emergency Procedures from time to time in the manner specified in **item 5 of schedule 9**.

Schedule 7

Insurance

1 Public liability insurance

The Operator must effect and maintain public liability insurance:

- (a) to cover the legal liability of the insured arising out of or in connection with the activities of the Operator under this Deed whether in respect of injury to or death of any person other than the insured or an employee of the insured or loss of or damage to any property other than property owned by the insured in a sum insured of not less than THREE HUNDRED AND FIFTY MILLION DOLLARS (\$350,000,000) for any one occurrence;
- (b) to include cover in respect of personal injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water where such discharge, dispersal, release or escape is caused by a sudden, unexpected, unintended and accidental happening which occurs on a definitely identifiable date; and
- (c) to cover the Operator's rail operations and associated activities on the Nominated Network.

2 Workers compensation insurance

The Operator must effect and maintain insurance covering such liability as may arise at common law or by virtue of any relevant Workers Compensation legislation in respect of any Operator's Staff.

3 Carrier liability insurance

The Operator must effect and maintain carrier liability insurance in relation to the legal liability of the insured arising out of the transport of goods by Train Services to a sum insured of not less than TEN MILLION DOLLARS (\$10,000,000).

4 Motor Vehicle (non-Act) insurance

The Operator must effect and maintain motor vehicle (non-Act) insurance to cover the legal liability of the insured arising out of or in connection with the use of all vehicles in the performance of this Deed by the Operator or Operator's Staff and must include:

- (a) third party liability to a sum insured of not less than TWENTY MILLION DOLLARS (\$20,000,000); and

- (b) a Dangerous Goods extension with a maximum sum insured as required by statute.

5 Motor Vehicle insurance

The Operator must effect and maintain motor vehicle insurance to cover the statutory liability in respect of personal injury arising out of or in connection with the use by the Operator or the Operator's Staff of all vehicles in the performance of their obligations under this Deed.

6 Required terms

Insurances effected pursuant to **items 1 and 4** of this **schedule 7** Error! Reference source not found. must:

- (a) include a principal's indemnity endorsement specifically noting Aurizon Network as an interested party in respect of its interest arising out of or under this Deed;
- (b) include a cross liability clause;
- (c) provide that a notice of claim given to the insurer by one insured party will be accepted by the insurer as a notice of claim given by each of the insured parties; and
- (d) provide that a breach of or failure to observe and fulfil the terms of the policy by any party comprising the insured must not prejudice the rights of the remaining parties comprising the insured.

Schedule 8

Part A – Suspension Events and Termination Events applicable to specific Train Service Types

Item	Suspension Event	Termination Event
1	<p>The Operator materially fails to provide, before the operation of a Train Service for a Train Service Type in a material respect, information that is required to be provided to Aurizon Network in relation to the Train Service under clause 15.5.</p>	
2	<p>(a) The Operator operates Train Services for a Train Service Type which materially do not comply, in a material respect, with the Train Description for that Train Service Type; and</p> <p>(b) such default:</p> <p>(i) adversely affects the entitlements of any Access Holder (other than the Access Holder under the Access Agreement) or other users of the Infrastructure (including Infrastructure Service Providers) of the Infrastructure, provided that:</p> <p>(A) Aurizon Network has sought to minimise the impact of such default by applying the Network Management Principles; and</p> <p>(B) Aurizon Network is not obliged to take any such action that may cause any additional cost or risk to Aurizon Network or an adverse impact on any Access Holder</p>	

Item	Suspension Event	Termination Event
	<p>(other than the Access Holder under the Access Agreement); or</p> <p>(ii) has caused an increased risk to the safety of any person or material risk to property, unless the Operator operated the Train Service in accordance with Train Control Directions in which case the default will not be considered a Suspension Event.</p>	
3	<p>The Operator fails, in a material respect, to comply with any obligation under this Deed which is specific to a Train Service Type (other than any obligation which, if not complied with by the Operator, may (either of itself or if other requirements are satisfied) result in any other Suspension Event referred to in part A of this schedule 8 Error! Reference source not found. occurring) and such default continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the default.</p>	<p>The Operator fails, in a material respect, to comply with any obligation under this Deed which is specific to a Train Service Type (other than any obligation which, if not complied with by the Operator, may (either of itself or if other requirements are satisfied) result in any other Termination Event referred to in part A of this schedule 8 occurring) and such default continues for at least 40 Business Days after Aurizon Network gives the Operator notice of the default.</p>

Part B – Suspension Events and Termination Events applicable to all Train Services Types

Item	Suspension Event	Termination Event
1	The Operator fails to pay by the due date any amount payable under this Deed, and such default continues for at least 10 Business Days after Aurizon Network gives the Operator notice of the default (and always subject to clause 8.4).	The Operator fails to pay by the due date any amount payable under this Deed, and such default continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the default (and always subject to clause 8.4).
2	<p>The Operator fails, in a material respect, to comply with any of its obligations under clause 13, 21 or 23 (other than clauses 21.3 or 23.9) and Aurizon Network is of the reasonable opinion that such failure:</p> <p>(a) adversely affects the entitlements of any Access Holder (other than the Operator under this Deed) or other users of the Infrastructure (including Infrastructure Service Providers); or</p> <p>(b) has caused an increased risk to the safety of any person or material risk to property.</p>	<p>The Operator fails, in a material respect, to comply with any obligations under clause 13, 21 or 23 (other than clause 21.3 or 23.9) and such default continues for, or the Operator has failed to take reasonable action to prevent recurrence of the default, within 20 Business Days after Aurizon Network gives the Operator a Suspension Notice in respect of the Corresponding Suspension Event.</p>
3	<p>The Operator fails in a material respect, to comply with:</p> <p>(a) any Train Control Direction given to the Operator; or</p> <p>(b) any Applicable Safeworking Procedures or Applicable Safety Standard.</p>	<p>The Operator fails, in a material respect, to comply with:</p> <p>(a) any Train Control Direction given to the Operator; or</p> <p>(b) any Applicable Safeworking Procedures or Applicable Safety Standard,</p> <p>and such default continues for, or the Operator has failed to take reasonable action to prevent recurrence of the default, within 20 Business Days after Aurizon Network gives the Operator a Suspension Notice in respect of the Corresponding Suspension Event.</p>
4	An Insolvency Event occurs in respect of the Operator.	An Insolvency Event occurs in respect of the Operator and continues for a period of at least 40 Business Days.
5	The Operator's Accreditation is suspended, cancelled or amended so	The Operator's Accreditation is suspended, cancelled or amended so

Item	Suspension Event	Termination Event
	that it cannot lawfully operate the Train Services or otherwise perform its obligations generally under this Deed.	that it cannot lawfully operate the Train Services or otherwise perform its obligations generally under this Deed, and such default continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the default.
6	The Operator fails to comply in a material respect with clause 23.11(c) .	The Operator fails to comply with clause 23.11(c) which in the reasonable opinion of Aurizon Network is causing or threatening to cause: <ul style="list-style-type: none"> (a) a serious or material risk to the safety of persons or property; or (b) serious or material Environmental Harm, and such failure continues for at least 10 Business Days after Aurizon Network gives the Operator a Suspension Notice in respect of the Corresponding Suspension Event.
7	If an Environmental Regulator gives Aurizon Network or the Operator a direction, notice or order about the conduct of the Operator in relation to the operation of Train Services which causes or threatens to cause serious Environmental Harm and <ul style="list-style-type: none"> (a) if the direction, notice or order is given to Aurizon Network, Aurizon Network promptly notifies the Operator of such direction, notice or order; and (b) the Operator fails, within the time: <ul style="list-style-type: none"> (i) specified in the relevant direction, notice or order, or in any stay or other court order made in relation to such direction, notice or order; or (ii) otherwise agreed to by the Environmental Regulator, to <ul style="list-style-type: none"> (c) comply with the direction, notice or order, as modified by any 	If an Environmental Regulator gives Aurizon Network or the Operator a direction, notice or order about the conduct of the Operator in relation to the operation of Train Services which causes or threatens to cause serious Environmental Harm and <ul style="list-style-type: none"> (a) if the direction, notice or order is given to Aurizon Network, Aurizon Network promptly notifies the Operator of such direction, notice or order; and (b) the Operator fails, within the time: <ul style="list-style-type: none"> (i) specified in the relevant direction, notice or order, or in any stay or other court order made in relation to such direction, notice or order; or (ii) otherwise agreed to by the Environmental Regulator, to <ul style="list-style-type: none"> (c) comply with the direction, notice or order, as modified by any

Item	Suspension Event	Termination Event
	<p>court order (if applicable); or</p> <p>(d) take other measures (including, for example, agreeing to implement an environmental management program) acceptable to the Environmental Regulator in relation to the requirements of the direction, notice or order.</p>	<p>court order (if applicable); or</p> <p>(d) take other measures (including, for example, agreeing to implement an environmental management program) acceptable to the Environmental Regulator in relation to the requirements of the direction, notice or order,</p> <p>and such failure continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the failure.</p>
8	<p>The Operator fails to comply with the requirements of a notice given by Aurizon Network (within the reasonable time specified in the notice) requiring the Operator to cease an Activity of the Operator in connection with this Deed which causes, or threatens to cause, serious Environmental Harm.</p>	
9	<p>The Operator fails to:</p> <p>(a) effect or maintain the insurances required under clause 25.2; or</p> <p>(b) provide evidence of the insurances required under clause 25.2 having been effected and maintained,</p> <p>and such default continues for at least five Business Days after Aurizon Network gives the Operator notice of the default.</p>	<p>The Operator fails to:</p> <p>(a) effect or maintain the insurances required under clause 25.2; or</p> <p>(b) provide evidence of the insurances required under clause 25.2 having been effected and maintained,</p> <p>and such default continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the default.</p>
10	<p>The Operator purports to Assign any of its rights or interests in this Deed other than as permitted in this Deed.</p>	<p>The Operator purports to Assign any of its rights or interests in this Deed other than as permitted by this Deed.</p>

Item	Suspension Event	Termination Event
11	<p>The Operator fails to comply with:</p> <ul style="list-style-type: none"> (a) any Laws relating to rail safety relevant to the operation of Train Services; (b) Train Control Directions; (c) Safeworking Procedures; or (d) Applicable Safety Standards, <p>and Aurizon Network is of the reasonable opinion that such default has caused an increased risk to the safety of any person or a material risk to property.</p>	<ul style="list-style-type: none"> (a) Subject to paragraph (b), Aurizon Network gives the Operator a Suspension Notice in respect of the Corresponding Suspension Event on three or more occasions in any 12 month period. (b) If a Dispute arises as to the validity of a Suspension Notice and it is determined under clause 29 that the Suspension Notice was invalid, the Suspension Notice must not be taken into account for the purposes of this provision.
12	<p>The Operator fails to comply with any obligation under this Deed (other than any obligation which, if not complied with by the Operator, is reasonably likely to (either of itself or if other requirements are satisfied) result in any other Suspension Event occurring), and such default continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the default.</p>	
13		The Access Agreement is terminated.

Schedule 9

Interface Coordination Arrangements

1 Train Control Procedures

1.1 Train Controllers' contact details

- (a) For the benefit of the Operator's Staff who are responsible for the operation of Rollingstock used in the operation of a Train Service for a Train Service Type (**Traincrew**), contact details for the Train Controllers relevant to the Nominated Network are set out below:

Line Sections:	[insert]
Control Board:	[insert]
Phone:	[insert]
Fax:	[insert]

- (b) For the benefit of the Operator's Controller, contact details for the Train Controllers relevant to the Nominated Network are set out below:

Line Sections:	[insert]
Control Board:	[insert]
Phone:	[insert]
Fax:	[insert]

1.2 Operator's advice to Train Controller

- (a) The Operator's Controller and the Traincrew of the relevant Train must:
- (i) immediately upon becoming aware of an emergency that may affect the performance of the Operator's Train; and
 - (ii) as soon as reasonably practicable after becoming aware of any other event or circumstances that may affect the performance of the Operator's Train,

provide the Train Controller with such information as the Train Controller may reasonably require, including:

- (iii) the Train number;
- (iv) the nature of the event or circumstances; and
- (v) the likely impact on the performance of Network Train Services (including any Train Service operated by the Operator),

regardless of whether or not the Operator's Train has entered the Nominated Network.

- (b) At least 15 minutes before the departure of a Train Service, the Operator's Controller must provide the Train Controller with the following information

in relation to that Train Service:

- (i) information with respect to the Traincrew for that Train Service including the names of the Traincrew personnel and details of any mandatory Traincrew breaks;
 - (ii) if the initial Traincrew for that Train Service is rostered to be replaced by a new Traincrew before that Train Service reaches its Destination, details of the relevant rosters;
 - (iii) the location of nominated depots as specified in the Operating Plan, where Activities in relation to that Train Service such as provisioning, shunting and marshalling, will be carried out;
 - (iv) any en route locomotive provisioning requirements;
 - (v) if the Train is in "Train Order Territory" (as defined in Aurizon Network's safety management system (as amended from time to time)) or "Direct Traffic Control Territory" (as defined in Aurizon Network's safety management system (as amended from time to time)), the number of the leading locomotive; and
 - (vi) a document in the form required by Aurizon Network (**Train List**) which contains the following information in relation to that Train Service:
 - (A) the Train number;
 - (B) the Origin of the Train;
 - (C) the length of the Train in metres (including the locomotives);
 - (D) the number of vehicles in the Train;
 - (E) the gross mass of the Train;
 - (F) the gross trailing load of the Train in tonnes;
 - (G) the motive power employed by the Train;
 - (H) for each vehicle in the Train, in the order in which they will be placed, leading end first, the following information:
 - (1) vehicle classification;
 - (2) vehicle number;
 - (3) vehicle type;
 - (4) gross weight of the vehicle;
 - (5) a description of the goods carried in the vehicle (including details of all Dangerous Goods) by class and location on the Train;
 - (6) the destination of each vehicle; and
 - (7) any known defects, eg brakes cut out; and
 - (I) any other relevant information in relation to the operation of that Train Service.
- (c) Subject to the Traincrew complying with **item 1.2(b)(ii)** of this **schedule 9**, the Train Controller must notify the Traincrew of the most probable

location for the rostered change of Traincrew as soon as reasonably practicable after the Train Controller determines such location.

- (d) The Operator must enter the Train List into Aurizon Network’s nominated information system in accordance with the procedures specified by Aurizon Network.
- (e) The Operator must, as soon as reasonably practicable after it becomes aware of any changes to the information it has provided to Aurizon Network in relation to the Train List, update Aurizon Network’s nominated information system with respect to such changes in accordance with the procedures specified by Aurizon Network.
- (f) The Operator must, at all times, ensure that the Train List for a Train Service is accurate and includes all relevant information in relation to that Train Service.
- (g) If the weight and/or length of a Train operated by the Operator alters during the operation of a Train Service utilising that Train, the Operator's Controller must advise the Train Controller of the new weight and/or length (as applicable) of the Train.
- (h) The Operator must provide to Aurizon Network (and keep current at all times during the Term) the contact details (including a mobile phone number and after hours contact details) for the Operator’s Controller. As at the date of this Deed, the contact details for the Operator’s Controller are set out below:

Name:	[insert]
Position:	[insert]
Phone (during business hours):	[insert]
Phone (outside business hours):	[insert]
Mobile phone number:	[insert]
Fax:	[insert]

- (i) The Operator’s Controller must be contactable by the Train Controller at all times while any of the Operator’s Train Services are operating on the Nominated Network.
- (j) The Operator must provide to Aurizon Network (and keep current at all times during the Term):
 - (i) the hours during which the Operator’s Controller will not be contactable while the Operator’s Train Services are not operating on the Nominated Network; and
 - (ii) the after hours contact procedures for the Operator’s Controller.
- (k) When a Train Service is operating on a section of Track which is not within “Track Circulated Territory” (as defined in Aurizon Network’s safety management system (as amended from time to time)), the Traincrew must, when reasonably requested by the Train Controller, advise the Train Controller of the arrival and departure times, or the departure times if the Train did not stop, for each “Crossing Location” (as defined in Aurizon Network’s safety management system (as amended from time to

time)) that the Train passed through on the Nominated Network.

- (l) The Train Controller must enter the arrival and departure times referred to in **item 1.2(k)** of this **schedule 9** into Aurizon Network's nominated information system as soon as reasonably practicable after the advice is received from the Traincrew.

1.3 Train Controller's advice to the Operator

- (a) As soon as reasonably practicable after becoming aware of any event or circumstances that may affect the performance of the Operator's Train, the Train Controller must provide to the Operator's Controller such information as the Operator's Controller may reasonably require, including:
 - (i) the Train number;
 - (ii) the nature of the event or circumstances; and
 - (iii) the likely impact on the performance of Network Train Services (including any Train Service operated by the Operator).
- (b) When reasonably requested by the Operator's Controller, the Train Controller will provide to the Operator's Controller an estimated time of arrival at any location on the Nominated Network for the Operator's Train.
- (c) When reasonably requested by the Traincrew, the Train Controller will provide information to the Traincrew regarding events or circumstances that may impact on the performance of the Operator's Train.

1.4 Consultation between Train Controller and the Operator

- (a) The Operator's Controller is responsible for determining whether the initial Traincrew for a Train Service will need to be replaced by a new Traincrew before the relevant Train Service reaches its Destination where such change of Traincrew is not included in the roster provided by the Operator's Controller to the Train Controller under **item 1.2(b)(ii)** of this **schedule 9** (if any) (**Relief**).
- (b) Subject to **item 1.4(c)** of this **schedule 9** Error! Reference source not found., the Traincrew will contact the Operator's Controller to request meal breaks and personal needs breaks (**Traincrew Breaks**) and Relief.
- (c) If the Traincrew cannot establish contact with the Operator's Controller to request a Traincrew Break or Relief, the Traincrew may contact the Train Controller directly to request the relevant Traincrew Break or Relief.
- (d) If the Traincrew submits a request for a Traincrew Break or Relief directly to the Train Controller, the Train Controller must:
 - (i) record the Traincrew's request for a Traincrew Break or Relief (as applicable); and
 - (ii) advise the Operator's Controller that it has received a request for a Traincrew Break or Relief (as applicable) from the Traincrew.
- (e) Upon receiving advice from the Train Controller in accordance with **item 1.4(d)** of this **schedule 9**, the Operator's Controller must verbally acknowledge receipt of that advice from the Train Controller.
- (f) If the Operator's Train Controller or the Traincrew submits a request for a

Traincrew Break or Relief to the Train Controller, then:

- (i) the Train Controller and the Operator's Controller must consult with each other as to the most appropriate time and location for the Traincrew Break or Relief (as applicable); and
 - (ii) the Train Controller must not unreasonably refuse to agree to the time and location for the Traincrew Break or Relief (as applicable).
- (g) If the Train Controller and the Operator's Controller agree the time and location for the requested Traincrew Break or Relief (as applicable), then:
- (i) the Operator's Controller must:
 - (A) make all the necessary arrangements for the Traincrew Break or Relief (as applicable) and, subject to **item 1.4(h)** of this **schedule 9**, advise the Traincrew of such arrangements; and
 - (B) inform the Train Controller of any changes to the Traincrew's requirements for that Traincrew Break or Relief (as applicable) including any changes to the Traincrew's requirements with respect to the time for that Traincrew Break or Relief (as applicable); and
 - (ii) the Train Controller must advise the Operator's Controller if the estimated time of arrival of the Train at the location for the Traincrew Break or Relief (as applicable) varies by more than 15 minutes from the agreed time for the Traincrew Break or Relief (as applicable).
- (h) If the Operator's Controller is unable to contact the Traincrew directly to provide advice in relation to the arrangements for the Traincrew Break or Relief (as applicable) referred to in **item 1.4(g)** of this **schedule 9**, then the Train Controller may, subject to receiving a request from the Operator's Controller, advise the Traincrew of the arrangements for that Traincrew Break or Relief (as applicable).
- (i) If the Operator's Train Controller informs the Train Controller in accordance with **item 1.4(g)(i)(B)** of this **schedule 9** that the Traincrew's requirements for a Traincrew Break or Relief have changed, then the Train Controller and the Operator's Controller must consult with each other with respect to the relevant changes.

1.5 Radio procedures

- (a) The Operator's Staff must follow the general radio procedures contained in the "Observance of Signals Manual STD/0037/SWK" (as amended from time to time) when using the Train Control radio system.

- (b) The details for access to the Train Control radio system for each of the line sections that comprise the Nominated Network are set out below:

Line Section:	[insert]
Channel Number:	[insert]
Line Section:	[insert]
Channel Number:	[insert]

1.6 Procedures for entering the Nominated Network

- (a) The Operator must comply with the yard procedures at the Origin for a Train Service (if any) as advised by Aurizon Network.
- (b) The Operator will only enter the Nominated Network upon receipt of the appropriate “Proceed Authority” (as defined in Aurizon Network’s safety management system (as amended from time to time)) as advised by Aurizon Network.
- (c) The Operator's Controller must advise the Train Controller of the anticipated departure time of the Operator's Train at least two hours before the Scheduled Time for the departure of the Train or when reasonably requested by the Train Controller. If the anticipated departure time alter from that previously advised to the Train Controller, then the Operator's Controller must advise the Train Controller of the new anticipated departure time as soon as reasonably practicable after it becomes aware of the change.
- (d) The Traincrew for a Train Service must advise the Train Controller when the Train for that Train Service is ready to depart the Origin.
- (e) Prior to the departure of the Train, the Operator must supply the Train driver with the Scheduled Times for that particular Train Service for that particular day.

1.7 Procedures for shunting/entering and exiting yards

Aurizon Network will advise the Operator of the appropriate procedures for shunting, entering yards and leaving yards en route.

1.8 Procedures for leaving the Nominated Network

The Operator must comply with yard procedures at the Destination for a Train Service (if any) as advised by Aurizon Network.

1.9 Contact details for party responsible for loading Trains – clause 18.4(c)

- (a) The Operator must provide to Aurizon Network (and keep current at all times during the Term) the contact details for any party responsible for loading the Operator’s Trains.

- (b) As at the date of this Deed, the parties responsible for loading the Operator's Trains are set out below:

Name	Phone	Fax
[insert]	[insert]	[insert]
[insert]	[insert]	[insert]
[insert]	[insert]	[insert]

2 Train Operations Procedures

2.1 Safety Alerts and Safety Notices

(a) Safety Alerts

- (i) In this **item 2** of **schedule 9**, **Safety Alert** means a document specified as a "Safety Alert" which notifies the recipient that a serious safety incident that has affected or could affect Aurizon Network, the Operator or any other user of the Infrastructure has occurred. A Safety Alert may include:
- (A) details in relation to the serious safety incident (for information purposes); and/or
 - (B) information in relation to any immediate actions to be taken in relation to the serious safety incident.
- (ii) Aurizon Network must give a Safety Alert as soon as reasonably practicable after the occurrence of a serious safety incident.
- (iii) Aurizon Network may give the Operator a Safety Alert using the Operator's address for notices specified in **item 2** of **schedule 1**. Without limiting the method of delivery, Aurizon Network may give the Operator a Safety Alert by electronic means.
- (iv) As soon as possible after the receipt of a Safety Alert from Aurizon Network, the Operator must make the Operator's Staff aware of the contents of such Safety Alert.

(b) Safety Notices

- (i) In this **item 2** of **schedule 9**:
- (A) **Safety Change** means a temporary or permanent change to Aurizon Network's safety management system.
 - (B) **Safety Notice** means a document specified as a "Safety Notice" which is published by Aurizon Network on a weekly basis for distribution to Aurizon Network's employees and the Operator (if it contains safety information relevant to the Operator) and includes safety information about a Safety Change.
- (ii) Subject to **item 2.1(b)(iii)** of this **schedule 9**, Aurizon Network will include safety information about a Safety Change in a Safety Notice published at least seven days before the date that the Safety Change becomes effective.

- (iii) If:
 - (A) Aurizon Network considers it necessary to communicate certain safety information about a Safety Change; and
 - (B) that safety information has not been published in a Safety Notice at least seven days before the date that the relevant Safety Change will become effective;
 then, Aurizon Network must:
 - (C) publish that safety information in a Train Notice or a Safety Alert; and
 - (D) as soon as reasonably practicable after publication of that Train Notice or Safety Alert, publish that safety information in a Safety Notice.
- (iv) The Operator must ensure that members of the Operator's Staff who perform Safety Related Work have access to a copy of, or are notified of, any safety information in the Safety Notices relevant to their area of work.
- (v) Aurizon Network may give the Operator a Safety Notice using the Operator's address for notices specified in **item 2 of schedule 1**. Without limiting the method of delivery, Aurizon Network may give the Operator a Safety Notice by electronic means.

(c) Train Notices

- (i) In this **item 2 of schedule 9, Train Notice** means a document specified as a "Train Notice" which is published by Aurizon Network on a daily basis (or as otherwise determined by Aurizon Network) for distribution to the Operator and conveys operational instructions, information and messages about Activities on the Infrastructure.
- (ii) The Operator must ensure that all Train Notices are given to members of the Operator's Staff who:
 - (A) are responsible for the operation of Rollingstock used in the operation of a Train Service for a Train Service Type; or
 - (B) work on or near any Track.
- (iii) Aurizon Network may give the Operator a Train Notice using the Operator's address for notices specified in **item 2 of schedule 1**. Without limiting the method of delivery, Aurizon Network may give the Operator a Train Notice by email.

(d) Safeworking Forms

- (i) Aurizon Network will make available to the Operator access to electronic copies of administrative forms included in Aurizon Network's safety management system which are necessary for the Operator to operate Train Services on the Nominated Network (**Safeworking Forms**).

- (ii) The Operator may obtain a reasonable quantity of Safeworking Forms by submitting a request to the following contact at Aurizon Network:

Position:	[insert]
Phone:	[insert]
Email address:	[insert]
Fax:	[insert]

2.2 Operational meetings

- (a) The contact details for the Operator's Representative are set out below:

Position:	[insert]
Phone:	[insert]
Mobile phone:	[insert]
Email address:	[insert]
Fax:	[insert]

- (b) The contact details for the Aurizon Network Representative are set out below:

Position:	[insert]
Phone:	[insert]
Mobile phone:	[insert]
Email address:	[insert]
Fax:	[insert]

- (c) The Operator's Representative and the Aurizon Network Representative (or their nominees) must meet on a monthly basis or as agreed by the Parties for the purpose of:
 - (i) reviewing the achievement of Performance Levels (as that term is defined in the Access Agreement) and other matters affecting the performance of Train Services so as to identify remedial action in relation to recurring problems and to plan action to address potential or known problems;
 - (ii) reviewing requests or proposals by the Operator or Aurizon Network to vary the procedures contained in this **schedule 9**;
 - (iii) reviewing the reliability of the Operator's Rollingstock;
 - (iv) reviewing Operational Constraints;
 - (v) investigating or reviewing breaches or suspected breaches of the Applicable Safeworking Procedures, Applicable Safety Standards or Train Control Directions by the Operator's Staff; and
 - (vi) reviewing any other matters relevant to the performance of this

Deed.

- (d) The Operator's Representative must attend other operational meetings relevant to the operation of Train Movements on the Nominated Network as required by Aurizon Network from time to time.

3 Nominated Persons

3.1 Operator's Incident Response Coordinator

The contact details for the Operator's Incident Response Coordinator are as follows:

Name:	[insert]
Position:	[insert]
Phone (during business hours):	[insert]
Phone (outside business hours):	[insert]
Mobile:	[insert]
Email:	[insert]
Fax:	[insert]

3.2 Operator's Recovery Team Leader

The contact details for the Operator's Recovery Team Leader are as follows:

Name:	[insert]
Position:	[insert]
Phone (during business hours):	[insert]
Phone (outside business hours):	[insert]
Mobile:	[insert]
Email:	[insert]
Fax:	[insert]

4 Possession Protocols

Aurizon Network must publish the the Possession Protocols (as amended from time to time) on its Website which detail the rules governing the management and scheduling of Planned Possessions and Emergency Possession on the Infrastructure.

5 Document Control Procedures

- (a) The contact details for the Operator's Document Controller are set out below:

Name:	[insert]
Position:	[insert]

Phone:	[insert]
Postal Address:	[insert]
Email Address:	[insert]

- (b) Upon execution of this Deed, Aurizon Network will give the Operator one electronic copy of each of the Applicable Safeworking Procedures and Applicable Safety Standards.
- (c) Aurizon Network will manage updates and revisions of the documents referred to in **item 5(b)** of this **schedule 9**, the Emergency Procedures and the Investigations Procedures in accordance with the provisions of the relevant Australian Standards that apply to document control at that time.
- (d) The Operator is responsible for ongoing distribution of all documents provided to it by or on behalf of Aurizon Network in respect of Aurizon Network's safety management system (including the documents referred to in **item 5(b)** of this **schedule 9**) to the relevant members of the Operator's Staff.

Schedule 10

Ancillary Services and Ancillary Services Charges

1 Ancillary Services

[Drafting note: Arrangements for the provision of Ancillary Services (if any) by Aurizon Network to the Operator will be agreed on a transaction-by-transaction basis and documented in this **schedule 10**.]

1.1 Provision of Wayside Equipment

In this **item 1.1** of **schedule 10**:

Wayside Equipment means equipment owned by Aurizon Network that is located on or adjacent to the Infrastructure which records data which, if made available to the Operator, could be used by the Operator to monitor the condition of the Operator's Rollingstock, but excludes Weighbridges and Overload Detectors.

[Drafting note: Arrangements for the provision of Wayside Equipment by Aurizon Network to the Operator will be an Ancillary Service to be agreed on a transaction-by-transaction basis and documented in this **schedule 10**.]

Schedule 11

Interface Risk Management Plan

Annexure 6 – Standard Rail Connection Agreement (clean)

QRC Submission draft – 17 February 2017

Aurizon Network Pty Ltd

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

**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 17, 175 Eagle Street, Brisbane (**Aurizon Network**)

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

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.
-

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

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 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.

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(c)(iii)(B)**.] *[Definition only to be included if the version of **clause 5**, as specified in Schedule 5, is included.]*

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(b)(i)**.] *[Definition only to be included if the version of clause 5 as set out in the body of the Agreement is included]*

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

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 18**, of this Agreement so as to remove the connection between the Network and the Private Infrastructure and restore the affected section of the Network to a condition consistent with the adjacent sections of the Network

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 17**).

Design means the design of the Connecting Infrastructure.

Dispute has the meaning given in **clause 17(a)**.

Dispute Notice has the meaning given in **clause 17(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**; and
- (b) as subsequently amended in accordance with **clause 11**.

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**.

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 11(I)(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 jointly undertaken by the Parties 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 (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.

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

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

- (a) the Private Infrastructure, even if Aurizon Network is the Rail Infrastructure Manager for the Private Infrastructure at any time; and
- (b) rail transport infrastructure for which Aurizon Network is the Accredited Rail Infrastructure Manager but which is owned by a Third Party and connected under an agreement of similar nature to this Agreement.

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 26(c)**.

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

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*.

Resolution Institute means [insert].

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** as it may be adjusted from time to time in accordance with **clause 20**.

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 utilise the Private Infrastructure and any alterations, additions and replacements of such facilities made by the Private Infrastructure Owner from time to time.

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

- (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 MCI or to otherwise be increased in proportion to a change in the MCI, the escalated amount is calculated as follows:

$$Escalated\ Amount = Amount \times \frac{MCI_n}{MCI_x}$$

where:

Escalated Amount is the amount as escalated;

Amount is the amount to be escalated;

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

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

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

2 Term

Subject to **clause 18**, 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 the Annual Service Charge and the Decommissioning Charges.
- (c) 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.
- (d) If for any Maintenance Year, all Train Services which utilised the Connecting Infrastructure to enter and/or exit the Network were Reference Train Services, no Annual Service Charge will be payable.
- (e) Subject to **clause 3(f)(i)**, 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.
- (f)
 - (i) 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.
 - (ii) If the Private Infrastructure Owner fails to pay in full any amount payable by it under this Agreement by the due date, the Private Infrastructure Owner must pay interest on the outstanding amount at the Default Rate.
 - (iii) Interest payable under **clause 3(f)(ii)** 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.
- (g) 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.
- (h) If, pursuant to an audit carried out under **clause 3(g)**, 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.
- (i) The value of any adjustment under **clause 3(h)** 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 17(d)**.

5 Connecting Infrastructure

- (a) This **clause 5** applies if Aurizon Network is responsible for the planning, design and construction of the Connecting Infrastructure (as specified in **Item 5 of Schedule 1**). 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**) then the version of **clause 5** as set out in **schedule 5** applies and this **clause 5** does not otherwise apply.
- (b)
 - (i) 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**.
 - (ii) 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(b)(ii)**, the Private Infrastructure Owner may refer to the matter for resolution under [Part 11] of the Access Undertaking

- (iii) Within [10 Business Days] of submission of the draft Design and the draft Construction Agreement under **clause 5(b)(ii)**, the Private Infrastructure Owner must give written notice to Aurizon Network:
 - (A) 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
 - (B) approving the Design or the Construction Agreement (or both); or
 - (C) rejecting the Design or the Construction Agreement (or both), in which case the Private Infrastructure Owner must give:
 - (1) reasons for the rejection; and
 - (2) 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.
- (iv) The Private Infrastructure Owner may only request amendments under **clause 5(b)(iii)(C)** if they relate to:
 - (A) the CI Criteria; or
 - (B) 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 that would result in the Connecting Infrastructure being 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).
- (v) If the Private Infrastructure Owner gives Aurizon Network written notice under **clause 5(b)(iii)(A)**, then within the timeframe specified in the notice the Private Infrastructure Owner must give written notice to Aurizon Network under either **clause 5(b)(iii)(B)** or **(C)**, in accordance with **clause 5(b)(iv)**.
- (vi) Within [20 Business Days] after receipt of a notice under **clause 5(b)(iii)(C)** or **5(b)(vii)**, Aurizon Network must:
 - (A) modify and resubmit the Design or the Construction Agreement (as applicable); or
 - (B) 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.
- (vii) 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(b)(iv)** it must, as soon as practicable of becoming aware of that change, notify Aurizon Network of:
 - (A) the nature of the material change in circumstances; and
 - (B) 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.

- (viii) If the Private Infrastructure Owner or a PIO Party acting reasonably considers that its own conduct will cause a material change in circumstances referred to in **clause 5(b)(vii)** then the Private Infrastructure Owner must consult with Aurizon Network before any such conduct is implemented.
- (ix) Aurizon Network will not be required to pay any costs associated with the material change referred to in **clause 5(b)(vii)** if it was the result of the Private Infrastructure Owner or a PIO Party's wilful misconduct, wilful default or gross negligence.
- (x) The Construction Agreement must contain at least the terms set out in **Schedule 6** and those terms prevail over other terms in the Construction Agreement to the extent of any inconsistency.

6 Connecting Infrastructure – post commissioning

- (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 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**, the parties must seek to agree, as soon as reasonably practicable, to amend **Schedule 2** to include a plan that is consistent with the constructed Connecting Infrastructure.
- (c) Aurizon Network must inspect the Connecting Infrastructure at least annually to assess the state of repair of the Connecting Infrastructure.
- (d) 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(c)**.
- (e) Subject to **clause 18(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.
- (f) 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 Expansion).

- (g) Aurizon Network must notify the Private Infrastructure Owner, in comprehensive detail, of any modifications, upgrades or replacement required under **clause 6(f)**, 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 Aurizon Network's own cost.
- (h) Aurizon Network must:
 - (i) subject to **clause 6(h)(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.
- (i) 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 26(d)**.
- (j) 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, the Rail Infrastructure Manager of the Private Infrastructure and any other person affected by the changes to the System Operating Parameters 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(j)(i)** meet with the Private Infrastructure Owner, the Rail Infrastructure Manager of the Private Infrastructure and any other person affected by the changes to the System Operating Parameters to negotiate in good faith and agree the proposed changes.
- (k) If the Private Infrastructure Owner, the Rail Infrastructure Manager of the Private Infrastructure, any other person affected by the changes to the System Operating Parameters and Aurizon Network are unable to agree within the **[x timeframe]** specified in **clause 6(j)(ii)**, the matter must be referred for expert resolution under **clause 17(d)**.

7 Maintenance of and modification or upgrade to 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(c)**.
- (b) 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.
- (c) 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:
 - (i) 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);
 - (ii) 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;
 - (iii) maintains the integrity of all electrical, signalling and telecommunications interfaces between the Private Infrastructure and the connecting sections of the Network;
 - (iv) maintains the integrity of any weighbridge or overload detector on the Private Infrastructure; and
 - (v) 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).
- (d) 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.
- (e) 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 as otherwise reasonably required by Aurizon Network.
- (f) 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.
- (g) 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.

- (h) The Private Infrastructure Owner is responsible for all electrical safety obligations for the Private Infrastructure.

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 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 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.

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) (i) As required by the Rail Infrastructure Manager for the Private Infrastructure or Aurizon Network (**Requesting Party**), the other entity (**Providing Party**) must provide the Requesting Party 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.
- (ii) Each Party must participate in:
- (A) reviews of the safety management systems and safety assurance matters in respect of interface issues;
 - (B) 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);
 - (C) identification of relevant engineering standards and procedures and operational systems safety standards; and
 - (D) 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.

11 Interface Risk Assessment and Emergency Response Plan

- (a) If the Private Infrastructure Owner is not the Rail Infrastructure Manager for the Private Infrastructure, 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 71 of the TRSA) with Aurizon Network in accordance with section 59 of the TRSA.
- (b) To the extent that the Rail Infrastructure Manager for the Private Infrastructure has not entered an interface agreement in accordance with **clause 11(a)** Aurizon Network may suspend, until such an interface agreement is entered, 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 an interface agreement under **clause 11(a)**.

- (c) 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.
- (d) 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(c)**, either Party may give the other Party a Dispute Notice and the Dispute will be referred for expert resolution under **clause 17(d)**. The expert for the purposes of this **clause 11(d)** and **clause 17(d)(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.
- (e) If, after a review under **clause 11(c)** or **11(d)**, 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.
- (f) The Private Infrastructure Owner must maintain an Emergency Response Plan reasonably satisfactory to Aurizon Network. The Private Infrastructure Owner must incorporate any findings arising from the review under **clause 11(c)** or an investigation under **clause 11(l)** into the Emergency Response Plan or Interface Risk Management Plan (as applicable) as soon as possible.
- (g) The Parties must comply with the Emergency Response Plan and the Interface Risk Management Plan, and must ensure that their officers, employees, agents and independent contractors also comply.
- (h) 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.
- (i) Subject to **clause 11(j)**, 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 26(d)**, 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.
- (j) 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 11(i)** 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.
- (k) Subject to the TRSA, 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.

- (l) Subject to the TRSA, 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.
- (m) Subject to the TRSA, 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.
- (n) Subject to the TRSA, 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.

12 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 13(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(c)** 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
 - (iv) 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 12(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 12(c)** and comply with directions of Aurizon Network's train controllers regarding entry to and exit from the Connecting Infrastructure.

13 Notification of matters affecting the Private Infrastructure

- (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** 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.

14 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.

15 Force Majeure Event

- (a) Subject to **clause 15(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.

16 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**.
- (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**.
- (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 16** and within 10 Business Days after receiving a request from the other Party in writing, make available for inspection at a reasonable time, a copy of such insurance policies.

- (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 16**.
- (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**. 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 16**.

17 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 17**; 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 17(a)(ii)** or **clause 17(e)**) 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) 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:
 - (i) in the case of what the Parties agree are financial matters, the President for the time being of [The Institute of Chartered Accountants in Australia];
 - (ii) in the case of what the Parties agree are non-financial matters, the President for the time being of the [Resolution Institute]; and
 - (iii) 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].
- (d) Where a Party refers a Dispute to an expert for resolution:
 - (i) 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;

- (ii) 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;
 - (iii) 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;
 - (iv) the expert must determine the Dispute no later than 60 Business Days following appointment under **clause 17(c)**;
 - (v) the expert must provide both Parties with a copy of their determination as soon as reasonably practicable following determination of the Dispute;
 - (vi) 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 17**, any financial records of Aurizon Network required to assist the determination of the dispute must be supplied to the expert only and will not be available to the 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;
 - (vii) 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;
 - (viii) in the absence of manifest error the determination of the expert will be final and binding upon the Parties; and
 - (ix) the costs of the expert and any advisors will be borne by the Parties in such proportion as determined by the expert.
- (e) Where the right to terminate which provided the grounds for a suspension under **clause 18(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 17(c)** provided that:
- (i) despite **clause 17(d)(v)**, 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 17(d)(iii)**, the Parties must use their best endeavours to assist the expert in making a determination as soon as is practicable.

18 Termination and suspension

- (a) Without prejudice to any other rights of Aurizon Network and subject to **clause 18(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:
 - (A) abandons, terminates or permanently ceases operation of the whole of the Private Infrastructure; or
 - (B) 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;
 - (ii) subject to **clause 3(f)(i)**, 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;
 - (iii) the Private Infrastructure Owner is in default of its obligation to establish or to maintain a security as required under **clause 20**, and such default continues for 20 Business Days (or such longer period as may be agreed between the Parties) after notice from Aurizon Network of such default;
 - (iv) the Private Infrastructure Owner is in default of its obligation to maintain insurance in accordance with **clause 16**, 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;
 - (v) an Insolvency Event occurs in relation to the Private Infrastructure Owner;
 - (vi) 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 11(a)** (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, 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;
 - (vii) the Private Infrastructure Owner fails to comply with **clause 9** or **clause 7(c)** 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

- (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, 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 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, 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;
- (ix) 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
- (x) 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 18(a)** to the extent that the right to terminate is the subject of a bona fide dispute between the Parties under **clause 17** 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, 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
 - (iii) 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 18(d)(i)**, must do all things required to transfer ownership and possession of the Connecting Infrastructure to the Private Infrastructure Owner (except any part of the Connecting Infrastructure which Aurizon Network reasonably requires for the purpose of continued operation of the Network), subject to Aurizon Network having legal title to the Connecting Infrastructure and not being required to act inconsistently with its land or infrastructure tenure rights, or other relevant arrangements with Third Parties, relating to any relevant part of the Network; and
 - (iii) where agreement has not been reached under **clause 18(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 and cost, 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 18(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 18(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 17(e)**, any suspension occurring under **clause 18(f)** will cease to the extent that the grounds for suspension become the subject of a bona fide dispute between the Parties under **clause 17** 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.

19 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.

20 Security

- (a) If Aurizon Network considers (acting reasonably) that the Private Infrastructure Owner is no longer financially sound, 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,
- and Aurizon Network must not unreasonably withhold or delay its acceptance of any security delivered under this **clause 20(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** in proportion to the change in the MCI over the most recent financial year (with the calculation and timing of that indexation to occur in accordance with **clause 1(b)(v)**).
 - (c) The Private Infrastructure Owner may, in accordance with **clause 17**, dispute a purported variation in the Security Amount under **clause 20(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 20**, undertaking to pay Aurizon Network on demand an amount equal to the amount called up. Such further security will form part of the security provided by the 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 20**, 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 20(a)**.

21 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 21(a), 21(d) and 22(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**.

- (d) The limitation in **clause 21(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.

22 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 22** 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.

23 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) (i) The addresses and numbers for service are initially:
- Aurizon Network Pty Ltd:**
Address: Level 17, 175 Eagle Street, Brisbane QLD 4000
Email: [access.services@aurizon.com.au]
Attention: Chief Executive Officer, 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
- (ii) A Party may from time to time change its address for service by notice to the other Party.
- (d) 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.
- (e) 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.

24 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 24(a)**; or
- (ix) with the prior written consent of the other Party, such consent not to be unreasonably withheld,

provided that a recipient under **clause 24(a)(iii), (iv) or (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 24(b)**; or
 - (D) with the other Party's written consent.
- (c) If a Party does not comply with **clause 24(a)** or **clause 24(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.

25 Compliance with laws

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

26 Access to land

- (a) (i) If the construction or operation of the Private Infrastructure or Connecting Infrastructure reasonably requires access to land owned or controlled by Aurizon Network or an Aurizon Party 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:
 - (A) the land is owned by Aurizon Network or an Aurizon Party or Aurizon Network has, through a lease, licence or other arrangement with the owners of the land or under the *Transport Infrastructure Act 1994* (Qld), the authority to authorise access to that land; and

- (B) 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.
- (ii) If Aurizon Network does not have authority to authorise the Private Infrastructure Owner to access land as provided by **clause 26(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:
 - (A) 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;
 - (B) advice as to the nature and extent of the rights, if any, that Aurizon Network holds in relation to the relevant land; and
 - (C) 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.
- (b) Where the Private Infrastructure Owner or the Railway Infrastructure Manager for the Private Infrastructure accesses land under **clause 26(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.
- (c) (i) If Aurizon Network requires access to any land on which the Private Infrastructure or Connecting Infrastructure is or will be constructed (**Private Land**), the Private Infrastructure Owner must:
 - (A) provide reasonable access to the Private Land for Aurizon Network and its employees, officers, agents and contractors to the extent that access to the Private Land is reasonably required to enable Aurizon Network to comply with its obligations under this Agreement or an interface agreement with the Rail Infrastructure Manager for the Private Infrastructure, provided that:
 - (1) the Private Land is owned by the Private Infrastructure Owner or its Related Body Corporate or the Private Infrastructure Owner 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
 - (2) the access is consistent with the terms of any lease, license or other arrangement to which the Private Infrastructure Owner or its Related Body Corporate is a party in respect of the land.
- (ii) If the Private Infrastructure Owner does not have authority to authorise Aurizon Network to access land as provided by **clause 26(c)(i)**, then the Private Infrastructure Owner must provide the details referred to in **clause 26(a)(ii)** (as applied to this **clause 26(c)(ii)**) in relation to access to that land within 10 Business Days of receiving a written request from Aurizon Network to access the Private Land.

- (d) 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.
- (e) Subject to **clause 26(f)**:
 - (i) Aurizon Network may enter Private Land owned or controlled by the Private Infrastructure Owner or Railway Infrastructure Manager for the Private Infrastructure 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 land owned or controlled by Aurizon Network or an Aurizon Party without the consent of Aurizon Network, if immediate entry is necessary to prevent, minimise or alleviate any threat or danger to any person or property that has resulted, or is expected to result, from an Incident.
- (f) If a Party enters land in accordance with **clause 26(e)** (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.

27 Miscellaneous

- (a)
 - (i) 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.
 - (ii) 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.
- (b) 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.
- (c) 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.
- (d) 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.

- (e) 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.
- (f) 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.
- (g) 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.
- (h) 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(a)**)
[Insert either Aurizon Network or Private Infrastructure Owner]
- Item 6** Cap on liability (**clause 21(c)**)
\$[#] per Train Service contracted to enter and/or exit the Network via the Connecting Infrastructure
- Item 7** Aurizon Network Train Control contact (**clause 13(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 (indexed annually in accordance with the MCI).

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 the insured'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 by the insured or the insured's staff;
- (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 the insured or the insured'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 the insured or the insured's staff of all vehicles in the performance of the Agreement in accordance with the relevant statutory requirements.

Any other insurance which is required by law to be maintained by the 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 (indexed annually in accordance with the MCI).

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.

The calculation and timing of indexation of any amounts to be indexed by MCI will occur in accordance with **clause 1(b)(v)**.

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 - Alternative clause 5

5. Connecting Infrastructure

- (a) 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.
- (b)
 - (i) Before commencing construction of the Connecting Infrastructure, the Private Infrastructure Owner may submit the Design to Aurizon Network for approval in accordance with this **clause 5**. 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.
 - (ii) Within 10 Business Days after the Design is submitted in accordance with **clause 5(b)(i)**, Aurizon Network must give written notice to the Private Infrastructure Owner:
 - (A) informing the Private Infrastructure Owner that additional time is required to consider the Design, and the reason that additional time is required; or
 - (B) approving the Design; or
 - (C) rejecting the Design, in which case Aurizon Network must give:
 - (1) reasons for the rejection; and
 - (2) 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.
 - (iii) Within 20 Business Days of giving a notice in accordance with **clause 5(b)(ii)(A)**, Aurizon Network must give written notice to the Private Infrastructure Owner:
 - (A) approving the Design; or
 - (B) rejecting the Design, in which case Aurizon Network must give:
 - (1) reasons for the rejection; and
 - (2) 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.
 - (iv) 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 that would result in the Connecting Infrastructure being 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).
 - (v) Following receipt of a notice under **clauses 5(b)(ii)(C), 5(b)(iii)(B) or 5(b)(vi)**, the Private Infrastructure Owner may:

- (A) modify and resubmit the Design, in which case **clause 5(b)(ii)** will reapply; or
 - (B) 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.
- (vi) 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(b)(ii)(B)** it must, as soon as practicable after becoming aware of that change, notify the Private Infrastructure Owner of the nature of the material change in circumstances and details of any modifications that it requires to be made to the Design so that it is suitable for the purpose of connecting the Private Infrastructure to the Network and for the operation of the Train Services anticipated by the Private Infrastructure Owner. Where it is the conduct of Aurizon Network or an Aurizon Party in respect of the Network which would cause the material change in circumstances:
- (A) Aurizon Network must consult with the Private Infrastructure Owner before implementing any such change; and
 - (B) 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.
- (c)
- (i) 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:
 - (A) whether the Design approved in accordance with **clause 5(b)(ii)(B)** (including any modifications made following a notice under **clause 5(b)(vi)**) appears to have been complied with to the date of inspection; and
 - (B) 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(c)(ii)**,
 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.
 - (ii) 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:
 - (A) complies with any Design approved in accordance with **clause 5(b)(ii)(B)** (including any modifications made following a notice under **clause 5(b)(vi)**); or
 - (B) 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).

- (iii) If Aurizon Network has, in accordance with **clause 5(c)(ii)**, 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:
 - (A) 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(c)(ii)**; and
 - (B) 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**).
- (iv) The Private Infrastructure Owner may dispute all or any part of the Connecting Infrastructure Work Notice in accordance with this Agreement.
- (a) 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 replacement, 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 a dispute resolution carried out 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.

Schedule 6 - Construction Agreement terms

[This Schedule 6 is only required if the version of clause 5 in the body of the Agreement is used. If the version of clause 5 as set out in Schedule 5 is used then this Schedule 6 is not required.]

- (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(b)(i)**, 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)

Annexure 7 – Standard Rail Connection Agreement (compare)

~~Aurizon Network 2017 DAU Draft – 30 November 2016~~

[QRC Submission draft – 17 February 2017](#)

Aurizon Network Pty Ltd

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

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

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<u>9</u>	<u>Accreditation requirements.....</u>	<u>26</u>
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<u>11</u>	<u>Interface Risk Assessment and Emergency Response Plan</u>	<u>29</u>
<u>12</u>	<u>Train Control.....</u>	<u>34</u>
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Date

Parties

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

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

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.
-

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

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

~~**Annual Service Charge** means, in respect of a Maintenance Year, the charge determined in accordance with clause 3(b)(v) or 3(b)(vi), as applicable.~~

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

Aurizon Party means a Related Body Corporate of Aurizon Network.

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

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].

~~[Examples of current Branch Lines include:~~

- ~~• Blackwater West — rail transport infrastructure from west of Burngrove;~~
- ~~• Blackwater East — rail transport infrastructure between Burngrove and Gracemere;~~
- ~~• Moura West — rail transport infrastructure west of Callide;~~
- ~~• Moura East — rail transport infrastructure between the Callide Junction and Byellee Fly Over;~~
- ~~• NCL South — rail transport infrastructure between Gracemere and Byellee and Gladstone Ports;~~
- ~~• Goonyella South — rail transport infrastructure between Burngrove Junction and Coppabella;~~
- ~~• Goonyella Central — rail transport infrastructure between Coppabella and Jilalan;~~
- ~~• Goonyella North — rail transport infrastructure between North Goonyella and Coppabella;~~
- ~~• Goonyella Far West — rail transport infrastructure between Blair Athol and Caval Ridge Junction;~~
- ~~• Goonyella West — rail transport infrastructure between Caval Ridge Junction and Wotonga Junction; 10795707/9 page 3~~
- ~~• Goonyella East — rail transport infrastructure between Jilalan and the Ports of Dalrymple Bay Coal Terminal and Hay Point;~~
- ~~• GAPE — rail transport infrastructure between North Goonyella and the Newlands Junction;~~
- ~~• Newlands West — rail transport infrastructure between the Newlands Junction and Kaili;~~
- ~~• Newlands East — rail transport infrastructure between Kaili and the Abbot Point coal terminal].~~

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

CI Criteria ~~has~~ means, in respect of a Design, that the ~~meaning given in clause 6(e)(iii).~~ Design.

(a) meets the technical specifications reasonably required by Aurizon Network for connection to the Network;

(b) provides for the Connecting Infrastructure to be constructed to a standard appropriate to the nature of the traffic and the current service standards of the adjoining part of the Network;

(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.

~~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 ~~Aurizon Network~~ Access Undertaking.

Coal System has the meaning given in the ~~Aurizon Network~~ Access Undertaking.

Commencement Date means the date of execution of this Agreement.

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

~~Commoncoment Date means the date of execution of this Agreement.~~

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

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

~~(a) — identified as Connecting Infrastructure on the plan detailed in **Schedule 2**; or~~

~~(b) — not identified on the plan detailed in **Schedule 2** as being Private Infrastructure, Connecting Infrastructure or part of the Network, but which:~~

~~(i) — is managed, controlled or owned by Aurizon Network;~~

~~(ii) — connects the Private Infrastructure to the Network; and~~

~~(iii) — on completion forms part of the Network;~~

as modified, upgraded or replaced from time to time.

[Connecting Infrastructure Work Notice means the notice referred to in **clause 6(d)(iii)(B)** ~~5(c)(iii)(B)~~ *[Definition only to be included if ~~clauses 6(a)–6(d)~~ are the version of clause 5, as specified in Schedule 5, is included].*

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; ~~or~~
- (k) in respect of any personal injury Claim, special loss or economic loss as those terms are used in the context of personal injury claims; or
- (l) any fines or penalties imposed by a governmental or regulatory body for failure by the Party to comply with the law as a result of the other Party's failure to comply with the requirements of the 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 7(b)(i), 5(b)(i)**.
[Definition only to be included if [the version of clause 7\(a\)5 as set out in the body of the Agreement](#) is included]

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

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 18**, of this Agreement so as to remove the connection between the Network and the Private Infrastructure and restore the affected section of the Network to a condition consistent with the adjacent sections of the Network

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

(a) 2%; and

~~the 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 1(a)**).

Design means the design of the Connecting Infrastructure.

Dispute has the meaning given in **clause 17(a)**.

Dispute Notice has the meaning given in **clause 17(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**; and
- (b) as subsequently amended in accordance with **clause 11**.

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 ~~Aurizon Network~~ Access Undertaking or, where that term ceases to be defined in the ~~Aurizon Network~~ Access Undertaking or there ceases to be an ~~Aurizon Network~~ Access Undertaking, as last given to that term in the ~~Aurizon Network~~ Access Undertaking.

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

Force Majeure Event means any cause, event or circumstance or combination of causes, events or circumstances which:

- (a) is beyond the reasonable control of the affected Party; and
- (b) by the exercise of due diligence the affected Party was not reasonably able to prevent or is not reasonably able to overcome,

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

- (c) compliance with a lawful requirement, order, demand or direction of an Authority or an order of any court having jurisdiction other than where that requirement, order, demand or direction results from any act or omission of the affected Party;
- (d) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the 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 11\(I\)\(iii\).](#)

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 jointly undertaken by the Parties 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 (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 ~~Aurizon Network~~-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.

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

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

- (a) the Private Infrastructure, even if Aurizon Network is the Rail Infrastructure Manager for the Private Infrastructure at any time; and
- (b) rail transport infrastructure for which Aurizon Network is the Accredited Rail Infrastructure Manager but which is owned by a Third Party and connected under an agreement of similar nature to this Agreement.

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 ~~Aurizon Network~~-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.

~~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 26(c)**.

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

Railway Operator has the meaning given in the ~~Aurizon Network~~-Access Undertaking.

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

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

Reimbursable Item means an item of expense incurred by Aurizon Network in respect of which Aurizon Network is entitled under this Agreement to be reimbursed by the Private Infrastructure Owner for the cost of the item (subject to clause ~~1(b)(iv)~~-1(b)(iv)).

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

Resolution Institute means insert.

Safety Regulator has the meaning given to that term in the ~~Aurizon Network~~ Access Undertaking.

Security Amount means the amount specified in **Item 3 of Schedule 1** as it may be adjusted from time to time in accordance with ~~clause 22(b)~~-20.

Site Senior Site Executive means the site senior ~~site~~ executive appointed ~~in accordance with~~ under the ~~Mineral Resources~~ Coal Mining Safety and Health Act ~~1989~~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 ~~rollingstock~~ rolling stock operating as a unit on the Network, Connecting Infrastructure ~~and~~/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 utilise the Private Infrastructure and any alterations, additions and replacements of such facilities made by the Private Infrastructure Owner from time to time.

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

(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 ~~Aurizon Network~~-Access Undertaking is a reference to the ~~Aurizon Network~~ 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 ~~Aurizon Network~~-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 MCI or to otherwise be increased in proportion to a change in the MCI, the escalated amount is calculated as follows:

$$\text{Escalated Amount} = \text{Amount} \times \frac{MCI_n}{MCI_x}$$

where:

Escalated Amount is the amount as escalated;

Amount is the amount to be escalated;

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

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

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

2 Term

~~This Agreement~~ Subject to clause 18, this Agreement commences on the Commencement Date and expires on the Expiry Date, ~~subject to earlier termination in accordance with clause 20 (Term).~~

3 Charges, invoicing ~~and~~, payment and audit

- (a) Subject to this clause 3(b)(iv), 3, the Private Infrastructure Owner must, in consideration for Aurizon Network performing its obligations under this Agreement, pay ~~to~~ Aurizon Network the following costs, fees Annual Service Charge and charges at the times and in the manner specified: Decommissioning Charges.
- ~~(i) — the Annual Service Charge (if any);~~
 - ~~(ii) — the reasonable and prudent costs of the design, construction and commissioning of modifications to, or upgrade or replacement of, the Connecting Infrastructure in accordance with **clauses 8(e) and 8(f)**, excluding any costs incurred by Aurizon Network in the performance of its maintenance, operation or reinstatement obligations under this Agreement in relation to the Connecting Infrastructure; and~~
 - ~~(iii) — the reasonable and prudent costs of decommissioning and removing the Connecting Infrastructure upon the expiry, or earlier termination in accordance with **clause 20**, 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,~~
- ~~as adjusted in accordance with **clause 3(b)**.~~
- (b) ~~(i) — The 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~~
 - ~~(i) — other amounts payable by the Private Infrastructure Owner under **clause 3(a)** represent consideration for Aurizon Network meeting all obligations under this Agreement including maintenance and inspection charges for the Connecting Infrastructure and administration of the Agreement.~~
 - ~~(ii) — The amounts payable by the Private Infrastructure Owner under **clause 3(a)** must be adjusted by under this Agreement but only after Aurizon Network where an audit undertaken in accordance with **clause 3(e)** has identified an error in the levy, allocation or calculation of the reasonable and prudent costs which have been invoiced to the Private Infrastructure Owner in accordance with **clause 3(c)**.~~
 - ~~(iii) — The value of any adjustment required in accordance with **clause 3(b)(ii)** must be:~~
 - ~~(A) — if the Private Infrastructure Owner has already paid incurs the relevant invoice reflecting the unadjusted amount at the time the audit results are released in accordance with **clause 3(e)(iv)**, refunded to the Private Infrastructure Owner by Aurizon Network no later than 5 Business Days after the date the audit results are released; or~~
 - ~~(B) — if the Private Infrastructure Owner has not already paid the relevant invoice reflecting the unadjusted amount at the time the audit results are released in accordance with **clause 3(e)(iv)**, reflected in a new invoice that Aurizon Network must issue to the Private Infrastructure Owner in accordance with **clause 3(c)** together with a cancellation of the invoice reflecting the unadjusted amount no later than 5 Business Days after the date the audit~~

~~results are released to the Parties and which invoice must specify the relevant adjusted costs, fees and charges to be paid by the Private Infrastructure Owner.~~

~~(iv)(ii) To avoid doubt, where Aurizon Network is required to issue a new invoice to the Private Infrastructure Owner in accordance with **clause 3(b)(iii)(B)**, the Private Infrastructure Owner will not be required to pay the relevant prior invoice costs and provided that such invoices cannot be issued by Aurizon Network which reflected the unaudited value of the relevant costs, fees and charges more regularly than monthly.~~

~~(v)(d) If for any Maintenance Year, all Train Services which utilised the Connecting Infrastructure to enter and/or exit the Network were Reference Train Services, no Annual Service Charge will be payable.~~

~~(vi) If for any Maintenance Year, some or all of the Train Services which utilised the Connecting Infrastructure Subject to enter and/or exit the Network were not Reference Train Services, the Annual Service Charge will be the proportion of the reasonable and prudent incremental and direct costs actually incurred by Aurizon Network during that Maintenance Year in connection with performing its operation and maintenance activities in relation to the Connecting Infrastructure in accordance with this Agreement, excluding costs:~~

~~(A) which are included in access charges for access rights utilised by Train Services entering and/or exiting the Network via the Connecting Infrastructure; and~~

~~(B) excluded in accordance with **clause 1(b)(iv)**,~~

~~which the non-Reference Train Services which utilised the Connecting Infrastructure during the Maintenance Year bears in proportion to the total number of all Train Services which utilised the Connecting Infrastructure during the Maintenance Year.~~

~~(c) Aurizon Network must issue an invoice to 3(f)(i), the Private Infrastructure Owner for:~~

~~(i) the Annual Service Charge (if any) referable to a Maintenance Year, within 30 Business Days of the expiry of that Maintenance Year (with an invoice for an Annual Services Charge calculated pursuant to clause 3(b)(vi) being required to provide details of how the relevant proportion and exclusions were calculated); and~~

~~(ii) other costs payable under **clause 3(a)** or other clauses of this Agreement, following the incurring of any such costs by Aurizon Network provided that such invoices cannot be issued more regularly than monthly.~~

~~(e) The Private Infrastructure Owner must pay the an amount invoiced by Aurizon Network under this Agreement within 20 Business Days after the Private Infrastructure ~~Owner's receipt of~~ Owner receives the invoice.~~

~~(d)(f)(i) If the Private Infrastructure Owner disputes an ~~amount or amounts claimed~~ invoice issued by Aurizon Network ~~in an invoice issued to the Private Infrastructure Owner~~, the Private Infrastructure Owner may, within 10 Business Days ~~of after~~ being is issued, give Aurizon Network a Dispute Notice ~~to Aurizon Network specifying that the Dispute will be resolved in accordance with **clause 19** of this Agreement.~~ The Private Infrastructure Owner must pay the undisputed portion of the amount claimed in the ~~relevant invoice~~ on or before by the due date ~~for payment~~. If the Dispute is ~~subsequently resolved in such a way~~ 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 ~~resolution of the Dispute under clause 19.~~ the Dispute is resolved.

- (ii) If the Private Infrastructure Owner fails to pay in full any ~~costs, fees or charges~~ amount payable by it under this Agreement by the due date, the Private Infrastructure Owner ~~under this Agreement on or before the due date for payment, the Private Infrastructure Owner will be liable to~~ must pay interest on the outstanding amount at the Default Rate.
- (iii) Interest payable under **clause 3(f)(ii)** will be calculated on daily balances on the amounts outstanding from the date following day after the ~~date on which payment of the amount was 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.

~~(e)~~ (g) The Private Infrastructure Owner may at any time require ~~that an audit is undertaken~~ of the ~~costs, fees and charges~~ referred to in **clause 3(a)** for the purpose of verifying that the ~~costs, fees and charges invoiced to the Private Infrastructure Owner~~ 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~~ 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, ~~the auditor being required to fully disclose any such interest or duty by notice to the Parties before its appointment; and~~
 - ~~(C)~~ (B) ~~undertake to be bound by reasonable duties of confidence;~~
- (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 ~~reasonable and prudent costs which have been~~ 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 ~~no later than~~ within 2 Business Days ~~following~~ after receiving a ~~verbal or written~~ 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 ~~(including, if required by Aurizon Network or the Private Infrastructure Owner, by entering into a confidentiality agreement).~~

(h) ~~Any rights and obligations relating~~ If, pursuant to payments ~~(including any exclusions, restrictions and limitations from~~ an audit carried out under clause 3(g), ~~an error is identified in the levy, allocation or on payments)~~ calculation of an amount

invoiced by Aurizon Network ~~to, or to Aurizon Network from,~~ then the invoice must be adjusted to correct the error.

(i) The value of any adjustment under **clause 3(h)** 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 ~~only in relation to the transaction expressly set out in this Agreement and the Private Infrastructure Owner's capacity as the owner of~~ available; or

(f)(ii) if the Private Infrastructure ~~Nothing in this Agreement prevents~~ Owner has ~~not already paid the invoiced amount, reflected in a new invoice that Aurizon Network~~ or must issue to the Private Infrastructure Owner ~~receiving payments under different agreements between them~~ 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 ~~to be~~ provided under this Agreement are exclusive of GST.
- (b) If Aurizon Network is required to pay GST on any amount payable or other consideration to be provided under this Agreement then, subject to **clause 4(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 ~~pursuant to~~ under this Agreement will take the form of a tax invoice.
- (e) If a dispute ~~between Aurizon Network and the Private Infrastructure Owner~~ arises out of or in connection with this **clause 4**, then either Party must give to the other Party a ~~notice of dispute in writing adequately identifying and providing details of the dispute.~~ Dispute Notice. If the dispute ~~has~~ is not ~~been~~ resolved within 10 Business Days after service of a ~~notice of dispute~~ Dispute Notice, the dispute must be referred for expert determination ~~by an expert in accordance with~~ under **clause 17(d)**.

5 ~~Access to operate rollingstock on Private Infrastructure, Network and Connecting Infrastructure~~

- (a) ~~This Agreement does not constitute an agreement between the Parties for:~~
 - ~~(i) access by This clause 5 applies if Aurizon Network or any Third Party to operate rollingstock on the Private Infrastructure; or~~
 - ~~(ii) access by the Private Infrastructure Owner or any Third Party to operate rollingstock on the Network or is responsible for the planning, design and construction of the Connecting Infrastructure.~~
- (b) ~~Arrangements for access to operate rollingstock on the Private Infrastructure, the Network and/or the Connecting Infrastructure will be the subject of a separate agreement or agreements between the relevant entities.~~

~~6 Connecting Infrastructure – Private Infrastructure Owner construction~~

~~[Under clause 9.1 (as specified in Item 5 of the Aurizon Network Access Undertaking, Aurizon Network must design, project manage, construct and commission the Connecting Infrastructure unless otherwise agreed with the Private Infrastructure Owner.]~~

- (a) ~~This clause 6 applies if Schedule 1). 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), then the version of clause 5 as set out in schedule 5 applies and this clause 5 does not otherwise apply.~~
- (b) ~~To enable the Private Infrastructure Owner to plan, design, construct and otherwise carry out the construction of the Connecting Infrastructure, Aurizon Network must, promptly following a written request from the 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, including:~~
- ~~(i) the provision of technical and engineering information in relation to the Network, including all information relating to the design specifications, infrastructure standards and scope of the rail infrastructure adjacent to the Private Infrastructure or to which the Private Infrastructure will connect;~~
 - ~~(ii) advice in connection with the design specifications, infrastructure standards and the scope of the rail infrastructure for the coal system which the Private Infrastructure Owner is developing;~~
 - ~~(iii) providing access to planning procedures developed and maintained by Aurizon Network which would reasonably have an impact on the operation of Train Services using the Connecting Infrastructure including any planned or anticipated upgrades or augmentation of the Network;~~
 - ~~(iv) the provision of information relating to any capacity analysis associated with the Private Infrastructure and Connecting Infrastructure, including capacity modelling assumptions and modelled simulation outputs required for planning and design purposes; and~~
 - ~~(v) reasonable access to employees, agents and officers of Aurizon Network who have knowledge of the Network, in particular of the matters identified in clauses 6(b)(i) to (iv).~~
- (c) ~~(b) (i) Prior to commencing construction of the Connecting Infrastructure, the Private Infrastructure Owner may submit the Design to Aurizon Network for approval in accordance with this clause 6(c). Any such submission must be accompanied by details of the Train Services the Private Infrastructure Owner anticipates entering and/or exiting the Network via the Connecting Infrastructure.~~
- ~~(ii) Within 10 Business Days of submission of the Design in accordance with clause 6(c)(i), Aurizon Network must give written notice to the Private Infrastructure Owner:~~
- ~~(A) where the Design is unusually complex or otherwise especially difficult to assess, informing the Private Infrastructure Owner that additional time is required to consider the Design, and the reason that additional time is required;~~
 - ~~(B) approving the Design; or~~
 - ~~(C) rejecting the Design, in which case Aurizon Network:~~
 - ~~(1) must give reasons for the rejection; and~~

~~(2) — must give details of any modifications that it requires to be made to the Design so that it is suitable for the purpose of connecting the Private Infrastructure to the Network and for the operation of the Train Services anticipated by the Private Infrastructure Owner.~~

~~(iii) — Aurizon Network must approve the Design of the Connecting Infrastructure where the Design:~~

~~(A)(a) — meets the technical specifications reasonably required by Aurizon Network for connection to the Network;~~

~~(B) — provides for the Connecting Infrastructure to be constructed to a standard appropriate to the nature of the traffic and the 10795707/9 page 18 current service standards of the adjoining part of the Network;~~

~~(C)(a) — 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;~~

~~(together, the **CI Criteria**), provided that Aurizon Network cannot refuse to approve the Design on the basis of **clauses 6(c)(iii)(A) – (C)** above if that would result in the Connecting Infrastructure being required to be of a standard or to be of any condition which exceeds the standard and condition of any relevant part of the Network (including any planned or anticipated Expansion).~~

~~(iv) — Within 20 Business Days of giving a notice in accordance with **clause 6(c)(ii)(A)**, Aurizon Network must give written notice to the Private Infrastructure Owner:~~

~~(A) — approving the Design; or~~

~~(B) — rejecting the Design, in which case Aurizon Network:~~

~~(1) — must give reasons for the rejection; and~~

~~(2)(1) — must give details of any modifications that it requires to be made to the Design so that it is suitable for the purpose of connecting the Private Infrastructure to the Network and for the operation of the Train Services anticipated by the Private Infrastructure Owner.~~

~~(C) — 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 that would result in the Connecting Infrastructure being required to be of a standard or to be of any condition which exceeds the standard and condition of any relevant part of the Network (including any planned or anticipated Expansion).~~

~~(v) — Following receipt of a notice under **clauses 6(c)(ii)(C), 6(c)(iv)(B) or 6(c)(vi)**, the Private Infrastructure Owner may:~~

~~(A) — modify and resubmit the Design, in which case **clause 6(c)(ii)** will reapply; or~~

~~(B) — dispute any of Aurizon Network's reasons for rejecting the Design in which case the matter will be resolved in accordance with **clause 11.1** of the Aurizon Network Access Undertaking.~~

~~(vi)(i) — If, following approval of the Design by Aurizon Network but prior to the commencement of construction of the Connecting Infrastructure, Aurizon~~

~~Network reasonably considers there has been a material change in circumstances such that it would no longer be required to approve the Design pursuant to **clause 6(c)(iii)** it must, as soon as practicable of becoming aware of that change, give notice to the Private Infrastructure Owner of the nature of the material change in circumstances and details of any modifications that it requires to be made to the Design so that it is suitable for the purpose of connecting the Private Infrastructure to the Network and for the operation of the Train Services anticipated by the Private Infrastructure Owner. Where it is the conduct of Aurizon Network or an Aurizon Party in respect of the Network which would cause the material change in circumstances:~~

~~(A) Aurizon Network must consult with the Private Infrastructure Owner before implementing any such change; and~~

~~(B)(A) 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.~~

~~(i) 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:~~

~~(A) whether the Design approved in accordance with **clause 6(c)** (including any modifications made following a notice under **clause 6(c)(vi)**) appears to have been complied with to the date of inspection; and~~

~~(B)(A) whether there is any evidence of defects or issues with the works in progress to the date of inspection that may result in the Connecting Infrastructure not meeting the suitability requirements in **clause 6(d)(ii)**,~~

~~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.~~

~~(ii) Prior to 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:~~
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~~(A) complies with any Design approved in accordance with **clause 6(c)** (including any modifications made following a notice under **clause 6(c)(vi)**); or~~

~~(B) 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 to be of any condition which exceeds the standard and condition of any relevant part of the Network (including any planned or anticipated Expansion).~~

~~(iii) If Aurizon Network has, in accordance with **clause 6(d)(ii)**, determined that modification or upgrade to, or replacement of, the Connecting Infrastructure is required in order to make it suitable for these purposes, Aurizon Network must:~~

~~(A) 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 6(d)(ii); and~~

~~(B)(A) 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**).~~

~~(iv)(i) The Private Infrastructure Owner may dispute all or any part of the Connecting Infrastructure Work Notice in accordance with this Agreement.~~

~~(v)(a) Within the period of 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 replacement, 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 a dispute resolution carried out 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.~~

~~7 Connecting Infrastructure – Aurizon Network construction~~

~~(a) This clause 7 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)(a)(i) 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 compliance with the terms of this clause 5.~~

~~(ii) Prior to 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 **Aurizon Network** Access Undertaking, Aurizon Network must submit to the Private Infrastructure Owner for review and comment a draft of the Design and draft Construction Agreement and the Design (these two documents are, If Aurizon Network does not required to be submitted to comply with this clause 5(b)(ii), the Private Infrastructure Owner simultaneously), may refer to the matter for resolution under [Part 11] of the Access Undertaking~~

~~(iii) Within [10 Business Days] of submission of the draft Design and the draft Construction Agreement by Aurizon Network in accordance with under clause 5(b)(ii), the Private Infrastructure Owner must give written notice to Aurizon Network:~~

~~(A) where the Design or the Construction Agreement (or both) are unusually complex or otherwise especially difficult to assess, informing Aurizon Network 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 ~~[x timeframe]; or~~ 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

- (B) approving the Design or the Construction Agreement (or both); or
 - (C) rejecting the Design or the Construction Agreement (or both), in which case the Private Infrastructure Owner must give:
 - (1) reasons for the rejection; and
 - (2) details of any amendments it requires to be made to the Design or the Construction Agreement ~~(or both)~~ so that they are ~~each~~ 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.
- (iv) The Private Infrastructure Owner may only request amendments under **clause 5(b)(iii)(C)** ~~above~~ if they relate to:
- (A) the CI Criteria; or
 - (B) project management or timing issues that the Private Infrastructure ~~owner~~ 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 ~~(or both) on the basis of clauses (A) or (B) above~~ if that would result in the Connecting Infrastructure being required to be of a standard or ~~to be of any~~ condition which exceeds the standard and condition of any relevant part of the Network (including any planned or anticipated Expansion).

- (v) ~~Within [20 Business Days] of giving a~~ lf the Private Infrastructure Owner gives Aurizon Network written notice in accordance with under clause 5(b)(iii)(A), then within the timeframe specified in the notice the Private Infrastructure Owner must give written notice to Aurizon Network under either **clause 5(b)(iii)(B)** or **(C)**, in accordance with **clause 5(b)(iv)**.

~~(vi) — Following:~~

- ~~(A)~~ (vi) Within [20 Business Days] after receipt of a notice under **clauses clause 5(b)(iii)(C) or 1(a)(i)(A)**, Aurizon Network must, ~~within [20 Business Days]:~~

~~(1)~~ (A) modify and resubmit the Design or the Construction Agreement (as applicable); or

~~(2)~~ (B) dispute any of the Private Infrastructure Owner's reasons for rejecting the Design or the Construction Agreement ~~(as applicable) in which case~~ and the matter will be resolved ~~in accordance with under [Part 11] of the Aurizon Network Access Undertaking; or,~~

~~(B) — a failure by Aurizon Network to make a submission in accordance with clause 7(b)(ii), the Private Infrastructure Owner may refer to the matter to be resolved in accordance with Part 11 of the Aurizon Network Access Undertaking.~~

- (vii) ~~If, following approval of the Design and the Construction Agreement by the Private Infrastructure Owner but prior to~~ f, 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 pursuant to under clause 5(b)(iv) it must, as soon as practicable of becoming aware of that change, give notice to Aurizon Network of the nature of the material change in circumstances and 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. Where it is the conduct of the Private Infrastructure Owner or a PIO Party in respect of the Network which would cause the material change in circumstances, it must, as soon as practicable of becoming aware of that change, notify Aurizon Network of:

- (A) the nature of the material change in circumstances; and
- (B) 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.

~~(A)(viii)~~ If the Private Infrastructure Owner or a PIO Party acting reasonably considers that its own conduct will cause a material change in circumstances referred to in clause 1(a)(i)(A) then the Private Infrastructure Owner must consult with Aurizon Network before implementing any such change; and conduct is implemented.

~~(B)(ix)~~ Aurizon Network will not be required to pay any costs associated with such change if the material change referred to in circumstances is clause 1(a)(i)(A) if it was the result of the Private Infrastructure Owner or a PIO Party's wilful misconduct, wilful default or gross negligence.

~~(viii)(x)~~ The Construction Agreement must contain at least the following terms set out in Schedule 6 and these those terms prevail over other terms in the Construction Agreement to the extent of any inconsistency:

- ~~(A) — Aurizon Network must give the Private Infrastructure Owner a reasonable period within which 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 Aurizon Network Access Undertaking provides for the parties to have a right to resolve via the dispute provisions in the Aurizon Network Access Undertaking, will be resolved in accordance with the Aurizon Network Access Undertaking;~~
- ~~(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 7(b)(i), provided that the Private Infrastructure Owner may dispute the amount of those costs in accordance with the Construction Agreement or with clause 7(b)(viii)(B);~~
- ~~(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)(a) Aurizon Network is not permitted to contract work to an Aurizon Party without the written approval of the Private Infrastructure Owner; and~~

~~(G)(a) Aurizon Network must not materially vary the works for the Connecting Infrastructure from the initial design without notifying the Private Infrastructure Owner.~~

86 Connecting Infrastructure – post commissioning

- (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 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**, the parties must seek to agree, as soon as reasonably practicable, to amend **Schedule 2** to include a plan that is consistent with the constructed Connecting Infrastructure.~~
- ~~(b)(c) Aurizon Network must inspect the Connecting Infrastructure at least ~~once per year~~ during the term of this Agreement, annually to assess the state of repair of the Connecting Infrastructure.~~
- ~~(e)(d) 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 ~~outlined~~ in **clause 7(c)**.~~
- ~~(e)(e) Subject to **clause 18(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.~~
- ~~(e)(f) At any time Aurizon Network may ~~require~~ make modifications or upgrades to, or ~~replacement of~~ replace, the Connecting Infrastructure, ~~but only~~ 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 ~~to be of any~~ condition which exceeds the standard and condition of any relevant part of the Network (including any planned or anticipated Expansion).~~
- ~~(f)(g) Aurizon Network must ~~give to~~ notify the Private Infrastructure Owner, in comprehensive ~~written details~~ detail, of any modifications, upgrades or replacement ~~that it requires to be made to the Connecting Infrastructure~~ required under **clause 6(f)**, and ~~thereafter provide~~ give the Private Infrastructure Owner ~~with a~~ reasonable opportunity to consult with Aurizon Network about ~~the proposed modifications,~~~~

~~upgrades or replacements, its requirements.~~ If, after consulting with the Private Infrastructure Owner, Aurizon Network ~~considers that it is required~~ decides to carry out, or cause to be carried out, those modifications, upgrades or ~~replacement~~ replacements, it must give notice the Private Infrastructure Owner a written notice (including full details) and carry out, or cause to be carried out, that work at ~~the Private Infrastructure Owner's cost (subject to the Private Infrastructure Owner's right to dispute).~~ The Private Infrastructure Owner may dispute the amount of the costs payable in respect of any modifications, upgrade or replacement, the scope of work and/or who Aurizon Network chooses to carry out the work. Network's own cost.

~~(g) The Parties acknowledge that the construction and commissioning of modifications or upgrades to, or replacement of, the Network or Connecting Infrastructure, and the maintenance or repair of the Network or Connecting Infrastructure, may cause disruption to Train Services which cannot reasonably be avoided. Aurizon Network must:~~

(h) Aurizon Network must:

- (i) subject to **clause 6(h)(ii)**, give the Private Infrastructure Owner reasonable prior written notice of any ~~such works~~ 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 ~~(to avoid doubt, this clause 8(g)(ii) does not prevent Aurizon Network from carrying out any such works or causing any disruptions to the extent reasonably necessary in the case of an emergency without prior written notice to the Private Infrastructure Owner);~~ and
- (iii) to the extent reasonably practicable, minimise any disruptions and the effects of any disruptions ~~insofar as it is reasonably practicable to do so.~~

~~(h)(i)~~ (i) Aurizon Network will, upon reasonable notice to the Private Infrastructure Owner and the Rail Infrastructure Manager of the Private Infrastructure ~~(to the extent it is not the Private Infrastructure Owner or Aurizon Network),~~ be entitled to enter and remain upon the Private Infrastructure, with such ~~workmen~~ 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 ~~the requirements of clause 1(a)(i)(A) in relation to access to Private Land.~~

~~(i)(j)~~ (j) If Aurizon Network proposes to make changes to the System Operating Parameters (as defined under the ~~Aurizon Network 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, the Rail Infrastructure Manager of the Private Infrastructure and any other person affected by the changes to the System Operating Parameters 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(j)(i)** meet with the Private Infrastructure Owner, the Rail Infrastructure Manager of the Private Infrastructure and any other person affected by the changes to the System Operating Parameters to negotiate in good faith and agree the proposed changes.

~~(k)~~ If the Private Infrastructure Owner, [the Rail Infrastructure Manager of the Private Infrastructure, any other person affected by the changes to the System Operating Parameters](#) and Aurizon Network are unable to agree within the [\[x timeframe\]](#) specified in **clause 6(j)(ii)**, the matter must be referred ~~to an~~[for](#) expert ~~for~~ resolution ~~in accordance with the process outlined in~~[under](#) **clause 17(d)**.

97 Maintenance of and modification or upgrade to Private Infrastructure

(a) Aurizon Network may require modifications or upgrades ~~to be made~~ to the Private Infrastructure to the extent that such modifications or upgrades are reasonably required to rectify a non-compliance with the standard ~~described at~~[in](#) **clause 7(c)**.

~~(b)~~ 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 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 President for the time being of Engineers Australia, Queensland Division).~~

~~(c)~~[\(b\)](#) ~~The Private Infrastructure Owner must carry out, or cause to be carried out, the construction and commissioning of any modifications or upgrades to the Private Infrastructure~~ [and](#) in such a way as to minimise the disruption to Train Services insofar as it is reasonably practicable to do so.

~~(d)~~[\(c\)](#) The Private Infrastructure Owner must, at its cost, ~~at all times~~ ensure that the Private Infrastructure is operated and maintained and any ~~future~~ modifications [or upgrades to the Private Infrastructure](#) are designed and constructed to a standard which:

- (i) satisfies the minimum technical, engineering and safety standards ~~that would be~~ expected of a competent Accredited Rail Infrastructure Manager ~~in accordance with all applicable laws and standards;~~ [as determined by an expert acceptable to both Parties \(or failing agreement by the President for the time being of Engineers Australia, Queensland Division\);](#)
- (ii) 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;
- (iii) maintains the integrity of all electrical, signalling and telecommunications interfaces between the Private Infrastructure and the connecting sections of the Network ~~(including the Connecting Infrastructure);~~
- (iv) maintains the integrity of any weighbridge or overload detector on the Private Infrastructure; and
- (v) 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 ~~to be of any~~ condition which exceeds the standard and condition of any relevant part of the Network (including any planned or anticipated Expansion).

~~(e)~~[\(d\)](#) 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.

- ~~(f)~~ If the Private Infrastructure Owner reaches an arrangement with Aurizon Network for Aurizon Network to carry out the design construction and/or maintenance of the Private Infrastructure, that arrangement will be the subject of a separate written agreement between the Parties.
- ~~(g)~~(e) The Private Infrastructure Owner must provide to Aurizon Network all information collected by any weighbridge or overload detector ~~which is~~ located on the Private Infrastructure before ~~departing a Train departs~~ the Transfer Facilities ~~(or for non-coal related Train Services, the relevant loading facility), or at such other reasonable intervals and in such reasonable manner as may be specified in writing otherwise reasonably required~~ by Aurizon Network ~~to the Private Infrastructure Owner from time to time.~~
- ~~(h)~~(f) 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 ~~from time to time~~, all electrical, signalling and telecommunications information required by Aurizon Network to manage and operate the Network ~~(including the Connecting Infrastructure and all Trains entering or running on the Network).~~
- ~~(i)~~ Aurizon Network may, and the Private Infrastructure Owner must permit Aurizon Network to, have reasonable access to inspect ~~(from time to time)~~ the connecting sections of the Private Infrastructure and any construction or maintenance of those connecting sections of the Private Infrastructure, in relation to the Private Infrastructure Owner's compliance with this **clause 7**. Aurizon Network must:
- ~~(i)~~(g) 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; ~~and~~
- ~~(ii)~~ ~~at all times comply with the requirements of clause 28(d) in relation to access to Private Land, including in the event of an emergency.~~
- ~~(j)~~(h) The Private Infrastructure Owner is responsible for all electrical safety obligations for the Private Infrastructure.

~~108~~108 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 ~~prior to~~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 ~~prior to~~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.

~~119~~119 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 ~~prior to~~before the Commitment Date.

- (b) The Private Infrastructure Owner must:
- ~~(i) if the Private Infrastructure Owner:~~
 - ~~(A) is the Rail Infrastructure Manager for the Private Infrastructure, maintain its Accreditation and comply with all conditions of its Accreditation prior to the Commitment Date and thereafter until the Expiry Date; or~~
 - ~~(B)(i) is not the Rail Infrastructure Manager for the Private Infrastructure, ensure that the Rail Infrastructure Manager for the Private Infrastructure maintains its Accreditation and complies with all conditions of its Accreditation prior to the Commitment Date; and thereafter until the Expiry Date;~~
 - (ii) notify Aurizon Network immediately if ~~at any time during the Term~~ the Rail Infrastructure Manager for the Private Infrastructure ceases to be Accredited in respect of the Private Infrastructure.
- (c) Aurizon Network must:
- (i) maintain ~~its Accreditation~~ and comply with ~~all conditions of~~ its Accreditation as the Rail Infrastructure Manager for the Connecting Infrastructure and the Network ~~prior to the Commitment Date and thereafter until the Expiry Date; and~~
 - (ii) ~~(ii)~~ notify the Private Infrastructure Owner immediately if ~~at any time during the Term it has ceased~~ it ceases to be Accredited in respect of the Connecting Infrastructure or the Network.

1210 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** ~~will~~ include the Rail Infrastructure Manager for the Private Infrastructure which is contracted by the Private Infrastructure Owner ~~from time to time~~.
- (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 ~~prior to~~ before the Commitment Date; or
 - ~~(ii)~~ where such an entity will become the Rail Infrastructure Manager for the Private Infrastructure ~~subsequent to~~ after the Commitment Date,
 - (ii) 90 days ~~prior to~~ before the date on which they are scheduled to become the Rail Infrastructure Manager.
- (c) Within 10 Business Days of receiving a notification 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, ~~including:~~
- ~~(i) implementing and maintaining measures for managing interface and safety risks;~~

- ~~(ii) evaluating, testing and, if necessary, revising of those measures;~~
 - ~~(iii) identifying accountabilities, authorities and reporting requirements of each Party, including safety requirements, roles and responsibilities of staff; and~~
 - ~~(iv) monitoring compliance with obligations of the parties to this and any related interface agreements.~~
- (e) (i) As required by the Rail Infrastructure Manager for the Private Infrastructure or Aurizon Network (**Requesting Party**), the other entity (**Providing Party**) must provide the Requesting Party ~~(and all other personnel nominated by the Requesting Party)~~ with the latest published versions of all documents relating to ~~the following~~ interface matters that may occur, or have an impact, on the operation of the Connecting Infrastructure:
- ~~(A) the Providing Party's safety policies, including compliance arrangements with legislative safety requirements;~~
 - ~~(B) safety documentation associated with all accountabilities, authorities and reporting of safety requirements and relevant competencies for relevant staff and safety audit regimes;~~
 - ~~(C) procedures for managing notifiable occurrences or reportable incidents;~~
 - ~~(D) interface risk management plans;~~
 - ~~(E) interface management plans;~~
 - ~~(F) where Aurizon Network is the Providing Party, changes to rail infrastructure standards of the section of the Network the Private Infrastructure connects to and between the Connecting Infrastructure and the destination of the Train Services entering and/or exiting the Network via the Connecting Infrastructure;~~
 - ~~(G) where Aurizon Network is the Providing Party, Network operating requirements and operating procedures that are relevant to the operation of the Connecting Infrastructure or to Train Services entering and/or exiting the Network via the Connecting Infrastructure;~~
 - ~~(H) relevant timetabling and scheduling information and procedures;~~
 - ~~(I) operational interface procedures;~~
 - ~~(J) emergency response plans;~~
 - ~~(K) rollingstock standards;~~
 - ~~(L) train operating protocols;~~
 - ~~(M) planning and management of possessions;~~
 - ~~(N) communications protocols; and~~
 - ~~(O) such other procedures and protocols as the Providing Party publishes or develops relating to functions associated with undertaking the role of Rail Infrastructure Manager.~~
- (ii) Each Party must participate in:
- (A) reviews of the safety management systems and safety assurance matters in respect of interface issues;
 - (B) 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);

- (C) identification of relevant engineering standards and procedures and operational systems safety standards; and
 - (D) development of interface risk management planning activities reasonably required by the other Parties.
- (f) ~~(i)~~ ~~Prior to~~Before disclosing ~~any~~ information ~~pursuant to~~under this **clause 10**, a Providing Party may require that the Requesting Party enter into a confidentiality deed ~~in the form set out in Schedule 6 except to the extent that any information to be disclosed by either entity under this clause 12 is already subject to confidentiality obligations under another agreement between the entities (including any interface agreement entered into in accordance with clause 13(k)).~~
- ~~(ii)~~ ~~Where the Private Infrastructure Owner or the Rail Infrastructure Manager for the Private Infrastructure requests amendments to the form of confidentiality deed set out in Schedule 6, the Parties must negotiate those amendments in good faith.~~
- ~~(iii)~~(g) ~~If the Rail Infrastructure Manager for the Private Infrastructure executes a confidentiality deed in the form set out in Schedule 6, the Private Infrastructure Owner may require that Aurizon Network sign the confidentiality deed.~~

~~13~~11 Interface Risk Assessment and Emergency Response Plan

- ~~(a)~~ ~~If at any time during the Term either Party notifies the other Party that it believes that the then current Interface Risk Management Plan is no longer effective 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 upon any amendments to the Interface Risk Management Plan to ensure all interface risks, including any risks which have arisen subsequently to the Interface Risk Management Plan, are effectively managed.~~
- ~~(b)~~ ~~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 of the Interface Risk Management Plan under clause 13(a), either Party may give a Dispute Notice to the other Party and the Dispute will be referred to an expert for resolution in accordance with clause 19(d). The Parties agree that the expert for the purposes of this clause 13(b) and clause 19(d)(i) will be the Safety Regulator. If the Safety Regulator refuses or is unable (for any reason whatsoever) to determine the Dispute, the expert will be appointed by the President for the time being of Engineers Australia, Queensland Division.~~
- ~~(c)~~ ~~If, after a review pursuant to clause 13(a) or 13(b), the Parties agree or an expert determines that the Interface Risk Management Plan requires amendment to effectively manage the interface risks, the plan will be so amended and the amended plan will be taken to be the Interface Risk Management Plan.~~
- ~~(d)~~ ~~The Private Infrastructure Owner must during the Term maintain an Emergency Response Plan reasonably satisfactory to Aurizon Network. The Private Infrastructure Owner must incorporate any findings arising from the joint review conducted pursuant to clause 13(a) or an investigation pursuant to clause 13(j) into the Emergency Response Plan or Interface Risk Management Plan (as applicable) as soon as possible.~~
- ~~(e)~~ ~~The Parties must at all times comply with the Emergency Response Plan and the Interface Risk Management Plan, and must ensure that their officers, employees, agents and independent contractors (including, in respect of the Private~~

~~Infrastructure Owner, any is not the Rail Infrastructure Manager for the Private Infrastructure that is not Aurizon Network) also comply.~~

- ~~(f)(a) 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.~~
- (g) — Subject to **clause 13(h)**, following an Incident the Parties must (and then 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, including taking any reasonable action necessary in respect of recovery of rollingstock and repairs to the Connecting Infrastructure, the Network and the Private Infrastructure. Where necessary, a Party 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 (subject to compliance with **clause 28(d)**) with such workmen and machinery as may be necessary, to enable prompt recommencement of Train Movements.
- (h) — The Parties acknowledge that 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 13(g)** 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.
- (i) — Subject to any requirement of the TRSA, if an Incident arises on the Private Infrastructure and causes damage to or affects the operation of the Connecting Infrastructure or the Network, the Private Infrastructure Owner must procure that the Rail Infrastructure Manager for the Private Infrastructure assume responsibility for the overall coordination and management of the response to the Incident (including notifying all relevant emergency services). The parties must cooperate with and assist the Rail Infrastructure Manager for the Private Infrastructure in responding to the Incident.
- (j) — Subject to any requirement of the TRSA, where an Incident arising on the Private Infrastructure causes damage to or affects the operation of the Connecting Infrastructure or the Network:
- ~~(i) an investigation into the Incident will be commenced as soon as practicable unless otherwise agreed;~~
 - ~~(ii)(i) 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, and all such information will be treated as confidential;
 - ~~(iv)(i) each Party must consult with the other in relation to the implementation of any recommendations arising from an investigation; and~~
 - ~~(v)(i) 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.~~

~~(k)(a) Subject to any requirement of the TRSA, if an Incident arises on the Connecting Infrastructure or the Network and causes damage to or affects the operation of the Private Infrastructure, Aurizon Network must assume responsibility for the overall coordination and management of the response to the Incident (including notifying all relevant emergency services). The 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.~~

~~(l) Subject to any requirement of the TRSA, where an Incident arising on the Connecting Infrastructure or the Network causes damage to or affects the operation of the Private Infrastructure:~~

~~(i) Aurizon Network must:~~

~~(A) commence an investigation into the Incident as soon as practicable unless otherwise agreed; and~~

~~(B) 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 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, and all such information will be treated as confidential~~

~~(iii)(i) 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.~~

~~(m)(a) If the Private Infrastructure Owner is not the Rail Infrastructure Manager for the Private Infrastructure, then the Private Infrastructure Owner must procure that prior to 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 71 of the TRSA) with Aurizon Network in accordance with section 59 of the TRSA.~~

~~(n)(b) To the extent that the Rail Infrastructure Manager for the Private Infrastructure has not entered an interface agreement in accordance with **clause 13(k)1(a)** Aurizon Network may suspend, until such an interface agreement is entered, some or all of the Private Infrastructure Owner's rights under this Agreement and the running of Train Services across the Connecting Infrastructure by ~~giving written notice to~~ notifying the Private Infrastructure Owner of the extent of rights being suspended, ~~but~~ Aurizon Network must lift the suspension immediately after the Rail Infrastructure Manager for the Private Infrastructure enters an interface agreement in accordance with ~~under~~ **clause 13(m)1(a)**.~~

- (c) 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.
- (d) 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(c)**, either Party may give the other Party a Dispute Notice and the Dispute will be referred for expert resolution under **clause 17(d)**. The expert for the purposes of this **clause 11(d)** and **clause 17(d)(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.
- (e) If, after a review under **clause 11(c)** or **11(d)**, 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.
- (f) The Private Infrastructure Owner must maintain an Emergency Response Plan reasonably satisfactory to Aurizon Network. The Private Infrastructure Owner must incorporate any findings arising from the review under **clause 11(c)** or an investigation under **clause 11(l)** into the Emergency Response Plan or Interface Risk Management Plan (as applicable) as soon as possible.
- (g) The Parties must comply with the Emergency Response Plan and the Interface Risk Management Plan, and must ensure that their officers, employees, agents and independent contractors also comply.
- (h) 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.
- (i) Subject to **clause 11(j)**, 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 1(a)(i)(A)**, 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.
- (j) 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 11(i)** 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.
- (k) Subject to the TRSA, 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.

- (l) Subject to the TRSA, 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.
- (m) Subject to the TRSA, 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.
- (n) Subject to the TRSA, 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.

4412 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 13(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(c)** 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~~[interface agreement](#) with Aurizon Network, or such agreement is terminated; or
 - (iv) 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 ~~its rights under~~ **clause 12(b)** and its obligations under the Network Management Principles (as defined in the ~~Aurizon Network~~ Access Undertaking), Aurizon Network must use reasonable endeavours to schedule Train Movements to and from the Private Infrastructure to ensure Train Services utilising the Connecting Infrastructure enter and exit the Network and Connecting Infrastructure in a manner that enables such a Train Service to utilise any corresponding access rights held in respect of the Network.
- (d) The Private Infrastructure Owner must, or must procure that any ~~contracted~~ Rail Infrastructure Manager for the Private Infrastructure that is not Aurizon Network must, co-operate with Aurizon Network to seek to achieve the scheduling outcomes ~~described~~ in **clause 12(c)** and comply with directions of Aurizon Network's train controllers regarding entry to and exit from the Connecting Infrastructure.

4513 Notification of matters affecting the Private Infrastructure

- (a) The Private Infrastructure Owner (~~or its contracted~~[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** 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.

~~16~~14 No requirement to take action jeopardising Accreditation

Nothing in this Agreement ~~will be interpreted as requiring~~requires Aurizon Network or the Accredited Rail Infrastructure Manager for the Private Infrastructure ~~(whether or not the Private Infrastructure Owner)~~ 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 ~~the taking of~~ that action would be likely to result in the suspension or revocation of their Accreditation.

~~17~~15 Force Majeure Event

- (a) Subject to **clause 15(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.

~~18~~16 Insurance

- (a) The Private Infrastructure Owner must, at its expense, ~~take out~~effect and ~~subsequently maintain current at all times during the Term,~~ or procure the Rail Infrastructure Manager for the Private Infrastructure to ~~take out~~effect and ~~subsequently maintain current at all times during the Term,~~ insurance with a corporation licensed to conduct insurance business in Australia for the risks and on the terms specified in **Schedule 3**.
- (b) Aurizon Network must, at its expense, ~~take out~~effect and ~~subsequently maintain current at all times during the Term,~~ insurance with a corporation licensed to conduct insurance business in Australia for the risks and on the terms specified in **Schedule 3**.

- (c) ~~Prior to~~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 ~~pursuant to~~under this **clause 16** and within 10 Business Days after receiving a request from the other Party in writing, make available for inspection at a reasonable time, a copy of such insurance policies.
- (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~~ 16.
- (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**. If Aurizon Network reasonably considers that the sum insured is not adequate or is excessive, then Aurizon Network will ~~by notice advise~~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 ~~pursuant to~~under this **clause 16**.
- ~~(g) Aurizon Network will from time to time review whether the insurances specified in Schedule 3 remain available in the market for reasonable commercial pricing (having regard to the likelihood and possible financial exposure arising from the risks insured). If Aurizon Network forms the view that such insurances are no longer available in the market for reasonable commercial pricing, Aurizon Network and the Private Infrastructure Owner will discuss in good faith whether the insurances required under this Agreement should be varied.~~

~~19~~17 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 1(a)**; or
 - (ii) where the dispute relates to a matter which the ~~Aurizon Network~~ Access Undertaking provides for the Parties to have a right to resolve ~~via the dispute provisions in the Aurizon Network under the~~ Access Undertaking, in the manner set out in the ~~Aurizon Network~~ Access Undertaking.
- (b) Within ~~five~~5 Business Days of the date of the Dispute Notice any Dispute (other than those ~~to be dealt with under the Aurizon Network Access Undertaking pursuant to referred to in~~ **clause 17(a)(ii)** or ~~those of the type described in~~ **clause 17(e)**) 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 1(a)**.
- (c) 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:

- (i) in the case of what the Parties agree are financial matters, the President for the time being of [The Institute of Chartered Accountants in Australia];
 - (ii) in the case of what the Parties agree are ~~nonfinancial~~non-financial matters, the President for the time being of the [~~Resolution Institute~~]; and
 - (iii) 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].
- (d) Where a Party refers a Dispute to an expert for resolution:
- (i) 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;
 - (ii) 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 ~~he~~the expert in ~~his~~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;
 - (iii) 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;
 - (iv) the expert ~~will be required to~~must determine the Dispute no later than 60 Business Days following appointment under **clause 17(c)**;
 - (v) the expert must provide both Parties with a copy of ~~his~~their determination as soon as reasonably practicable following determination of the Dispute;
 - (vi) the expert appointed will be required to undertake to keep confidential all matters coming to ~~his~~their knowledge by reason of ~~his~~their appointment and performance of ~~his~~their duties. In any dispute dealt with ~~pursuant to~~under this **clause 1(a)**, 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;
 - (vii) any person nominated as an expert hereunder will be deemed to be and will act as an expert and not an arbitrator, and the law relating to arbitration will not apply to ~~him~~that person or ~~his~~their determination or the procedures by which ~~he~~that person may reach ~~his~~their determination;
 - (viii) in the absence of manifest error the determination of the expert will be final and binding upon the Parties; and
 - (ix) the costs of the expert and any advisors will be borne by the Parties in such proportion as determined by the expert.

- (e) Where the right to terminate which provided the grounds for a suspension under **clause 18(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 17(c)** provided that:
 - (i) despite **clause 17(d)(v)**, 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 17(d)(iii)**, the Parties must use their best endeavours to assist the expert in making a determination as soon as is practicable.

2018 Termination and suspension

- (a) Without prejudice to any other rights of Aurizon Network and subject to ~~clause 18(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:
 - (A) abandons, terminates or permanently ceases operation of the whole of the Private Infrastructure; or
 - (B) 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;
 - (ii) subject to **clause 3(f)(i)**, 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;
 - (iii) the Private Infrastructure Owner is in default of its obligation to establish or to maintain a security as required under **clause 20**, and such default continues for 20 Business Days (or such longer period as may be agreed between the Parties) after notice from Aurizon Network of such default;
 - (iv) the Private Infrastructure Owner is in default of its obligation to maintain insurance in accordance with ~~clause 16 of this Agreement,~~ and such default continues for 20 Business Days (or such longer period as may be agreed between the Parties) after notice from Aurizon Network to the Private Infrastructure Owner of the default;
 - (v) an Insolvency Event occurs in relation to the Private Infrastructure Owner;
 - (vi) 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 13(k) 1(a)** (as applicable) or any relevant laws, and ~~that default is not remedied within 20 Business Days after notice from Aurizon Network to the Private Infrastructure Owner of the default;~~

- (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, 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;
- (vii) the Private Infrastructure Owner fails to comply with: clause 9 or clause 7(c) and:
- (A) ~~clause 11 (Accreditation Requirements), including, if the Private Infrastructure Owner is not the Rail Infrastructure Manager for the Private Infrastructure, where the Private Infrastructure Owner fails to ensure that the Rail Infrastructure Manager for the Private Infrastructure maintains its Accreditation or complies with all conditions of its Accreditation; or~~
- (B) ~~clause 9(d) (Operation and Maintenance Standards);~~
- (A) ~~and such default continues for~~ 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
- (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, 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 conducts activities which cause or contribute to Environmental Harm on the Connecting Infrastructure or the Network and:
- (viii)(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) within 20 Business Days after notice from Aurizon Network to remedy 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, 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;
- (ix) 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
- (x) 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 18(a)** to the extent that the right to terminate is the subject of a bona fide dispute between the Parties ~~pursuant to~~ under clause 1(a) or the ~~Aurizon Network~~ 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 ~~Aurizon Network has not remedied the default within 20 Business Days after notice from the Private Infrastructure Owner specifying the nature of such default and requiring such default to be remedied;~~
 - (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, 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
 - (iii) 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 ~~for any reason whatsoever 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 ~~upon~~ 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 ~~pursuant to~~ under clause 18(d)(i), must do all things required to transfer ownership and possession of the Connecting Infrastructure to the Private Infrastructure Owner (except any part of the Connecting Infrastructure which Aurizon Network reasonably requires for the purpose of continued operation of the Network), subject to Aurizon Network having legal title to the Connecting Infrastructure and not being required to ~~do anything that would be inconsistent~~ act inconsistently with its land or infrastructure tenure rights, or other relevant arrangements with Third Parties, relating to any relevant part of the Network; and

- (iii) where agreement has not been reached ~~pursuant to~~under **clause 18(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 and cost, ~~forthwith~~ 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~~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 18(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 ~~prior to~~before the expiration of any applicable remedy period under **clause 18(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 ~~giving a notice in writing to~~notifying the Private Infrastructure Owner ~~(and the Rail Infrastructure Manager for the Private Infrastructure where that is not the Private Infrastructure Owner or Aurizon Network).~~ 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 17(e)**, any suspension occurring under **clause 18(f)** will cease to the extent that the grounds for suspension become the subject of a bona fide dispute between the Parties ~~pursuant to~~under **clause 1(a)** 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 ~~by written notice advise~~notify the Private Infrastructure Owner of its intention to not repair or replace the relevant part of the Connecting Infrastructure and ~~thereupon~~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 ~~by written notice advise~~notify Aurizon Network of its intention to not repair or replace the Private Infrastructure and ~~thereupon~~ terminate this Agreement.

~~21~~19 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 ~~which are~~ 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.

~~22~~20 Security

- (a) If ~~on, or at any time after, the Commencement Date~~ Aurizon Network considers (acting reasonably) that the Private Infrastructure Owner ~~does not have an Acceptable Credit Rating~~ is no longer financially sound, 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 ~~has an Acceptable Credit Rating~~ 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 ~~and in the form set out in Schedule 5 or such other form as is~~ in a form reasonably acceptable to Aurizon Network; or
 - (iii) any other security reasonably acceptable to Aurizon Network,
 - ~~(iii)~~ and Aurizon Network must not unreasonably withhold or delay its acceptance of any security delivered under this **clause 20(a)**.
- (b) ~~Following each 30 June occurring from the Commencement Date Aurizon Network will have a right to~~ may request the Security Amount be increased from that listed in **Item 3 of Schedule 1** in proportion to the change in the MCI over the most recent financial year (with the calculation and timing of that indexation to occur in accordance with **clause ~~1(b)(v)-1(b)(v)~~**).
- ~~(ii)(c)~~ If Aurizon Network purports to vary the Security Amount in accordance with clause 22(b)(i), and the Private Infrastructure Owner disputes whether that varied Security Amount properly reflects the changes permitted to be made pursuant to clause The Private Infrastructure Owner may, in accordance with clause 1(a), dispute a purported variation in the Security Amount under clause 1(a), ~~clause 19 will apply,~~ In such cases, there will be no variation to the Security Amount until the dispute between the parties has been properly resolved.

~~(e)~~(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 20**, undertaking to pay Aurizon Network on demand an amount equal to the amount called up. Such further security will form part of the security provided by the Private Infrastructure Owner under this Agreement from the date on which the Private Infrastructure Owner provides such further security.

~~(d)~~(e) Aurizon Network must, subject to ~~the~~its rights of recourse ~~to the security~~ under this **clause 20**, 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 ~~in the event that~~after the Private Infrastructure ~~Owner's credit rating~~Owner becomes ~~an Acceptable Credit Rating~~financially sound; and
- (iii) where the Private Infrastructure Owner provides a replacement security which meets the requirements in **clause 20(a)**.

~~23~~21 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 21(a), 21(d) and 22(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**.
- (d) The limitation in **clause 21(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,

(v) — 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.
- ~~(e)~~ — ~~Nothing in this Agreement creates or constitutes any contract between Aurizon Network and any haulage operator contracted by the Private Infrastructure Owner or otherwise responsible for the operation of the Train Services utilising the Connecting Infrastructure.~~

2422 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 1(a)** 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.

2523 Notices

- (a) Any notice, invoice, or other communication under this ~~document will~~ 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 facsimile to the Party's current number for service;~~
 - ~~(v)~~ (iv) being sent by email to the Party's current email address for service; or
 - ~~(vi)~~ (v) if at any time agreed by the Parties, being sent by another agreed electronic form.
- (c) (i) The addresses and numbers for service are initially:
 - _____ **Aurizon Network Pty Ltd:**
Address: Level 17, 175 Eagle Street, Brisbane QLD 4000
~~Facsimile: 07 3235 3637~~

Email: [access.services@aurizon.com.au]
Attention: Chief Executive Officer, Aurizon Network Pty Ltd

The Private Infrastructure Owner:

Address: as set out in Item 1 of Schedule 1

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

Email: as set out in Item 1 of Schedule 1

Attention: as set out in Item 1 of Schedule 1

- (ii) A Party may from time to time change its address ~~or number~~ for service by notice to the other Party.
- (d) 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 facsimile, on the next Business Day after being sent if the sender's facsimile machine produces a transmission report stating that the facsimile was sent to the addressee's facsimile number; and~~
 - ~~(iv)~~ (iii) sent by email, on the next Business Day after the sender receives confirmation by read receipt that the message has been transmitted.
- (e) If a communication to a Party is received by it after ~~5.00 pm~~: 00pm or on a day which is not a Business Day, it will be deemed to have been received on the next Business Day.

2624 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 ~~Aurizon Network~~ 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 ~~and~~ agents, legal and other professional advisers, Related Bodies Corporate, and officers, employees, agents, legal and other professional advisers of such Related Bodies Corporate provided that any such disclosure by Aurizon Network must not breach the ring-fencing and confidentiality obligations ~~included~~ in the ~~Aurizon Network~~ Access Undertaking;
 - (iii) to an existing or proposed Rail Infrastructure Manager for the Private Infrastructure which first executes a ~~Confidentiality Deed in the form contained in Schedule 6~~ 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 ~~Aurizon Network~~ 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 24(a)**; or

- (ix) with the prior written consent of the other Party, such consent not to be unreasonably withheld,

provided that a recipient ~~pursuant to~~under **clause 24(a)(iii), (iv) or (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 (~~including, without limitation, any information provided in accordance with clauses 6, 12 and 13~~) and must not: 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 ~~in accordance with clause 12(f)~~, if necessary;
- (C) to the extent the information is in the public domain through means other than a breach of this **clause 24(b)**; or
- (D) with the other Party's written consent.
- (c) If a Party does not comply with **clause 24(a)** or **clause 24(b)** and the other Party suffers any detriment as a result of or in connection with that non-compliance, the Party which suffers detriment ~~will be entitled to~~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.

~~27~~25 Compliance with laws

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

~~28~~26 Access to land

- (a) ~~To the extent that some part of the Private Infrastructure or the Connecting Infrastructure has been, or will be, constructed upon land owned or controlled by Aurizon Network or an Aurizon Party or (i) _____~~ If the construction or operation of the Private Infrastructure or Connecting Infrastructure ~~otherwise~~ reasonably requires access to ~~such land, land owned or controlled by Aurizon Network or an Aurizon Party~~ then Aurizon Network must provide ~~reasonable~~ 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 ~~that access to the relevant land is reasonably required for construction of the relevant infrastructure or ongoing operation and maintenance of the Private Infrastructure or to enable the Private Infrastructure Owner or the Railway Infrastructure Manager for the Private Infrastructure to comply with its obligations under~~

~~this Agreement or an interface agreement with Aurizon Network,~~ reasonably required provided that:

- (A) the land is owned by Aurizon Network or an Aurizon Party or Aurizon Network has, through a lease, licence or other arrangement with the owners of the land or ~~pursuant to the TIA,~~ under the Transport Infrastructure Act 1994 (Qld), the authority to authorise access to that land; and
 - (B) the access is ~~not inconsistent~~ 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.
- (ii) If Aurizon Network does not have authority to authorise the Private Infrastructure Owner to access land as provided by ~~clause 28(a),~~ 1(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 ~~relevant~~ land:
- (A) 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, ~~where this information is reasonably available to Aurizon Network;~~
 - (B) advice as to the nature and extent of the rights, if any, that Aurizon Network holds in relation to the relevant land; and
 - (C) 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.
- (b) Where the Private Infrastructure Owner or the Railway Infrastructure Manager for the Private Infrastructure ~~access~~ accesses land ~~pursuant to~~ under ~~clause 28(a),~~ 1(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) ~~prior to~~ 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.
- (c) (i) If Aurizon Network requires access to any land on which the Private Infrastructure or Connecting Infrastructure is or will be constructed (**Private Land**), the Private Infrastructure Owner must:
- (A) provide reasonable access to the Private Land for Aurizon Network and its employees, officers, agents and contractors to the extent that access to the Private Land is reasonably required to enable Aurizon Network to comply with its obligations under this Agreement or an interface agreement with the Rail Infrastructure Manager for the Private Infrastructure, provided that:
 - (1) the Private Land is owned by the Private Infrastructure Owner or its Related Body Corporate or the Private Infrastructure Owner has, through a lease, licence or other arrangement with the owners of the land or ~~pursuant to the TIA,~~ under the Transport Infrastructure Act 1994 (Qld), the authority to authorise access to that land; and
 - (2) the access is ~~not inconsistent~~ consistent with the terms of any lease, license or other arrangement to which the

Private Infrastructure Owner or its Related Body Corporate is a party in respect of the land.

- (ii) If the Private Infrastructure Owner does not have authority to authorise Aurizon Network to access land as provided by **clause 26(c)(i)**, then the Private Infrastructure Owner must provide the ~~following details referred to in **clause 26(a)(ii)** (as applied to this **clause 26(c)(ii)**)~~ in relation to access to that land within 10 Business Days of receiving a written request from Aurizon Network to access the Private Land:

~~(A) — details of the relevant entity (including that entity's name, address and contact details) that Aurizon Network would need to obtain approval from to gain access to that land, where this information is reasonably available to the Private Infrastructure Owner;~~

~~(B) — advice as to the nature and extent of the rights, if any, that the Private Infrastructure Owner holds in relation to the relevant land; and~~

~~(C) — a notice to be provided to that entity identifying that the Private Infrastructure Owner has no objection to Aurizon Network negotiating for access to that land.~~

- (d) 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 ~~prior to~~ before such access, any reasonable direction given by any nominated ~~Site~~ Senior ~~Site~~ Executive for the Private Land and any other reasonable conditions specified by the Private Infrastructure Owner or its Related Body Corporate.

- (e) Subject to **clause 26(f)**:

(i) Aurizon Network may enter Private Land owned or controlled by the Private Infrastructure Owner or Railway Infrastructure Manager for the Private Infrastructure 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 land owned or controlled by Aurizon Network or an Aurizon Party without the consent of Aurizon Network,

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

- (f) If a Party enters land in accordance with **clause 26(e)** (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.

~~29~~27 Miscellaneous

- (a)

- (i) 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.
- (ii) 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.

(b) ~~(i)~~ 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.

~~(i)~~(c) 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)~~(d) 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.

~~(e)~~(e) 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.

~~(e)~~(f) 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.

~~(f)~~(g) 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.

~~(g)~~(h) 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: Facsimile No. of Private Infrastructure Owner: Telephone No. of Private Infrastructure Owner: Email of Private Infrastructure Owner: Attention:
Item 2	Expiry Date The date which is the earlier of: (a) [<i>Private Infrastructure Owner to nominate anticipated expiry date</i>]; 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 \$[<i>the estimated reasonable and prudent costs of decommissioning and removing the Connecting Infrastructure (including a reasonable and prudent contribution for Aurizon Network's internal costs related to such decommissioning and removal) upon the expiry of this Agreement so as to remove the connection between the Network and the Private Infrastructure and restore the affected section of the Network to a condition consistent with the adjacent sections of the Network</i>]
Item 4	Commitment Date [<i>The date which is the scheduled date for availability of the connection</i>] [<i>To be used where Aurizon Network is constructing Connecting Infrastructure</i>] [<i>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.</i>] [<i>To be used where the Private Infrastructure Owner is constructing Connecting Infrastructure</i>]
Item 5	Party responsible for the planning, design and construction of the Connecting Infrastructure (clause 6(a) and clause 7(a) 1(a)) [Insert either Aurizon Network or Private Infrastructure Owner]
Item 6	Cap on liability (clause 21(c)) \$[#][\$][#] per Train Service contracted to enter and/or exit the Network via the Connecting Infrastructure
Item 7	Aurizon Network Train Control contact (clause 13(a)) Name: Address: Facsimile: Telephone: Email:

Connecting Infrastructure

Schedule 2 -

~~Schedule 2~~ - Plan showing Connecting Infrastructure,
Private Infrastructure and the Network

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

Schedule 3 - Insurance

1. —

1. Required Private Infrastructure Owner ~~Insurances~~ insurances

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

Public liability insurance

- (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 the insured'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 by the insured or the insured'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 the insured or the insured'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 the insured or the insured's staff of all vehicles in the performance of the Agreement in accordance with the relevant statutory requirements.

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

2. Required Aurizon Network ~~Insurances~~insurances

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

Public liability insurance

- (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; ~~and~~.

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.

The calculation and timing of indexation of any amounts to be indexed by MCI will occur in accordance with **clause 1(b)(v)**.

Schedule 4 - Emergency Response Plan and Interface Risk Management Plan

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

Schedule 5 - Alternative clause 5

~~Schedule 5 - Connecting Infrastructure~~ ~~Pro forma bank guarantee~~

~~[On bank letterhead]~~

5. To:—

~~Aurizon Network Pty Ltd ACN 132 181 116 (Aurizon Network)~~

~~At the request of [insert Private Infrastructure Owner details] (ACN [### ### ###]) (must, promptly following a written request from the Private Infrastructure Owner) and in consideration of Aurizon Network accepting this undertaking in respect of the agreement dated [date] in respect of rail infrastructure connecting rail owned or controlled, provide all information and assistance reasonably requested by the Private Infrastructure Owner, at the Private Infrastructure Owner's reasonable and rail infrastructure for which Aurizon Network is the accredited rail infrastructure manager (within the meaning of prudent cost, so that term in the Transport (Rail Safety) Act 2010 (Qld) (the Agreement), [insert details of bank (ABN ### ### ###)] (the Guarantor) unconditionally the Connecting Infrastructure satisfies the minimum technical, engineering and irrevocably undertakes to pay on written demand any sum or sums which may from time to time be demanded by Aurizon Network under and in accordance with the Agreement (as amended from time to time) to a maximum aggregate sum of \$[security amount to reflect Item 3 of Schedule 1].~~

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

~~The undertaking is to continue until:~~

- ~~(a) notification has been received from Aurizon Network that the sum is no longer safety standards required by Aurizon to connect the Private Infrastructure to the Network;~~
- ~~(b) — this undertaking is returned to the Guarantor by Aurizon Network; or~~
- ~~(c) — payment by the Guarantor to Aurizon Network of the whole of the sum, whichever occurs first.~~

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

~~This undertaking is governed by the laws of Queensland.~~

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

~~[Bank Details]~~

Schedule 6 – Confidentiality Deed

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

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

AND ~~[Rail Infrastructure Manager for the Private Infrastructure] (RIM)~~

RECITALS

A ~~Pursuant to clause 12 of the Rail Connection Agreement, the Parties may each require the other to provide information which the other Party wishes to remain secret and confidential.~~

B ~~The Parties have agreed to supply the information to each other on condition of entry into this Deed to protect the secret and confidential nature of the information to be disclosed.~~

IT IS AGREED

1. Interpretation

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

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

~~**Confidential Information** means any information, data or other matter (information) disclosed by the Discloser to the Recipient pursuant to clause 12(e) of the Rail Connection Agreement, provided that such information:~~

~~(i) is not already in the public domain;~~

~~(ii) does not become available to the public through means other than a breach of the confidentiality provisions in this Deed;~~

~~(iii) was not in the other party's lawful possession prior to such disclosure; and~~

~~(iv) is not received by the Recipient independently from a Third Party free to disclose such information, data or other matter;~~

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

~~(v) the information is now in the public domain through means other than a breach of the confidentiality provisions in this Deed; or~~

~~(vi) the information has been received by Aurizon Network or the RIM (as applicable) independently from a Third Party free to disclose the information.~~

~~**Discloser** has the meaning given in clause 2.~~

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

~~(vii) managing the interface arrangements in respect of the Private Infrastructure and the Network;~~

~~(b) in the case of Aurizon Network, managing the Network or the **Connecting Infrastructure** (i); and~~

~~(ix) in the case of the RIM, managing the Private Infrastructure.~~

~~(i) **Rail Connection Agreement** means the Rail Connection Agreement between Aurizon Network and Before commencing construction of the Connecting Infrastructure, the Private Infrastructure Owner may submit the Design to Aurizon Network for approval in accordance with this clause 5. 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.

(ii) Within 10 Business Days after the Design is submitted in accordance with **clause 5(b)(i)**, Aurizon Network must give written notice to the Private Infrastructure Owner:

informing the Private Infrastructure Owner dated [*].

~~Recipient has the meaning given in clause 2.~~

~~2. Disclosure and Use of Confidential Information~~

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

~~(a) the Discloser provides its prior written approval; or~~

~~(b) the disclosure and/or use is:~~

~~(i) that additional time is required or compelled by any law;~~

~~(ii)(A) to consider the Design, and the reason that additional time is required or compelled by any order of a court; or~~

~~(B) approving the Design; or~~

~~(iii) rejecting the Design, in which case Aurizon Network required or compelled by notice validly issued by any Authority;~~

~~(C) necessary must give:~~

~~(1) reasons for the rejection; and~~

~~(2) 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.~~

~~(iii) Within 20 Business Days of giving a notice in accordance with **clause 5(b)(ii)(A)**, Aurizon Network must give written notice to the Private Infrastructure Owner:~~

~~(A) approving the Design; or~~

~~(B) rejecting the Design, in which case Aurizon Network must give:~~

~~(1) reasons for the rejection; and~~

~~(2) 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.~~

~~(iv) conduct of any legal proceedings, 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 that would result in the Connecting Infrastructure being 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).~~

- (v) Following receipt of a notice under **clauses 5(b)(ii)(C), 5(b)(iii)(B) or 5(b)(vi)**, the Private Infrastructure Owner may:
 - (A) modify and resubmit the Design, in which case **clause 5(b)(ii)** will reapply; or
 - (iv)(B) dispute ~~resolution process under the Rail Connection Agreement, the Aurizon Network~~ 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 ~~or the Queensland Competition Authority Act 1997 (Qld)~~;
- (vi) 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(b)(ii)(B)** it must, as soon as practicable after becoming aware of that change, notify the Private Infrastructure Owner of the nature of the material change in circumstances and details of any modifications that it requires to be made to the Design so that it is suitable for the purpose of connecting the Private Infrastructure to the Network and for the operation of the Train Services anticipated by the Private Infrastructure Owner. Where it is the conduct of Aurizon Network or an Aurizon Party in respect of the Network which would cause the material change in circumstances:
 - (A) Aurizon Network must consult with the Private Infrastructure Owner before implementing any such change; and
 - (B) 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.

(c)

- ~~(v) — required under any stock exchange listing requirement or rule; or~~
- ~~(vi) — to At the Recipient's solicitors, barristers, or accountants under a duty request of confidentiality.~~

~~3. General Obligations~~

~~Each Recipient acknowledges and agrees that:~~

- ~~(a) — the Confidential Information of the Discloser is confidential to the Discloser and is and remains at all times the valuable and exclusive property of the Discloser;~~
- ~~(b) — the Recipient is responsible for any use or disclosure of Confidential Information which is contrary to the provisions of this Deed by persons to whom the Recipient discloses the Confidential Information, and must take such steps as may be necessary to prevent any such improper use or disclosure (including enforcing any confidentiality deed or confidentiality provisions contained in another arrangement pursuant to which the Recipient disclosed that Confidential Information);~~
- ~~(c) — the Recipient must not copy or reduce into tangible, visible or recorded form or allow to be copied or reduced into tangible, visible or recorded form, any Confidential Information furnished to it by or on behalf of another party to this Deed except to the extent necessary to carry out the Permitted Purpose;~~
- ~~(d) — this Deed will not be construed as assigning any other rights to use Confidential Information, or as granting to the Recipient any licence or other rights relating to any Confidential Information or other intellectual property rights owned by the Discloser;~~
- ~~(e) — the Recipient must secure and protect the Confidential Information received from another party to this Deed from unauthorised disclosure, access or use;~~

- ~~(f) — the Discloser may take legal proceedings against the Recipient and/or any Third Party if there is any actual, threatened or suspected breach of this Deed or a breach by a Related Body Corporate of the Recipient of a confidentiality deed or confidentiality provisions contained in another arrangement with the Recipient pursuant to which the Confidential Information was disclosed to it; and~~
- ~~(g) — damages may be inadequate compensation for breach of this Deed and, subject to the court's discretion, the Discloser will be entitled to specific performance of this Deed and may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of this Deed.~~

~~4. General~~

- ~~(a) — Unless otherwise terminated by mutual consent of all parties in writing, this Deed will continue in force notwithstanding the return of all copies of Confidential Information held by a Recipient to the Discloser.~~
- ~~(b) — This Deed:~~
- ~~(i) — may be terminated by mutual consent of all parties in writing;~~
 - ~~(ii) — will terminate if the Rail Connection Agreement terminates;~~
 - ~~(iii) — will terminate if the RIM ceases to be the Rail Infrastructure Manager for the the Private Infrastructure for the purposes of the Rail Connection Agreement.~~
- ~~(c) — Any obligation of confidence under this Deed is independent and survives the term of this Deed and remains binding for a period of 10 years after termination of this Deed. Any other term by its nature intended to survive the termination of this Deed survives termination of this Deed.~~
- ~~(d) — This Deed is personal to the parties and may not be assigned or otherwise transferred in whole or in part without the prior written consent of the other party.~~
- ~~(e)(i) — The laws of Queensland will govern the construction and performance of this Deed and the parties submit to the non-exclusive jurisdiction of the Supreme Court of Queensland. This Deed constitutes the entire agreement between the parties in respect of the Confidential Information and supersedes all previous agreements and understandings in respect of the Confidential Information. Nothing in this Deed derogates from any obligation of any party under the Rail Connection Agreement or the Owner, Aurizon Network Access Undertaking with respect to the Confidential Information 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:~~
- ~~(A) — whether the Design approved in accordance with **clause 5(b)(ii)(B)** (including any modifications made following a notice under **clause 5(b)(vi)**) appears to have been complied with to the date of inspection; and~~
 - ~~(B) — 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(c)(ii)**.~~
- ~~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.~~
- ~~(ii) — 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:

- (A) complies with any Design approved in accordance with **clause 5(b)(ii)(B)** (including any modifications made following a notice under **clause 5(b)(vi)**); or
 - (B) 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).
- (iii) If Aurizon Network has, in accordance with **clause 5(c)(ii)**, 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:
- (A) 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(c)(ii)**; and
 - (B) 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**).
- (iv) The Private Infrastructure Owner may dispute all or any part of the Connecting Infrastructure Work Notice in accordance with this Agreement.
- (a) 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 replacement, 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 a dispute resolution carried out 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.

Schedule 6 - Construction Agreement terms

[This Schedule 6 is only required if the version of clause 5 in the body of the Agreement is used. If the version of clause 5 as set out in Schedule 5 is used then this Schedule 6 is not required.]

- (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.
- (a) 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.
- (a) 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(b)(i)**, provided that the Private Infrastructure Owner may dispute the amount of those costs in accordance with the Construction Agreement or with **paragraph (b)** above).
- (b) Aurizon Network must provide reasonable substantiation of the costs sought to be recovered by it.
- (c) 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.
- (d) Aurizon Network is not permitted to contract work to an Aurizon Party without the written approval of the Private Infrastructure Owner.
- (e) Aurizon Network must not materially vary the works for the Connecting Infrastructure from the initial design without notifying the Private Infrastructure Owner.
- ~~(f) A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.~~
- ~~(g) In this Deed, references to Clauses are references to Clauses contained in this Deed unless otherwise stated.~~

~~EXECUTED as a DEED~~

~~Executed as a deed in accordance with section 127 of the Corporations Act 2001 by Aurizon Network Pty Ltd (ACN 132 481 116):~~

~~Director Signature~~

~~Director/Secretary Signature~~

~~Print Name~~

~~Print Name~~

~~Executed as a deed in accordance with section 127 of the Corporations Act 2001 by (the RIM):~~

~~Director Signature~~

~~Director/Secretary Signature~~

~~Print Name~~

~~Print Name~~

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)