

Revised DAAU
Standard Train Operations Deed

Aurizon Network Pty Ltd

[Insert name of Operator]

Train Operations Deed – Coal

Contents

1	Definitions and interpretation	7
1.1	Definitions	7
1.2	Interpretation	28
1.3	References to descriptors of Train Service Types	29
1.4	Material published on the Website	29
1.5	Headings	29
1.6	Words and expressions defined in Access Undertaking	29
1.7	Inconsistency	30
2	Term	30
2.1	Term	30
3	Access Undertaking	30
3.1	Incorporation	30
3.2	Changes in Access Undertaking	30
4	Operational Rights	32
4.1	Grant of Operational Rights	32
4.2	Nature and scope of Operational Rights	32
4.3	Operation of Ad Hoc Train Service	32
5	Ancillary Services	33
6	Nomination of the Operator	33
6.1	Nomination	33
6.2	Multiple Access Agreements	33
6.3	Variation of nomination of the Operator	34
7	Interaction of rights	34
8	Billing and payments	35
8.1	Charges	35
8.2	Invoicing	35
8.3	Payment	35
8.4	Disputes	36
8.5	Interest on overdue payments and Disputed amounts	37
8.6	Right of set-off	37
9	Accreditation	37
10	Operation of Train Services	38
10.1	Operation of Train Services	38
10.2	Commencement of Train Services	38
10.3	Commencement of Train Services for Train Service Type	40
10.4	Power	43
10.5	Use of Regenerative Brakes	43
11	Increase in Maximum Payload	43

11.1	Increase in Maximum Payload for a Train Service Type	43
11.2	No prejudice to other rights	44
12	[NOT USED]	44
<hr/>		
13	Day to day Train Movements	44
13.1	Exclusive responsibility for Train Control	44
13.2	Train Control rights and obligations - Aurizon Network	44
13.3	Train Control rights and obligations - Operator	45
13.4	Train Control communications	45
13.5	Removal at the end of Authorised Parking	45
14	Compliance	46
<hr/>		
14.1	General requirements	46
14.2	Non-compliance by Operator with Train Description	47
14.3	Certain matters to apply consistently to all Railway Operators	48
14.4	Provision of information	48
15	Plans	49
<hr/>		
15.1	Approval of Plans	49
15.2	Amendments to Plans	52
16	Train operations	53
<hr/>		
16.1	Compliance with Scheduled Time	53
16.2	Alterations to Train Services	54
16.3	Authorisation of other Train Movements	54
16.4	Notification	54
16.5	Operator to supply information	55
16.6	Operation of Trains and Rollingstock	55
17	Authorisation of Rollingstock and Rollingstock Configurations	55
<hr/>		
17.1	Use of Rollingstock and Rollingstock Configuration	55
17.2	Authorisation Request Notice	56
17.3	Compliance Statement	56
17.4	Rollingstock Interface Standards Risk Assessment	56
17.5	Certificate of Compliance	57
17.6	Disputes	58
17.7	Update of Schedule 4 as a consequence of New Authorisations	58
17.8	Issue of Train Route Acceptance or Authority to Travel	58
18	Amendments to System Wide Requirements	58
<hr/>		
18.1	Amendment Notice	58
18.2	Response to a Discretionary System Amendment	59
18.3	Discretionary System Amendment which frustrate operations	59
18.4	Discretionary System Amendment with negative financial impact	60
18.5	Expert must have regard to certain matters	61
18.6	Costs of implementing amendments to a System Wide Requirement	61
18.7	Implementation of amendments to System Wide Requirements	61
19	Weighbridges and Overload Detectors	62
<hr/>		

19.1	General	62
19.2	Exceeding Maximum Allowable Gross Tonnage	62
19.3	Exceeding Maximum Desirable Gross Tonnage	62
19.4	Record keeping	63
19.5	Verification	63
19.6	No Claim	64
20	Performance Levels	64
20.1	Consequences of failure to comply with Performance Levels	64
20.2	Review of Performance Levels	65
21	Infrastructure management	65
21.1	Management and control of the Nominated Network	65
21.2	Maintenance of the Nominated Network	65
22	Incident management	66
22.1	Compliance	66
22.2	Obstructions	67
22.3	Notification	67
22.4	Management of Incident response	67
22.5	Investigations	70
22.6	Management of Environmental Incidents	70
22.7	Environmental Incident reporting	71
23	Operator's staff	72
23.1	Safety of Operator's Staff	72
23.2	Qualifications of Operator's Staff	72
23.3	Entry onto Aurizon Network Land	73
24	Interface and environmental risk management	73
24.1	Compliance with Interface Risk Management Plan	73
24.2	Environmental consultant	73
24.3	Interface representative	73
24.4	Operator's Safety Management System	74
24.5	Aurizon Network's Safety Management System	74
24.6	Aurizon Network's environmental management system	74
24.7	Carriage of Dangerous Goods on Train Services	74
24.8	Noise management during Train Services	75
24.9	Community liaison and environmental complaint procedures	75
24.10	Audit and review	75
24.11	Notification	76
25	Inspection and audit rights	76
25.1	Right of inspection by Operator	76
25.2	Right of inspection of Trains and Rollingstock by Aurizon Network	77
25.3	Parties' obligations	78
26	Insurance by Operator	78
26.1	Maintain insurance policies	78

26.2	Required insurance policies	78
26.3	Disclosure of insurance policies	79
26.4	Failure to disclose insurance policies	79
26.5	Minimum terms of policies	79
26.6	Operator not to render policy void	79
26.7	Compliance	79
26.8	Notice of potential claims	79
26.9	Operator to pay all excess/deductibles	80
26.10	Settlement of claims	80
27	Indemnities	80
27.1	Indemnity for personal injury and property damage	80
27.2	Indemnity by Operator for certain liabilities to Third Parties	81
27.3	Duty to mitigate	81
27.4	General provisions regarding indemnities	81
28	Limitations and exclusions of liability	81
28.1	Exclusion of Consequential Loss	81
28.2	Time limit and minimum threshold on Claims	81
28.3	Claims and exclusions in respect of Infrastructure standard	82
28.4	Claims and exclusions in respect of non-provision of Operational Rights	82
28.5	Claims and exclusions in respect of delays to Train Movements	84
28.6	Defence of Claims by Third Parties	85
29	Determination of liability and loss adjustment	85
29.1	Determination of liability	85
29.2	Loss Adjuster	85
29.3	Parties to assist loss adjuster	87
29.4	Decision of the loss adjuster	87
29.5	Costs of the loss adjuster	87
30	Disputes	87
30.1	Method	87
30.2	Authorised representative resolution	87
30.3	Expert	88
30.4	Arbitration	90
30.5	Queensland Competition Authority (QCA)	91
30.6	Determination by Court	91
31	Force Majeure	91
31.1	Notice of Force Majeure	91
31.2	Suspension of obligations	92
31.3	Duty to mitigate	93
31.4	End of period of Force Majeure	93
31.5	Reduction of Access Rights	93
31.6	Effect of Nominated Network FM Reduction Notice on Operator nomination	95
31.7	Termination after extended Force Majeure Event	95
32	Suspension	95

32.1	Suspension of Train Services for a Train Service Type	95
32.2	Suspension of Train Services generally	95
32.3	Suspension of certain Rollingstock or Rollingstock Configurations	96
32.4	Suspension due to suspension under Access Agreement	96
32.5	Details of suspension	96
32.6	Effect of suspension	97
32.7	Duration of suspension	97
33	Termination	98
33.1	Termination of Train Services for a Train Service Type by Aurizon Network	98
33.2	Termination of Agreement	98
33.3	Termination by the Operator	98
33.4	Grounds for termination to be specified	99
33.5	Obligations and other rights upon termination or expiry	99
33.6	Removal of Rollingstock following termination	99
34	Assignment	100
34.1	Assignment by Aurizon Network	100
34.2	Assignment by the Operator	100
34.3	Charging	101
35	GST	101
35.1	Construction	101
35.2	Consideration GST exclusive	102
35.3	Payment of GST	102
35.4	Timing of GST payment	102
35.5	Tax invoice	102
35.6	Adjustment event	102
35.7	Reimbursements	102
36	Confidentiality	102
36.1	Confidentiality	102
36.2	Permitted disclosures	103
36.3	Discloser may give certain directions	104
36.4	PPS Act	104
36.5	Survival	105
36.6	Injunctive relief	105
37	Relationship with Access Agreements	105
38	Notices	106
38.1	Form of Notice	106
38.2	Method of service	106
38.3	Deemed Notice	106
38.4	Addresses for notices	107
38.5	Train Control Direction or Incident Commander's direction	107
39	General	107
39.1	Survival	107

39.2	Amendment	107
39.3	Entire agreement	107
39.4	Counterparts	108
39.5	Non-merger	108
39.6	Authority to enter into agreement	108
39.7	Consents and approvals	108
39.8	Relationship	108
39.9	Certificate	108
39.10	Costs	109
39.11	Duty	109
39.12	Waiver and exercise of rights	109
39.13	Computation of time	109
39.14	Severance of invalid or illegal terms	109
39.15	Rights cumulative	110
39.16	Approvals and consents	110
39.17	Third Party Land	110
39.18	Implementation of agreement	111
39.19	Governing law and jurisdiction	111
39.20	PPS Act	111
Schedule 1 - Reference schedule		116
Schedule 2 - Train Descriptions		117
Appendix A to Schedule 2- Sectional Running Times		121
Appendix B to Schedule 2 - Nominated Monthly Operational Rights		123
Schedule 3 - Nominated Network		124
Schedule 4 - Rollingstock and Rollingstock Configurations		126
Schedule 5 - Performance Levels		127
Schedule 6 - High visibility clothing and Emergency Procedures		130
Schedule 7 - Insurance		131
Schedule 8		133
Schedule 9 - Interface Coordination Arrangements		139
Schedule 10 - Ancillary Services and Ancillary Services Charges		151
Schedule 11 - Interface Risk Management Plan		152

Date

Parties

Aurizon Network Pty Ltd ABN 78 132 181 116 of Level 8, 900 Ann Street, Fortitude Valley, Queensland, 4006 (**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 18.1(a)**.

Ancillary Services means those services set out in **Schedule 10** (if any) which Aurizon Network has agreed to provide to the Operator in addition to the grant of the Operational Rights.

Ancillary Services Charges means the ancillary services charges (if any) determined in accordance with **Schedule 10** and any interest payable in relation to such charges under this Deed.

Applicable Safety Standards means:

- (a) in respect of the Operator, any Safety Standards identified in the IRMP as being applicable to the Operator; and
- (b) in respect of Aurizon Network, any Safety Standards identified in the IRMP as being applicable to Aurizon Network.

Applicable Safeworking Procedures means:

- (a) in respect of the Operator, any Safeworking Procedures identified in the IRMP as being applicable to the Operator; and
- (b) in respect of Aurizon Network, any Safeworking Procedures identified in the IRMP as being applicable to Aurizon Network.

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

Approved Derogation means, in respect of any Rollingstock or Rollingstock Configuration which does not comply with the Rollingstock Interface Standards, a departure from the Rollingstock Interface Standards which the IRMP identifies can be effectively managed by complying with measures specified in the IRMP in respect of such Rollingstock or Rollingstock Configuration.

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

Aurizon Network Land means each parcel of land on, under or above which the Nominated Network is situated and which is:

- (a) land that is owned, leased or controlled by Aurizon Network; or
- (b) land in respect of which entry is required to be given by Aurizon Network as part of the definition of Access.

Aurizon Network Representative means the Aurizon Network officer for the time being appointed pursuant to **item 2.2(b) of Schedule 9**.

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

Authorisation Request Notice has the meaning given in **clause 17.2(a)**.

Authorised Parking has the meaning given in **clause 13.5(a)**.

Authorised Rollingstock means Rollingstock which is taken to be authorised Rollingstock under **clause 17.5(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 17.5(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 10.2(d)(i)(A)**.

Category 2 Reduced Operational Rights has the meaning given in **clause 10.2(d)(i)(B)**.

Certificate of Compliance means a certification issued by a Certifier under **clause 17.5(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 34.3**.

Chargor has the meaning given in **clause 34.3**.

Claim means any action, proceeding, claim, demand, damage, loss, cost, liability or expense, including the costs and expenses of defending or settling any action, proceeding, claim or demand.

Coal System has the meaning given in the Access Undertaking.

Collateral has the meaning given in the PPS Act.

Commencement Date means the date of this Deed.

Commitment Date means the earliest Train Service Commitment Date under this Deed.

Compliance Date means the earliest Train Service Compliance Date under this Deed.

Compliance Statement has the meaning given in **clause 17.3(b)**.

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:

- (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 30.3**).

Depot for a Train Service Type means a depot, as specified in the Train

Description for that Train Service Type.

Destination for a Train Service Type means the destination specified as such in the Train Description for that Train Service Type.

Discloser means a Party that discloses Confidential Information to the other Party.

Discretionary System Amendment has the meaning given in **clause 18.1(a)(iii)**.

Dispute has the meaning given in **clause 30.1**.

Dispute Notice has the meaning given in **clause 30.1**.

Disputed Aspect has the meaning given in **clause 15.1(d)(iii)**.

Effective Date has the meaning given in the Access Agreement.

Emergency Possession has the meaning given in the Access Undertaking.

Emergency Response Plan has the meaning given in **clause 15.1(a)(i)(B)**.

Emergency Procedures means the procedures developed and advised by Aurizon Network from time to time (as varied by Aurizon Network in accordance with this Deed) for dealing with a Network Incident including all actions to be taken to prevent, mitigate or remedy any risks to the safety of persons, to property or to the Environment.

Environment has the meaning given in the Environmental Protection Act.

Environmental Authorities means:

- (a) a “development approval” or “registration certificate” for a chapter 4 activity or an “environmental authority”, as those terms are defined under the Environmental Protection Act; or
- (b) any approval (however described) which is deemed by the Environmental Protection Act to be a “development approval”, “registration certificate” or “environmental authority” referred to in **paragraph (a)** of this definition.

Environmental Harm has the meaning given in the Access Undertaking.

Environmental Incident means any:

- (a) release, spillage or leakage of any Contaminating Materials; or
- (b) any incident which results in Environmental Harm.

Environmental Law has the meaning given in the Access Undertaking.

Environmental Management Plan has the meaning given in **clause 15.1(g)**.

Environmental Protection Act means the *Environmental Protection Act 1994* (Qld).

Environmental Regulator means, in respect of an Environmental Law, the Authority administering that Environmental Law.

Environmental Risks means all risks to the Environment arising or potentially arising from the Operator's Activities in connection with this Deed (including risks associated with the environmental management matters identified as part of an Interface Risk Assessment).

Expert has the meaning given in **clause 30.3**.

Expiry Date means the latest Train Service Expiry Date under this Deed.

FM Access Rights means the Access Rights for each Train Service Type which cannot be made available by Aurizon Network for the Operator to operate Train Services due to damage to, or the destruction of, a part of the Nominated Network referred to in **clause 31.6(a)** (assuming that part of the Nominated Network will not be repaired or replaced).

Force Majeure Event means any cause, event or circumstance, or combination of causes, events or circumstances which:

- (a) is beyond the reasonable control of the affected Party; and
- (b) by the exercise of due diligence the affected Party was not reasonably able to prevent or is not reasonably able to overcome,

and, provided that the requirements in paragraphs (a) and (b) of this definition are satisfied, includes:

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

- natural calamity;
- (m) epidemic or quarantine restriction; and
 - (n) delay of a supplier due to any of the foregoing whether any such cause of delay exists before or after the Commencement Date.

Former Interface Risk Provisions has the meaning given in **clause 3.2(b)(i)**.

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

GST has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Incident means any Network Incident involving the Activities of the Operator.

Incident Commander means a member of Aurizon Network's Staff who has been delegated responsibility for the direction and coordination of Aurizon Network's and the Operator's resources in the performance of their respective roles and tasks at the site of an Incident, recording events during the course of an Incident and liaison with Authorities.

Indicative Tonnage for a Train Service Type means the tonnage as specified as such in the Train Description for that Train Service Type.

Infrastructure has the meaning given to the term "Rail Infrastructure" in the Access Undertaking.

Infrastructure Enhancement has the meaning given in the Access Undertaking.

Infrastructure Lease means any lease or sublease to Aurizon Network of any Infrastructure which forms part of the Nominated Network.

Infrastructure Lessor means any lessor or sublessor under an Infrastructure Lease.

Infrastructure Service Providers has the meaning given in the Access Undertaking.

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

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) a meeting is convened to pass a resolution to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within 10 Business Days or the resolution fails to pass;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within 10 Business Days after it is made;

- (d) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets if that appointment is not revoked within 10 Business Days after it is made;
- (e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement; or
- (f) any similar event occurs in respect of the Party under the laws of any jurisdiction other than Australia.

Interface Coordination Arrangements means the plan set out in **Schedule 9** as updated from time to time which identifies the procedures to be followed and the responsible officers from each Party, in respect of all regular operational interfaces between the Parties that arise in the exercise by the Parties of their respective rights and the performance of their respective obligations under this Deed other than those specified in the Network Management Principles.

Interface Representative has the meaning given in **clause 24.3(a)**.

Interface Risk Assessment has the meaning given in the Access Undertaking.

Interface Risk Management Plan or **IRMP** has the meaning given in the Access Undertaking.

Interface Risk Provisions means:

- (a) the provisions of the Access Undertaking which include the details of:
 - (i) the Interface Risks, the Interface Risk Assessment and the IRMP (which, as at the Commencement Date, is Schedule C of the Access Undertaking); and
 - (ii) the Environmental Management Plan (which, as at the Commencement Date, is Schedule C of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the Interface Risks, the Interface Risk Assessment, the IRMP and the Environmental Management Plan.

Interface Risks means all risks to the safety of persons or property arising or potentially arising from the interaction between the Operator's Activities in connection with this Deed and:

- (a) the Infrastructure;
- (b) any Land;
- (c) Activities on the Infrastructure or any Land (including other Network Train Services); or
- (d) persons on, using or near the Infrastructure or any Land.

Investigation means an investigation conducted in accordance with the Investigation Procedures.

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

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

Land means any:

- (a) parcel of land on, under or above which the Infrastructure is situated;
- (b) Aurizon Network Land; and
- (c) Third Party Land.

Law has the meaning given in the Access Undertaking.

Loading Facility for a Train Service Type means the loading facility located at the ultimate origin for that Train Service Type (whether located on the Nominated Network, an Adjoining Network or otherwise), as specified in the Train Description for that Train Service Type.

Maintenance Work has the meaning given in the Access Undertaking.

Major Periodic Maintenance has the meaning given in the Access Undertaking.

Material Change means a:

- (a) Change in Law;
- (b) Change in Access Undertaking; or
- (c) matter deemed to be a Material Change under **clause 39.17(d)**.

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 4**.

Maximum Other Dwell Times for a Train Service Type means the maximum Other Dwell Times for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Payload for a Train Service Type means the maximum Payload for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Sectional Running Time for a Section for a Train Service Type

means the maximum Sectional Running Times for Train Services for that Train Service Type operating on that Section as specified as such in the Train Description for that Train Service Type.

Maximum SRT means the sum of Maximum Sectional Running Time for all relevant Sections for the relevant Train Service Type except if it is the first or last movement of the relevant Train Service where the time to start and stop the Train Service is included (as specified in **Appendix A to Schedule 2** for the relevant Train Service Type).

Maximum Time at Depot for a Train Service Type means the maximum Time at Depot for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Time at Loading Facility for a Train Service Type means the maximum Time at Loading Facility for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Time at Unloading Facility for a Train Service Type means the maximum Time at Unloading Facility for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Month means calendar month.

Net Financial Effect on a Party of an event or circumstance means the net effect in financial terms of the occurrence of the event or circumstance on the Party in relation to performing its obligations and exercising its rights under this Deed including any increases in costs (whether capital or operating, fixed or variable) and other detriments incurred, or to be incurred, by the Party but deducting the amount of any savings or other benefits or advantages received, or to be received, by the Party, and on the basis that the Party uses reasonable endeavours to mitigate the net effect of the event or circumstance.

Network Incident has the meaning given in the Access Undertaking.

Network Interface Point means a location at which the Infrastructure meets an Adjoining Network.

Network Management Principles has the meaning given in the Access Undertaking.

Network Train Service means the running of a Train between specified origins and destinations by a Railway Operator (including any Stowage) on the Infrastructure.

New Authorisation has the meaning given in **clause 17.6**.

New Interface Risk Provisions has the meaning given in **clause 3.2(b)(i)**.

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

- (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 34.3**.

Notice has the meaning given in **clause 36.1(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 15.1(a)(i)(A)**.

Operational Constraint has the meaning given in the Access Undertaking.

Operational Rights means the rights to operate Train Services on the Nominated Network granted to the Operator pursuant to this Deed.

Operator's Controller means the person for the time being nominated in that position pursuant to **item 1.2(h)** of **Schedule 9**.

Operator's Incident Response Coordinator means the person appointed pursuant to **item 3.1** of **Schedule 9**.

Operator's Recovery Team Leader means the person appointed pursuant to **item 3.2** of **Schedule 9**.

Operator's Representative means the person for the time being appointed pursuant to **item 2.2(a)** of **Schedule 9**.

Operator's Safety Management System has the meaning given in **clause 24.4**.

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 13**.

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 *Rail Safety National Law (Queensland) Act 2017* (Qld).

Rail Safety Regulator means the Office of the National Rail Safety Regulator.

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 39.20(a)**.

Signalling and Telecommunications Equipment means all electronic, electrical and other equipment, including signalling systems, safety devices and communications facilities, installed on or as part of the Infrastructure or on Rollingstock, for the purpose of compliance with Safeworking Procedures and to facilitate Train Control.

Staff means Aurizon Network's Staff or the Operator's Staff (as applicable).

State means the State of Queensland.

Stowage has the meaning given in the Access Undertaking.

Supplier has the meaning given in **clause 35.3**.

Supply Chain Rights has the meaning given in the Access Agreement.

Suspension Event means any event or circumstance specified as such in **Schedule 8**.

Suspension Notice has the meaning given under **clause 32.1, 32.2, 32.3 or 32.4**.

System Operating Parameters has the meaning given in the Access Undertaking.

System Rules has the meaning given in the Access Undertaking.

System Wide Requirements means the Possession Protocols, the Interface Coordination Arrangements, the Rollingstock Interface Standards, the Safeworking Procedures, the Safety Standards, the Emergency Procedures and the Investigation Procedures.

Tare Weight means the tare weight for a Wagon or other Rollingstock as specified in **Schedule 4**.

Term means the term of this Deed in accordance with **clause 2.1**.

Termination Event means any event or circumstance specified as such in **Schedule 8**.

Third Party means a person other than the Operator or Aurizon Network.

Third Party Land has the meaning given in **clause 39.17(a)**.

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 13.1(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 37**) and the schedules of this Deed, the substantive terms of this Deed prevail to the extent of the inconsistency.
- (b) If there is any inconsistency between matters contained in the Access Undertaking (as amended by any Change in Access Undertaking) and this Deed, the provisions of this Deed prevail to the extent of the inconsistency unless expressly provided to the contrary.

2 Term

2.1 Term

This Deed commences on the Commencement Date and, unless earlier terminated in accordance with its terms, continues until the Expiry Date.

3 Access Undertaking

3.1 Incorporation

- (a) The Parties agree that, for the purposes of the Access Undertaking, the Operator is considered a Train Operator or a Railway Operator (as applicable).
- (b) Subject to **clause 3.2**, the Interface Risk Provisions (as in force as at the Commencement Date) form part of this Deed as if they were set out in full under this Deed.
- (c) For the avoidance of doubt, despite any other provision in the Access Undertaking:
 - (i) **clause 28** applies to any Claim in respect of a breach of the Interface Risk Provisions which form part of this Deed under this **clause 3**; and
 - (ii) **clause 30** 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 1.1(a)(i)** or this **clause 3.2 (Former Interface Risk Provisions)** with the

Interface Risk Provisions as changed by the Change in Access Undertaking (**New Interface Risk Provisions**);

- (ii) of any other changes to the other terms of this Deed (if any) which the Notifying Party requires as a consequence of, or to give full effect to the replacement of the Former Interface Risk Provisions with the New Interface Risk Provisions under this **clause 3.2**; and
 - (iii) of the date from which the changes become effective (and if any changes become effective from different dates, the dates applicable to each change) which must be on or after the date on which the Change in Access Undertaking became effective (**Change Date(s)**).
- (c) An Amendment Notice must include an amended version of this Deed, with the changes referred to in **clause 3.2(b)(i)** clearly identified.
 - (d) Promptly following receipt of an Amendment Notice, the Receiving Party must notify the Notifying Party the extent to which the Receiving Party accepts or does not accept the drafting of the amendments to the terms of this Deed proposed in the Amendment Notice in accordance with **clause 3.2(b)(ii)**.
 - (e) If the Receiving Party does not accept the drafting of the amendments to the terms of this Deed, then the Parties must promptly meet to negotiate and attempt to agree the changes to the terms of this Deed (if any) which are necessary as a consequence of, or to give full effect to, the replacement of the Former Interface Risk Provisions with the New Interface Risk Provisions under this **clause 3.2**.
 - (f) If the Parties do not agree the amendments in respect of the matters outstanding under **clause 3.2(f)** by the Change Date(s), the matter must be referred to the QCA for determination in accordance with the provisions of the Access Undertaking which provide for determination of disputes by the QCA.
 - (g) On and from the Change Date(s) (or such other time as the QCA may determine):
 - (i) the New Interface Risk Provisions will form part of this Deed as if set out in full in this Deed;
 - (ii) the Former Interface Risk Provisions will cease to form part of this Deed; and
 - (iii) amendments to the terms of this Deed:
 - (A) accepted under **clause 3.2(d)**;
 - (B) agreed under **clause 3.2(e)**; or
 - (C) determined by the QCA under **clause 3.2(f)**,
become effective.

- (h) Within 10 Business Days from the date that amendments to the terms of this Deed are accepted, agreed and/or determined (as applicable) under this **clause 3.2**, Aurizon Network must prepare and send to the Operator a copy of this Deed as modified.

4 Operational Rights

4.1 Grant of Operational Rights

On and from the Train Service Commitment Date for each Train Service Type until the Train Service Expiry Date for that Train Service Type, Aurizon Network grants, and must provide, to the Operator the Operational Rights for that Train Service Type in accordance with the Train Description on the terms and conditions of this Deed.

4.2 Nature and scope of Operational Rights

- (a) The Operational Rights granted under **clause 4.1** are non-exclusive contractual rights and do not give the Operator any right, title or interest of any proprietary nature in the Nominated Network.
- (b) The Operator must not:
 - (i) operate on, or use any part of, the Infrastructure that is not specifically included in the Nominated Network; or
 - (ii) use the Nominated Network for:
 - (A) carrying out any provisioning, inspection, testing or maintenance of Rollingstock;
 - (B) any marshalling, shunting or other relocation of Rollingstock;
 - (C) storage of Rollingstock; or
 - (D) any purpose other than the operation of Train Services,unless otherwise expressly:
 - (iii) permitted or required to do so under this Deed;
 - (iv) directed to do so by Aurizon Network in accordance with this Deed; or
 - (v) expressly permitted under another agreement with Aurizon Network.

4.3 Operation of Ad Hoc Train Service

- (a) If:
 - (i) the Access Holder (or the Operator at the request of the Access Holder) notifies Aurizon Network under the Access Agreement that it wishes to have the Operator operate an Ad Hoc Train Service; and

- (ii) the Operator notifies Aurizon Network that it is able and willing to operate an Ad Hoc Train Service for a Train Service Type at the request of the Access Holder,

then, to the extent permitted by the Network Management Principles, Aurizon Network:

- (iii) must if required in accordance with clause 5.4(c) of Schedule G of the Access Undertaking; or
 - (iv) otherwise must use reasonable endeavours to, schedule the Ad Hoc Train Service for the Train Service Type in the Daily Train Plan.
- (b) On and from the time that the Ad Hoc Train Service is scheduled in the Daily Train Plan, the terms and conditions of this Deed apply to the Ad Hoc Train Service as if the Ad Hoc Train Service is a Train Service for the Train Service Type which the Operator is entitled to operate under this Deed.

5 Ancillary Services

In consideration of the Operator paying the Ancillary Services Charge, Aurizon Network must provide the Operator with the Ancillary Services (if any) in accordance with **Schedule 10**.

6 Nomination of the Operator

6.1 Nomination

If at any time the Access Holder nominates the Operator in respect of all or part of the Access Holder's Access Rights, in accordance with the Access Agreement, then Aurizon Network must promptly provide to the Operator:

- (a) if not already provided by the Access Holder, a copy of the Access Agreement;
- (b) replacement Schedules (as relevant) amended to be consistent with the Access Holder's nomination of the Operator; and
- (c) details of the date on which those replacement Schedules take effect being the date Aurizon Network notifies the Access Holder under the Access Agreement that it accepts the Operator's nomination,

and this Deed is varied in accordance with those replacement Schedules with effect on and from the date referred to under **clause 6.1(c)**.

6.2 Multiple Access Agreements

The Operator may not be nominated under more than one Access Agreement for the purposes of this Deed.

6.3 Variation of nomination of the Operator

- (a) If at any time:
- (i) the Access Holder notifies, or is deemed to have notified, Aurizon Network of a variation to the nomination of the Operator by the Access Holder in accordance with the Access Agreement; or
 - (ii) the Access Holder withdraws, or is deemed to have withdrawn, the Access Holder's nomination of the Operator under the Access Agreement (or this Deed),
- then:
- (iii) Aurizon Network must promptly provide to the Operator:
 - (A) a copy of the Access Holder's notice or withdrawal or, if no such notice or withdrawal has been given, details of the circumstances supporting the deeming of the notice or withdrawal;
 - (B) replacement Schedules (as relevant) amended consistent with the Access Holder's notice or withdrawal or deemed notice or withdrawal; and
 - (C) the date on which those replacement Schedules take effect; and
 - (iv) this Deed is varied in accordance with those replacement Schedules with effect on and from the date referred to under **clause 6.3(a)(iii)(C)**.
- (b) The Access Holder is deemed to have withdrawn its nomination of the Operator if the Access Agreement is terminated or expires.

7 Interaction of rights

- (a) The Parties acknowledge and agree that:
- (i) the Access Holder has contracted directly with Aurizon Network under the Access Agreement for the Access Rights:
 - (A) on the basis that the Access Rights will be used by one or more persons (such as the Operator) under agreements (such as this Deed) for the benefit of the Access Holder; and
 - (B) as such, the Access Holder has no direct above rail operational responsibilities in relation to Train Services for the Access Holder (unless it is also an "Operator" as defined in the Access Agreement); and
 - (ii) the Operator will have above rail operational obligations in respect of the Train Services that will be operated by it for the Access Holder.

- (b) The Operator has no right to renew, transfer (subject to **clauses 34.2** and **34.3**), vary or relinquish to Aurizon Network any part of the Operational Rights, whether under this Deed or the Access Undertaking. The right to seek a renewal, transfer, variation or relinquishment of Access Rights is solely a right of the Access Holder.

8 Billing and payments

8.1 Charges

The Operator must pay to Aurizon Network the Ancillary Services Charges and any other charges (if any) as calculated in accordance with this Deed.

8.2 Invoicing

- (a) As soon as reasonably practicable after the end of each Billing Period, Aurizon Network must give to the Operator an invoice for:
 - (i) the Ancillary Services Charges for that Billing Period; plus
 - (ii) any amounts payable but unpaid by the Operator to Aurizon Network under this Deed, and which have not previously been invoiced, as at the end of the Billing Period.
- (b) If **clause 8.6** applies, Aurizon Network must give the Operator an invoice under **clause 8.2(a)** after the end of a Billing Period even if no amount is required to be invoiced under **clause 8.2(a)** for that Billing Period.
- (c) Each invoice given under this **clause 8.2** must be accompanied by reasonable details of Aurizon Network's calculation of the amounts claimed in the invoice, including an itemised description of any other amounts (for the amounts deducted under **clause 8.6**, particulars must include the amounts against which the deduction is applied).

8.3 Payment

Subject to **clause 8.4**, the Operator must:

- (a) pay to Aurizon Network the amount claimed in an invoice given under **clause 8.2** within 10 Business Days after the invoice is given to the Operator; and
- (b) pay all amounts payable to Aurizon Network under this Deed:
 - (i) in Australian currency; and
 - (ii) by:
 - (A) direct deposit into the one or more bank account notified by Aurizon Network to the Operator in the invoice for this purpose (whether or not those bank accounts are in the name of Aurizon Network); or
 - (B) such other payment method as Aurizon Network specifies in the invoice (acting reasonably).

- (c) Any payment by the Operator of an amount payable under this Deed in accordance with this **clause 8.3** is taken to be a payment of such amount to Aurizon Network for the purpose of this Deed (whether or not such amount is paid into a bank account in the name of Aurizon Network).

8.4 Disputes

- (a) Any Disputes in connection with an amount claimed in an invoice:
 - (i) must be resolved in accordance with **clause 30**; and
 - (ii) which is not resolved in accordance with **clause 30.2**, may be referred by either Party to an Expert for determination in accordance with **clause 30.3**.
- (b) Despite **clause 8.4(a)**, if an amount claimed in an invoice given by Aurizon Network is Disputed, the Operator must pay to Aurizon Network:
 - (i) the portion of the amount claimed in the invoice that is not in Dispute; and
 - (ii) 50% of the portion of the amount claimed in the invoice that is in Dispute,within the time specified in **clause 8.3(a)**.
- (c) Upon resolution of any Dispute about an amount claimed in an invoice given by Aurizon Network, if the total amount which Aurizon Network was entitled to claim in the invoice (as resolved) is:
 - (i) more than the amount paid by the Operator, then the amount of the difference, together with interest on that amount calculated in accordance with **clause 8.5** (from the date when the amount in Dispute would have been due and payable under **clause 8.3(a)** but for **clause 8.4(b)**, until the date on which the difference, together with any interest, has been paid in full), must be paid by the Operator to Aurizon Network within 20 Business Days after the resolution of the Dispute; or
 - (ii) less than the amount paid by the Operator, then the amount of the difference, together with interest on that amount calculated in accordance with **clause 8.5** (from the date when the amount in Dispute was paid by the Operator until the date on which the credit is applied or the amount is paid (as applicable) under this **clause 8.4(c)(ii)**), must be:
 - (A) applied by Aurizon Network as credit in favour of the Operator against the amount claimed in the next invoice to be issued by Aurizon Network to the Operator after the resolution of the Dispute (and, if necessary, to subsequent invoices issued by Aurizon Network until the amount of the difference (including any interest) has been fully credited in favour of the Operator against amounts payable under

invoices issued by Aurizon Network to the Operator under **clause 8.2**); or

- (B) if there will be no further invoices issued by Aurizon Network to the Operator after the resolution of the Dispute or the last credit referred to in **clause 8.4(c)(ii)(A)**, paid by Aurizon Network to the Operator within 20 Business Days after resolution of the Dispute or the last credit referred to in **clause 8.4(c)(ii)(A)** (as applicable).

8.5 Interest on overdue payments and Disputed amounts

- (a) Without prejudice to the rights, powers and remedies of a Party under this Deed or otherwise at Law, if for any reason a Party does not pay an amount payable under or in connection with this Deed on or before the due date for payment, then that Party must pay interest on the outstanding amount calculated in accordance with this **clause 8.5**.
- (b) Interest accrues on outstanding amounts from the due date for payment until that amount, together with the interest on that amount, has been paid in full.
- (c) Interest under **clauses 8.4(c)(i), 8.4(c)(ii) and 8.5(b)** is calculated at the Default Rate. Any interest accrued but unpaid at the end of each Month is capitalised and, once capitalised, will itself bear interest.

8.6 Right of set-off

A Party may deduct from any amounts which are due and payable by the Party to the other Party under this Deed any amounts which are due and payable by the other Party to the Party under this Deed.

9 Accreditation

- (a) The Operator must, before the commencement of the first Train Services under this Deed, provide to Aurizon Network evidence of the Operator's Accreditation (including all conditions and/or variations).
- (b) Each Party must have and maintain Accreditation to the extent required to perform its obligations and exercise its rights under this Deed and, if requested to do so in writing by the other Party, provide to the other Party copies of documentation evidencing currency, renewal or amendment of its Accreditation within five Business Days after such request.
- (c) Each Party must notify the other as soon as possible of any notice from an Authority affecting, or likely to affect, its Accreditation, and must provide a copy of that notice to the other Party on request.
- (d) If:
 - (i) **Schedule 2** is varied to include an additional Train Service Type;
or

- (ii) the Train Description for an existing Train Service Type is varied, then before the Operator commences or continues (as applicable) to operate any Train Services for such Train Service Type, the Operator must:
- (iii) if the Operator's Accreditation is required to be varied to address the operation of Train Services for such additional Train Service Type or the operation of Train Services in accordance with such varied Train Description (as applicable), provide Aurizon Network evidence of the Operator's Accreditation as varied; or
- (iv) if the Operator reasonably determines that no variations to the Operator's Accreditation are required to address the operation of such Train Services, notify Aurizon Network of that determination and the reasons for that determination.

10 Operation of Train Services

10.1 Operation of Train Services

The Operator must not operate Train Services:

- (a) which do not comply with the applicable Train Description and this Deed, unless:
 - (i) acting under a Train Control Direction; or
 - (ii) with the prior written approval of Aurizon Network (which approval may specify terms in addition to or varying the terms of this Deed in respect of the Train Services or Ad Hoc Train Services to which the approval relates);
- (b) if clause 4.4 of the Access Agreement applies to those Train Services, unless an Access Interface Deed (as defined under the Access Agreement) has been executed by the relevant Customer and Aurizon Network; and
- (c) if the Access Holder does not hold, or does not have the benefit of, Supply Chain Rights for those Train Services.

10.2 Commencement of Train Services

- (a) Without limiting any other provision of this Deed, the Operator must only operate any Train Service if:

Category 1- Requirements for Train Services generally

- (i) an Operating Plan has been approved by Aurizon Network under **clause 15.1**;
- (ii) the Operator has submitted an Emergency Response Plan to Aurizon Network which complies with, or is taken to comply with, the requirements of **clause 15.1(a)(i)(B)**;

- (iii) the Operator has provided evidence to Aurizon Network of the Operator's Accreditation as required by **clause 9(a)**;
- (iv) an IRMP has been agreed or determined under the Interface Risk Provisions which form part of this Deed under **clause 3**;
- (v) the Operator has developed:
 - (A) the Operator's Safety Management System under **clause 24.4**;
 - (B) the Environmental Management Plan under **clause 15.1(g)**;
- (vi) the Operator has taken out the insurances, and provided evidence of those insurances to Aurizon Network, as required under **clause 24.3**;
- (vii) the Operator has complied with, or implemented any aspects of, the Operating Plan, Emergency Response Plan, the Operator's Accreditation, the IRMP, the Operator's Safety Management System and the Environmental Management Plan that are required to be complied with or implemented before the commencement of Train Services;

Category 2 – Requirement for specific Train Service Types

- (viii) the Operator has provided a Certificate of Compliance to Aurizon Network for all of the Rollingstock and/or Rollingstock Configurations which the Operator proposes to use in the operation of Train Services, and such Rollingstock and/or Rollingstock Configurations is Authorised Rollingstock and/or Authorised Rollingstock Configurations for each Train Service Type; and
- (ix) Aurizon Network has given the Operator an Authority to Travel or a Train Route Acceptance.
- (b) Aurizon Network must use reasonable endeavours to cooperate with the Operator and act promptly to facilitate the Operator's compliance with **clause 10.2(a)**.
- (c) If the Operator has not complied with each of the requirements of **clause 10.2(a)** by:
 - (i) the Compliance Date and Aurizon Network has a reasonable expectation that the Operator cannot commence the operation of Train Services by the Commitment Date; or
 - (ii) the Commitment Date,

then, provided that the Operator's failure to comply with **clause 10.2(a)** was not due to Aurizon Network's breach of **clause 10.2(b)** Aurizon Network may give a notice to the Operator and the Access Holder requiring the Operator to comply with **clause 10.2(a)** within 20 Business Days after the date the notice is given to the Operator and specifying that

it is a notice given under this **clause 10.2(c)**. For clarity, the Operator is not obliged to, and Aurizon Network may not require the Operator to, comply with **clause 10.2(a)** prior to the Commitment Date.

- (d) If Aurizon Network notifies the Operator and the Access Holder under **clause 10.2(c)** and the Operator fails to comply with the requirements set out in the notice then, subject to **clause 10.2(e)**, Aurizon Network may:
 - (i) by notice to the Operator and the Access Holder reduce (as applicable):
 - (A) all of the Operational Rights (**Category 1 Reduced Operational Rights**); and
 - (B) the Operational Rights in respect of the affected Train Service Types only (**Category 2 Reduced Operational Rights**); or
 - (ii) if, as a result of such reduction, there will be no remaining Operational Rights, terminate this Deed.
- (e) Aurizon Network must allow the Access Holder to nominate an alternative “Operator” (as defined in the Access Agreement) to utilise the Category 1 Reduced Operational Rights and/or the Category 2 Reduced Operational Rights (as applicable).

10.3 Commencement of Train Services for Train Service Type

- (a) Without limiting any other provision of this Deed, if:
 - (i) **Schedule 2** is varied or deemed to be varied to include an additional Train Service Type; or
 - (ii) the Train Description for an existing Train Service Type is varied or deemed to be varied (including under **clause 14.2**),

then the Operator must only operate or continue to operate (as applicable) any such additional or varied Train Services for that Train Service Type if:

- (iii) the Operator:
 - (A) if required under **clause 17.5**, has provided a Certificate of Compliance to Aurizon Network for all of the Rollingstock or Rollingstock Configurations which the Operator proposes to use in the operation of Train Services for that Train Service Type, and such Rollingstock is Authorised Rollingstock or such Rollingstock Configurations are Authorised Rollingstock Configurations for that Train Service Type;
 - (B) has amended the Emergency Response Plan to address the operation of those Train Services, or notified Aurizon Network of its determination that no such amendments are required, under **clause 15.2(a)**;

- (C) has provided evidence to Aurizon Network of the Operator's Accreditation as varied to address the operation of those Train Services, or notified Aurizon Network of its determination that no such variations are required, under **clause 9(d)**;
 - (D) and Aurizon Network have jointly conducted a further Interface Risk Assessment, and amendments to the IRMP, to the extent required, have been agreed or determined, under **clause 15.2(e)**;
 - (E) if required under **clause 24.4**, has amended the Operator's Safety Management System to address any amendments to the IRMP and the operation of those Train Services; and
 - (F) if required under **clause 15.2**, has amended the Environmental Management Plan to address any amendments to the IRMP and the operation of those Train Services; and
 - (G) has complied with or implemented any aspects of the Operating Plan, Emergency Response Plan, the Operator's Accreditation, the IRMP, the Operator's Safety Management System and the Environmental Management Plan that are required to be complied with or implemented before the commencement of those Train Services;
- (iv) amendments to the Operating Plan to address the operation of those Train Services have been approved by Aurizon Network, or the Operator notified Aurizon Network of its determination that no such amendments are required, under **clause 15.2(a)**; 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 must 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 Increase in Maximum Payload

11.1 Increase in Maximum Payload for a Train Service Type

- (a) The Operator acknowledges that the Access Holder may :
 - (i) under clause 10 of the Access Agreement, request that Aurizon Network consider increasing the Maximum Payload for a Train Service Type; or

- (ii) be deemed to increase the Maximum Payload for a Train Service Type under clause 11 of the Access Agreement.
- (b) If the Maximum Payload for a Train Service Type is increased under clause 10 or clause 11 of the Access Agreement, Aurizon Network will notify the Operator of any changes to:
 - (i) the Nominated Monthly Operational Rights;
 - (ii) the Maximum Payload for the relevant Train Service Type;
 - (iii) the Nominal Payload for the relevant Train Service Type; and
 - (iv) the Indicative Tonnage for the relevant Train Service Type,as a result of the increase under clause 10 or clause 11 of the Access Agreement (as applicable) and this Deed will be varied in accordance with that notice.

[Drafting note: any train tests involving a change in the Maximum Payload that have been approved in writing by Aurizon Network will be exempt from the Reduction Notice trigger process in clause 11 of the Access Agreement]

11.2 No prejudice to other rights

This **clause 11** does not prejudice Aurizon Network's other rights and remedies in respect of any non-compliance by the Operator with the Train Description for a Train Service Type.

12 [NOT USED]

13 Day to day Train Movements

13.1 Exclusive responsibility for Train Control

Aurizon Network must provide, and has exclusive responsibility for, Train Control in respect of the Nominated Network.

13.2 Train Control rights and obligations - Aurizon Network

- (a) Aurizon Network must exercise Train Control by the issue of Train Control Directions to the Operator and the Operator's Staff consistent with the Network Management Principles.
- (b) In exercising Train Control, Aurizon Network must act reasonably and have regard to the safe conduct of rail operations on the Infrastructure and may, acting reasonably:
 - (i) delay, alter or add a Train Service or other Network Train Services;
 - (ii) cancel, re-route or re-schedule a Train Service or other Network Train Services;
 - (iii) alter the Scheduled Times for Train Services or other Network Train Services in the Train Schedule; and

- (iv) impose any Operational Constraint on the Nominated Network consistent with **clause 21.2**.

13.3 Train Control rights and obligations - Operator

Without limiting the rights of the Operator, the Operator must:

- (a) comply with Train Control Directions;
- (b) ensure the Operator's Staff comply with Train Control Directions;
- (c) ensure that its Train drivers are contactable by the Train Controller to receive Train Control Directions;
- (d) notify the Train Controller as soon as reasonably possible after the Operator becomes aware that:
 - (i) it is not possible for the Operator or the Operator's Staff to comply with a Train Control Direction; or
 - (ii) the Operator or the Operator's Staff have not complied with a Train Control Direction; and
- (e) notify the Train Controller as soon as reasonably possible after the Operator becomes aware of:
 - (i) any changes or delays in Train Services; or
 - (ii) any circumstances which have affected or may affect Train Control including the ability of any Train Service to conform to its Scheduled Times.

13.4 Train Control communications

The Operator must ensure all Trains are equipped with or have available means of communication to permit the Operator's Staff to comply with this Deed (including the Rollingstock Interface Standards and the Applicable Safeworking Procedures).

13.5 Removal at the end of Authorised Parking

- (a) To the extent that Aurizon Network has allowed any Train to be Stowed or directed or otherwise allowed any items of Rollingstock to be temporarily parked on the Nominated Network (in either case, **Authorised Parking**):
 - (i) the Operator must ensure that it ceases the Stowage or the temporary parking of the relevant Rollingstock on the Nominated Network on:
 - (A) the expiry of any permitted period specified by Aurizon Network in respect of such Authorised Parking; or
 - (B) if no such permitted period has been specified by Aurizon Network in respect of any such Authorised Parking, within 12 hours (or such longer period as may be specified by Aurizon Network) of notice from Aurizon Network requiring the cessation of Stowage or end to temporary parking of the

- relevant Rollingstock; and
- (ii) without limiting any other rights which Aurizon Network may have, Aurizon Network may, subject to Aurizon Network using reasonable efforts to first consult with the Operator:
 - (A) take such action as Aurizon Network (acting reasonably) considers necessary in relation to the cessation of Stowage or end to temporary parking of the relevant Rollingstock (including removing the Train or the relevant Rollingstock) following the expiry of the relevant period referred to in **clause 13.5(a)(i)**; and
 - (B) recover such reasonable costs incurred by Aurizon Network in doing so and, subject to **clause 8.4**, the Operator must, within 10 Business Days after receiving such demand, pay to Aurizon Network such reasonable costs incurred by Aurizon Network.
 - (iii) Aurizon Network will not be liable for any damage to or loss of freight, Train or Rollingstock caused by any action referred to in **clause 13.5(a)(ii)** and the Operator is solely liable for, and releases, indemnifies and will keep indemnified Aurizon Network and its directors and Aurizon Network's Staff against all Claims of any nature suffered or incurred by, or made or brought against, Aurizon Network, its directors or Aurizon Network's Staff in respect of any exercise of Aurizon Network's rights under **clause 13.5(a)(ii)**.

14 Compliance

14.1 General requirements

- (a) To the extent relevant to the performance of its obligations under this Deed:
 - (i) each Party must observe and comply with:
 - (A) all applicable Laws;
 - (B) the conditions of its own Accreditation;
 - (C) the lawful requirements of relevant Authorities;
 - (D) Train Control Directions;
 - (E) the Applicable Safeworking Procedures and Applicable Safety Standards;
 - (F) the Network Management Principles;
 - (G) the Interface Coordination Arrangements;
 - (H) to the extent applicable, the Emergency Procedures;
 - (I) the IRMP; and

- (J) the Access Undertaking (including, in Aurizon Network's case, its obligations in Part 3 of the Access Undertaking);
- (ii) the Operator must observe and comply with:
 - (A) the Train Description for each Train Service Type (subject to the Network Management Principles);
 - (B) the description of the relevant Reference Train Service except as otherwise permitted by this Deed;
 - (C) the Operating Plan;
 - (D) the Emergency Response Plan;
 - (E) the Environmental Management Plan;
 - (F) subject to the provision of reasonable notice from Aurizon Network specifying:
 - (1) the relevant requirements of the Environmental Authorities held by Aurizon Network from time to time and the permits, approvals and licences in respect of facilities to which access is provided by Aurizon Network to the Operator, those relevant requirements;
 - (2) relevant Approvals affecting the operations of Aurizon Network and their applicability to the Operator, those Approvals;
 - (G) the applicable requirements under the Noise Code; and
- (iii) Aurizon Network must observe and comply with:
 - (A) the conditions of its Accreditation;
 - (B) all licences and permits affecting its operations, including any licences, permits and approvals in respect of facilities relevant to this Deed; and
 - (C) any Environmental Authorities it holds from time to time.

14.2 Non-compliance by Operator with Train Description

- (a) If:
 - (i) Train Services operated by the Operator do not comply, in any material respect, with the Train Description for the Train Service Type, except where such non-compliance is attributable to another Railway Operator or Aurizon Network; and
 - (ii) the Operator fails to demonstrate to the reasonable satisfaction of Aurizon Network, within 20 Business Days of being requested to do so, that those Train Services will consistently comply with the applicable Train Description for the remainder of the Term,

then, if following satisfaction by Aurizon Network of the requirements of clauses 15.3(a) and 15.3(b) of the Access Agreement, Aurizon Network

continues to not be reasonably satisfied that the Operator will consistently comply with the Train Description for the remainder of the Term, Aurizon Network may, by giving the Operator and the Access Holder 20 Business Days' notice:

- (iii) vary the applicable Train Description to a level it reasonably expects to be achievable by the Operator for the remainder of the Term, having regard to the extent of previous compliance with the applicable Train Description (ignoring, for the purpose of assessing previous compliance, any non-compliance to the extent that the non-compliance was attributable to another Railway Operator or to Aurizon Network); and
 - (iv) reasonably vary any other provisions of this Deed to reflect the impact of the change in the applicable Train Description.
- (b) The Operator is entitled to dispute any variation by Aurizon Network under **clause 14.2(a)** and such dispute must be referred to an Expert for resolution in accordance with **clause 30.3**.
 - (c) This **clause 14.2** does not prejudice Aurizon Network's other rights and remedies in respect of any non-compliance by the Operator with the Train Description for a Train Service Type.
 - (d) If any variations under this **clause 14.2** affect the Train Description, then the commencement of those variations is subject to and conditional upon the Operator being notified by Aurizon Network that all necessary amendments (if any) to the Access Agreements have been made in respect of such matters and any relevant nomination of the Operator by the Access Holder in accordance with the Access Agreement has, if necessary, been varied.

14.3 Certain matters to apply consistently to all Railway Operators

Aurizon Network must ensure that as far as reasonably practicable:

- (a) the Network Management Principles;
- (b) the System Operating Parameters;
- (c) the System Rules;
- (d) the Safeworking Procedures and Safety Standards;
- (e) the Emergency Procedures; and
- (f) the Investigation Procedures,

will be applied consistently for all Railway Operators operating Network Train Services to destinations located in the same Coal System.

14.4 Provision of information

- (a) Aurizon Network must provide the Operator with:

- (i) information relevant to the Operator's operation of Train Services if and when required to do so under the Network Management Principles; and
- (ii) a copy of each Operating Document (which may be via publication on the Website).

15 Plans

15.1 Approval of Plans

- (a) Before the commencement of any Train Services:
 - (i) the Operator must develop and submit to Aurizon Network for approval the following documents which must be, at all times during the Term, consistent with the terms of this Deed:
 - (A) a plan (**Operating Plan**) which:
 - (1) specifies reasonable details of the Operator's planned operations of Train Services; and
 - (2) without limiting **clause 15.1(a)(i)(A)**, addresses the matters required under Schedule C of the Access Undertaking;
 - (B) a plan (**Emergency Response Plan**) which:
 - (1) contains the set procedures adequate for dealing with an Incident, including all actions to be taken to minimise or alleviate any threat or danger to any person or property or the environment;
 - (2) is compatible with the Emergency Procedures; and
 - (ii) the Parties must in accordance with the Interface Risk Provisions which form part of this Deed under **clause 3**:
 - (A) jointly with the Access Holder conduct an Interface Risk Assessment; and
 - (B) as soon as reasonably practicable after the completion of the Interface Risk Assessment (and in any event by not later than 20 Business Days after the completion), negotiate diligently and in good faith an IRMP, including any amendment to it.
- (b) As soon as possible and in any event by no later than 20 Business Days from the date of receipt of the Operating Plan or the Emergency Response Plan (as applicable), Aurizon Network must:
 - (i) notify the Operator whether or not it approves the Plan; and
 - (ii) if not, provide reasonable details of its reasons for withholding its approval.

- (c) Aurizon Network:
- (i) may withhold its approval of the Operating Plan if it is not reasonably satisfied that the Operating Plan complies with **clause 15.1(a)(i)(A)**;
 - (ii) must notify the Operator if it is not reasonably satisfied that the Emergency Response Plan complies with **clause 15.1(a)(i)(B)** and the parties must meet to agree on a mutually acceptable course of action to address Aurizon Network's concerns within 10 Business Days after the notice is given;
 - (iii) must promptly determine, acting reasonably, the IRMP (including any amendment to it) and notify the Operator of its determination if the Parties are unable to agree an IRMP or any amendments to it under **clause 15.1(a)(ii)**.
- (d) If a dispute arises as a result of:
- (i) Aurizon Network withholding its approval of the Operating Plan under **clause 15.1(c)(i)**;
 - (ii) the Parties failing to comply with the timeframe in **clause 15.1(c)(ii)**; or
 - (iii) the IRMP, or any aspect of or amendment to the IRMP, determined by Aurizon Network under **clause 15.1(c)(iii) (Disputed Aspect)** being Unreasonable,
- it must be resolved under **clause 30.2**, failing which **clause 30.3** applies.
- (e) If a dispute is referred to an Expert, then:
- (i) the Expert is required to determine whether or not the Operating Plan or the Emergency Response Plan (as applicable) complies with the **clause 15.1(a)(i)**; and
 - (ii) if the Expert determines (as applicable):
 - (A) the Operating Plan does not comply with **clause 15.1(a)(i)(A)**;
 - (B) the Emergency Response Plan is not compatible with the Emergency Procedures and otherwise complies with **clause 15.1(a)(i)(B)**; or
 - (C) that the Disputed Aspect of the IRMP is Unreasonable,
 then the Expert must determine (and specify in the report of its determination of the Dispute):
 - (D) if **clause 15.1(e)(ii)(A)** or **15.1(e)(ii)(B)** applies, how the non-compliance should be rectified and the Operator must rectify the Operating Plan or the Emergency Response Plan (as applicable) accordingly; or
 - (E) if **clause 15.1(e)(ii)(C)** applies, the amendments to the IRMP

which the Expert reasonably considers, if made, would result in the Disputed Aspect ceasing to be Unreasonable.

- (f) A Plan is effective only from the date:
 - (i) in respect of an Operating Plan or Emergency Response Plan, Aurizon Network notifies the Operator that it approves the Operating Plan or the Emergency Response Plan (as applicable);
 - (ii) in respect of an IRMP (including any amendments to it):
 - (A) the Parties agree in writing on the terms of the IRMP or the amendments to it; or
 - (B) if the Parties cannot agree, Aurizon Network determines the IRMP or the amendment to it and notifies the Operator;
 - (iii) if **clause 15.1(d)** applies in respect of any Plan, it is agreed or determined that the Plan complies with the relevant requirements under **clause 15.1(a)(i)** (as applicable).
- (g) If it is agreed or determined through the Dispute resolution process that the Disputed Aspect of the IRMP is Unreasonable, then (unless otherwise agreed between the Parties through the Dispute resolution process):
 - (i) despite the Dispute, the IRMP, or the aspect of it or amendment to it, determined by Aurizon Network under **clause 15.1(c)(iii)** or **15.1(g)(ii)** (as applicable) is taken to be valid and binding; but
 - (ii) as soon as reasonably practicable (and in any event within 20 Business Days) after such agreement or determination, Aurizon Network must:
 - (A) determine, acting reasonably, the amendments to the IRMP (in the case of an Expert determination, having regard to the reasons for the Expert's determination and the amendments to the IRMP specified in the Expert's report of the determination of the Dispute) which result in the Disputed Aspect ceasing to be Unreasonable; and
 - (B) notify the Operator of the amendments to the IRMP determined by Aurizon Network;
 - (C) the amendments to the IRMP, as determined by Aurizon Network, will take effect on the date notified to the Operator under **clause 15.1(g)(ii)(B)**; and
 - (D) if Aurizon Network does not notify the Operator of amendments to the IRMP by the time referred to in **clause 15.1(g)(ii)**, then the IRMP will be taken to be amended as specified in the Expert's report of the determination of the Dispute with effect immediately after the end of the time referred to in **clause 15.1(g)(ii)**.

- (h) The Operator must develop, implement and maintain a plan to address Environmental Risks (**Environmental Management Plan**) in accordance with the Interface Risk Provisions which form part of this Deed under **clause 3**.

15.2 Amendments to Plans

- (a) The Operator:
 - (i) may amend the Operating Plan or the Emergency Response Plan (as applicable) from time to time provided it complies with this **clause 15.2**;
 - (ii) must, to the extent reasonably required, amend:
 - (A) the Operating Plan and/or the Emergency Response Plan if:
 - (1) **Schedule 2** is varied to include an additional Train Service Type or the Train Description for an existing Train Service Type is varied, to address the operation of the Train Services before the Operator commences or continues (as applicable) to operate the Train Services for that Train Service Type; or
 - (2) they cease to be consistent with the terms of this Deed or any document that the Operator is required under this Deed to comply with, to address the inconsistency;
 - (B) the Operating Plan if at any time **clause 17.2(a)(ii)** applies, to address the proposal under the Authorisation Request Notice (assuming that the Rollingstock Configurations become Authorised Rollingstock Configurations for the Train Service Type); and
 - (iii) must notify Aurizon Network if it reasonably determines that no amendments to the Operating Plan and the Emergency Response Plan are required as a result of a variation to **Schedule 2**, including the reasons for that determination.
- (b) If Aurizon Network becomes aware of an inconsistency between the Operating Plan or the Emergency Response Plan and this Deed or any document that the Operator is required under this Deed to comply with, Aurizon Network must notify the Operator.
- (c) If the Operator intends or is required to amend the Operating Plan or the Emergency Response Plan (as applicable), it must submit to Aurizon Network for approval full details of each proposed amendment, including its reasons for the amendment.
- (d) **Clauses 15.1(b) to 15.1(e)** apply to any amendments to a Plan the Operator submits to Aurizon Network for approval.
- (e) If, at any time during the Term:
 - (i) a Party notifies the other Party that it believes that:

- (A) the IRMP is no longer effective in managing an Interface Risk or Environmental Risk addressed in the IRMP; or
 - (B) an additional or varied Interface Risk or Environmental Risk exists, or is likely to exist, that is not addressed in the IRMP;
 - (ii) **Schedule 2** is varied to include an additional Train Service Type or the Train Description for a Train Service Type is varied; or
 - (iii) Aurizon Network notifies the Operator that the Rollingstock Interface Standards are varied and Aurizon Network considers that a further Interface Risk Assessment is required; or
 - (iv) a Certifier gives Aurizon Network a Compliance Statement,
- then:
- (v) as soon as reasonably practicable after:
 - (A) a Party notifies the other Party under **clause 15.2(e)(i)(A)** or **15.2(e)(i)(B)**; or
 - (B) Aurizon Network notifies the Operator under **clause 15.2(e)(iii)**; or
 - (C) the Certifier gives Aurizon Network the Compliance Statement; or
 - (vi) before the Operator commences or continues (as applicable) to operate any Train Services for a Train Service Type referred to in **clause 15.2(e)(ii)**;

the Parties must undertake a further Interface Risk Assessment and agree on amendments to the IRMP in accordance with **clauses 15.1(a)(ii)** and **15.1(c)(iii)**.

16 Train operations

16.1 Compliance with Scheduled Time

- (a) The Operator must use reasonable endeavours to:
 - (i) operate Train Services in accordance with the relevant Daily Train Plan unless:
 - (A) otherwise permitted by the Network Management Principles;
 - (B) varied in the circumstances specified in this Deed;
 - (C) otherwise directed in a Train Control Direction; or
 - (D) otherwise agreed between the Parties (such agreement not to be unreasonably withheld); and
 - (ii) otherwise comply with all other Scheduled Times.

- (b) A Train Service is deemed to operate in accordance with its Scheduled Time if it is operated within three minutes before or after the Scheduled Time.

16.2 Alterations to Train Services

- (a) Without limiting the rights of the Operator, Aurizon Network must give the Operator a Train Control Direction as soon as reasonably practicable after it becomes aware that it is unable to make the Infrastructure available for the operation of a Train Service which is scheduled in the Daily Train Plan.
- (b) Unless Aurizon Network has already given the Operator a Train Control Direction under **clause 16.2(a)**, the Operator must notify Aurizon Network as soon as reasonably practicable after it decides not to, or becomes aware that it will be unable to, operate a Train Service which is scheduled in the Daily Train Plan and specify the Access Holder for that Train Service.
- (c) If **clause 16.2(a)** or **16.2(b)** applies, Aurizon Network must reschedule the relevant Train Service in accordance with the Network Management Principles.

16.3 Authorisation of other Train Movements

If:

- (a) the Operator gives Aurizon Network a notice in accordance with **clause 14.2(b)**;
- (b) Aurizon Network gives the Operator a Train Control Direction in accordance with **clause 16.2(a)**; or
- (c) for any reason, the Operator does not operate a Train Service at its Scheduled Time in the Train Schedule (including a revised Scheduled Time for that Train Service),

then Aurizon Network may authorise the operation of another Train Movement at that Scheduled Time.

16.4 Notification

- (a) Without limiting its obligations under **item 1.3 of Schedule 9**, Aurizon Network must notify the Operator's Controller (such notification to include, where relevant, the anticipated effect on the relevant Train Service) as soon as reasonably practicable after Aurizon Network becomes aware of any circumstances (including Obstructions) which:
 - (i) have materially affected, or could potentially materially affect, the ability of the Operator to operate any Train Service in accordance with its Scheduled Time; or
 - (ii) have affected, or could potentially affect, the security or safety of a Train Service or the Operator's Staff.

- (b) Aurizon Network must, as soon as reasonably practicable after becoming aware of the relevant changes, advise the Operator's Controller from time to time of changes to notices previously provided under **clause 16.4(a)**.
- (c) A Party must inform the other Party if it becomes aware of any failure by the Operator to comply with:
 - (i) any requirement specified in **clause 14.1**; or
 - (ii) the Authorised Rollingstock and Authorised Rollingstock Configurations for each Train Service Type.

16.5 Operator to supply information

- (a) The Operator must provide to Aurizon Network:
 - (i) and at all times maintain operable software, hardware and associated communication links to establish (to Aurizon Network's reasonable satisfaction) an interface with Aurizon Network's information systems; and
 - (ii) information in relation to each Train Service in accordance with **item 1.2 of Schedule 9** before the operation of that Train Service.
- (b) The Operator's interface with Aurizon Network's information systems are subject to any reasonable controls specified by Aurizon Network to protect the integrity and confidentiality of Aurizon Network's information systems and the information contained in them.
- (c) Aurizon Network must cooperate with the Operator to establish the Operator's interface with Aurizon Network's information systems.

16.6 Operation of Trains and Rollingstock

The Operator is responsible for the safe operation of its Rollingstock and must ensure that at all times the operation of such Rollingstock (including all loading and unloading of such Rollingstock) is undertaken in a manner that:

- (a) is consistent with the Rollingstock Interface Standards (subject to any Approved Derogations);
- (b) does not affect the safe operation of the Rollingstock or any other Train Movements; and
- (c) ensures that all items on or in the Operator's Rollingstock remain secured in position during transit.

17 Authorisation of Rollingstock and Rollingstock Configurations

17.1 Use of Rollingstock and Rollingstock Configuration

- (a) The Operator must only operate Train Services using Rollingstock or Rollingstock Configurations which:

- (i) comply with the Rollingstock Interface Standards (subject to any Approved Derogations);
- (ii) are Authorised Rollingstock;
- (iii) are Authorised Rollingstock Configuration for that Train Service Type; and
- (iv) comply with all applicable Laws.

17.2 Authorisation Request Notice

- (a) Subject to **clause 17.2(b)**, if, at any time during the Term, the Operator proposes to operate:
 - (i) Train Services using Rollingstock which are not Authorised Rollingstock; or
 - (ii) Train Services for a Train Service Type using Rollingstock Configurations which are not Authorised Rollingstock Configurations for that Train Service Type,

then the Operator may give Aurizon Network a notice (**Authorisation Request Notice**) of its proposal, specifying reasonable details of the proposed Rollingstock or Rollingstock Configurations (as applicable).

- (b) The Operator must not give Aurizon Network an Authorisation Request Notice in respect of a proposal to operate Train Services using Rollingstock Configurations which are not Authorised Rollingstock Configurations for the Train Service Type unless the proposed Rollingstock Configurations are only comprised of Rollingstock which, at the time of the notice, are Authorised Rollingstock.

17.3 Compliance Statement

If the Operator gives Aurizon Network an Authorisation Request Notice, then the Operator must procure a Certifier to:

- (a) assess whether or not the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Authorisation Request Notice comply with the Rollingstock Interface Standards; and
- (b) provide a statement (**Compliance Statement**) to Aurizon Network which specifies whether or not the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) comply with the Rollingstock Interface Standards and, if not, reasonable details of each non-compliance.

17.4 Rollingstock Interface Standards Risk Assessment

If the Operator gives Aurizon Network an Authorisation Request Notice, the Interface Risk Assessment required to be conducted under **clause 15.2(e)** will, unless otherwise required by Aurizon Network, be limited to a Rollingstock Interface Standards Risk Assessment in respect of the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable)

specified in the Authorisation Request Notice.

17.5 Certificate of Compliance

(a) If:

- (i) the Operator gives Aurizon Network an Authorisation Request Notice; and
- (ii) a Certifier provides Aurizon Network with a Compliance Statement in respect of the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Authorisation Request Notice,

then promptly after:

- (iii) the Parties have conducted an Interface Risk Assessment under **clause 17.4** in respect of such Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable); and
- (iv) any amendments to the IRMP have been agreed or determined in accordance with **clause 24** following such Interface Risk Assessment,

the Operator must procure a Certifier to:

- (v) assess whether or not the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) comply with the Rollingstock Interface Standards (subject to any Approved Derogations); and
 - (vi) if the assessment is positive, certify that such Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) comply with the Rollingstock Interface Standards (subject to any Approved Derogations).
- (b) If a Certifier provides a Certificate of Compliance under **clause 17.5**, the Operator must promptly (and in any event, within 10 Business Days) after being requested to do so by Aurizon Network provide (or procure the Certifier to provide) to Aurizon Network:
- (i) the Certificate of Compliance; and
 - (ii) any information or documentation (including reports on trials and/or commissioning tests) in relation to the Rollingstock or Rollingstock Configurations for a Train Service Type (as applicable) specified in that Certificate of Compliance;
- (c) If the Operator complies with **clause 17.5(b)**, then 20 Business Days after the date the Operator complies with **clause 17.5(b)**:
- (i) the Rollingstock specified in the Certificate of Compliance is taken to be Authorised Rollingstock; and/or

- (ii) the Rollingstock Configurations for the Train Service Type specified in the Certificate of Compliance is taken to be Authorised Rollingstock Configurations for that Train Service Type,

unless within 20 Business Days of the date the Operator complied with **clause 17.5(b)**, Aurizon Network notifies the Operator that it is not satisfied that the Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Certificate of Compliance complies with the Rollingstock Interface Standards (subject to any Approved Derogations), and provide reasonable details of any non-compliance.

17.6 Disputes

- (a) If Aurizon Network gives the Operator a notice under **clause 17.5(c)** and the Operator disputes that notice, then the Operator may give a Dispute Notice to Aurizon Network under **clause 30.1**.
- (b) If a Dispute referred to in **clause 17.6(a)** is not resolved in accordance with **clause 30.2**, then the Operator may refer the Dispute to an Expert under **clause 30.3** to determine whether or not the Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Certificate of Compliance comply with the Rollingstock Interface Standards (subject to any Approved Derogations).

17.7 Update of Schedule 4 as a consequence of New Authorisations

If, at any time during the Term, any Rollingstock is taken to be Authorised Rollingstock (**New Authorisation**), then **item 1 of Schedule 4** is deemed to be amended to include:

- (a) the maximum gross mass for any Wagon or other Rollingstock for that New Authorisation; and
- (b) the tare weight for any Wagon or other Rollingstock for that New Authorisation,

at the time the Rollingstock is taken to be Authorised Rollingstock.

17.8 Issue of Train Route Acceptance or Authority to Travel

Within five Business Days after Rollingstock Configurations for a Train Service Type become Authorised Rollingstock Configuration for the Train Service Type, Aurizon Network must give the Operator a Train Route Acceptance or Authority to Travel (as applicable) for the Train Service Type.

18 Amendments to System Wide Requirements

18.1 Amendment Notice

- (a) Aurizon Network may, acting reasonably, amend a System Wide Requirement by the issue of a notice (**Amendment Notice**) to the Operator:

- (i) at any time to ensure the ongoing safe operation of the Nominated Network, provided it consults with the Operator before its implementation;
 - (ii) if required pursuant to a Material Change; or
 - (iii) in any other circumstance (**Discretionary System Amendment**), subject to:
 - (A) the Operator's agreement to such proposed amendment (such agreement not to be unreasonably withheld or delayed); or
 - (B) the other provisions of this **clause 18**.
- (b) An Amendment Notice must be reasonably in advance of the proposed implementation date for the proposed amendments and specify:
- (i) such details of the proposed amendments as reasonably necessary to:
 - (A) properly inform the Operator of the terms of the proposed amendments; and
 - (B) enable the Operator to assess the consequences for the Operator of the proposed amendments;
 - (ii) whether the Amendment Notice is issued on the ground referred to in **clause 18.1(a)(i)**, **18.1(a)(ii)** or **18.1(a)(iii)**; and
 - (iii) details of the proposed implementation date for the proposed amendments.

18.2 Response to a Discretionary System Amendment

- (a) Within 20 Business Days (or such longer period as may be agreed between the Parties, such agreement not to be unreasonably withheld or delayed) after receiving an Amendment Notice in accordance with **clause 18.1(b)** which proposes a Discretionary System Amendment, the Operator must notify Aurizon Network whether:
- (i) irrespective of any financial arrangements agreed or determined under **clause 18.4(c)**, the proposed amendments will materially impact the Operator's operations to such an extent as to fundamentally frustrate the Operator's operation of Train Services under this Deed over a sustained period of time; and/or
 - (ii) the Net Financial Effect on the Operator of the Discretionary System Amendment is equivalent to one percent or greater of the annual Access Charges payable by the Access Holder under the Access Agreement.

18.3 Discretionary System Amendment which frustrate operations

- (a) If the Operator notifies Aurizon Network under **clause 18.2(a)(i)**, Aurizon Network must, acting reasonably, assess the Operator's response and

notify the Operator if it agrees or disagrees with the Operator's notice within 20 Business Days after receipt of that notice (or such longer period as may be agreed between the Parties).

- (b) If Aurizon Network agrees with the Operator's notice under **clause 18.2(a)(i)**, then Aurizon Network must:
 - (i) amend the proposed amendments to ensure that such amendments will not materially impact the Operator's operations to such an extent as to fundamentally frustrate the Operator's operation of Train Services under this Deed over a sustained period of time; and
 - (ii) within 5 Business Days of making the amendments under **clause 18.3(b)(i)** give the Operator a copy of its amendments to the proposed amendments.
- (c) If Aurizon Network disagrees with the Operator's notice under **18.2(a)(i)**, Aurizon Network may implement the proposed amendments from the later of:
 - (i) the date Aurizon Network notifies the Operator of its determination; and
 - (ii) if the Operator has notified Aurizon Network within the required timeframe under **clause 18.2(a)(ii)**, the date that the Parties comply with **clause 18.4**.
- (d) If the Operator disputes Aurizon Network's determination under **clause 18.3(b)**, then either Party may refer the dispute for determination by an Expert in accordance with **clause 30.3** and Aurizon Network must not implement the proposed amendments pending the Expert's determination.

18.4 Discretionary System Amendment with negative financial impact

- (a) If the Operator notifies Aurizon Network under **clause 18.2(a)(ii)**, the Operator must, within 20 Business Days after providing such notice (or such longer period as may be agreed between the Parties), provide to Aurizon Network details of such Net Financial Effect reasonably required by Aurizon Network to assess such Net Financial Effect, including estimates of any additional costs, savings, benefits or detriments to be obtained or suffered, or reasonably expected to be obtained or suffered, by the Operator as a direct result of Aurizon Network implementing the proposed amendments.
- (b) The Operator warrants that any estimates given by it under **clause 18.4(a)** are to its knowledge accurate on the basis of the information reasonably available to it.
- (c) Promptly after the Operator complies with **clause 18.4(a)**, the Parties must negotiate in good faith to seek to agree appropriate financial

arrangements between them with respect to such Net Financial Effect and, failing agreement within a further 20 Business Days after the Operator provides the relevant details under **clause 18.4(a)**, either Party may refer the matter to an Expert in accordance with **clause 30.3** to determine an appropriate financial arrangement to compensate the Operator for the Net Financial Effect on the Operator of the Discretionary System Amendment. Aurizon Network must not implement the proposed amendments pending the Expert's determination.

18.5 Expert must have regard to certain matters

In making a determination referred to in **clause 18.3(d)** or **18.4(c)**, the Expert must have regard to, except in circumstances where consequences are otherwise provided under this Deed, the reasonable costs and benefits accruing to the Operator.

18.6 Costs of implementing amendments to a System Wide Requirement

- (a) The Operator must use all reasonable endeavours to minimise the Net Financial Effect on the Operator of any proposed amendments to a System Wide Requirement.
- (b) Despite **clause 18.4**, where any System Wide Requirement is varied to ensure the ongoing safe operation of the Network, each Party must fund its own costs of implementing the proposed amendments including the equipping of Rollingstock with new or additional equipment such as Signalling and Telecommunications Equipment or making any other modification to Rollingstock.
- (c) At any time before Aurizon Network implements any proposed amendments, Aurizon Network may elect not to proceed with the proposed amendments provided it notifies the Operator within 1 Business Day of making such election.
- (d) The Parties must account to each other in respect of the contributions agreed or determined under **clause 18.4(c)** after completion of the implementation of the proposed amendments and subsequent modifications to the Operator's systems, equipment or Rollingstock as required by the amendments.

18.7 Implementation of amendments to System Wide Requirements

- (a) Where Aurizon Network implements the proposed amendments in accordance with this **clause 18**, the relevant System Wide Requirement will be altered as contemplated in the Amendment Notice following completion of the implementation of the proposed amendments.
- (b) The Parties must take all necessary action and make all necessary amendments to the IRMP, Environmental Management Plan, the Operating Plan and/or the Emergency Response Plan in response to the relevant amendments to the System Wide Requirements (including providing Aurizon Network with a further Certificate of Compliance where

the Authorised Rollingstock or Rollingstock Configurations require modification as a result of a change to a System Wide Requirement).

- (c) Aurizon Network must allow a reasonable period for the Operator to amend its procedures and plans to comply with any such amended System Wide Requirement, except in the case of emergency circumstances for safety reasons where Aurizon Network may require immediate compliance.

19 Weighbridges and Overload Detectors

19.1 General

- (a) Where a Weighbridge or Overload Detector is located en route between an Origin and Destination for a Train Service Type:
 - (i) the Party responsible for that Weighbridge or Overload Detector (as specified in **item 5 of Schedule 3**) must use reasonable endeavours to ensure that such Weighbridge or Overload Detector is operational, calibrated and available to weigh Trains operated over such Weighbridge or Overload Detector; and
 - (ii) the Operator must use reasonable endeavours to operate its Trains over such Weighbridge or Overload Detector in a manner so that the Weighbridge or Overload Detector weighs the Operator's Trains.
- (b) Aurizon Network may vary at any time the numbers and locations of Weighbridges and Overload Detectors, subject to providing reasonable notice to the Operator.

19.2 Exceeding Maximum Allowable Gross Tonnage

- (a) The Operator must use reasonable endeavours to ensure that the gross mass of any Wagon or Train operated by it under this Deed does not exceed the relevant Maximum Allowable Gross Tonnage.
- (b) If any Wagon or Train operated by the Operator is determined by a Weighbridge or Overload Detector to be in excess of the relevant Maximum Allowable Gross Tonnage, then the Operator must reduce the gross mass to a level below the relevant Maximum Allowable Gross Tonnage:
 - (i) unless otherwise directed by Aurizon Network, if the Train has not entered the mainline, before the Train enters the mainline; and
 - (ii) if directed by Aurizon Network, at a specific siding or location directed by Aurizon Network.

19.3 Exceeding Maximum Desirable Gross Tonnage

If any Wagon or Train operated by the Operator is determined by a Weighbridge or Overload Detector to be in excess of the relevant Maximum Desirable Gross Tonnage, then Aurizon Network may impose any Operational

Constraints which Aurizon Network considers to be reasonable in the circumstances.

19.4 Record keeping

Where the Operator's Trains or Wagons are weighed by a Weighbridge or Overload Detector, the Party responsible for the Weighbridge or Overload Detector as specified in **item 5 of Schedule 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 19.4(a)** and **19.4(b)** (as applicable) are provided to:
 - (i) the Party or other person loading the Trains; and
 - (ii) the other Party within 10 Business Days after the end of each Month.

19.5 Verification

- (a) If the Party that is not responsible for the Weighbridge or Overload Detector reasonably believes that any Weighbridge or Overload Detector may be inaccurate, that Party may by notice to the other Party require the other Party to procure the testing of the accuracy of such Weighbridge or Overload Detector.
- (b) As soon as reasonably practicable after being given a notice under **clause 19.5(a)**, the Party responsible for the Weighbridge or Overload Detector must use reasonable endeavours to procure a suitably qualified person to:
 - (i) test the calibration of the relevant Weighbridge or Overload Detector (as applicable); and
 - (ii) make any adjustments required to correct the calibration of the Weighbridge or Overload Detector (as applicable).
- (c) Subject to **clause 19.5(e)**, the relevant Weighbridge or Overload Detector (as applicable) is deemed to have malfunctioned from the date the notice is given under **clause 19.5(a)** until the testing referred to in **clause 19.5(b)** has been carried out and, if required, the Weighbridge or Overload Detector has been recalibrated. Until such testing has been carried out and the Weighbridge or Overload Detector has been recalibrated, the mass of the relevant Train or Wagon which would otherwise have been measured by that Weighbridge or Overload Detector is the Maximum Desirable Gross Tonnage for the Train or Wagon, as applicable.

- (d) Except in the case of manifest error or fraud, the determination of the person conducting the test in accordance with **clause 19.5(b)** is final and binding on the Parties.
- (e) Where the person conducting the test in accordance with **clause 19.5(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 19.5(a)**.
- (f) The cost of conducting the test and making adjustments in accordance with **clause 19.5(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 17.5(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).

19.6 No Claim

- (a) Despite any other provision in this Deed, neither Party (**first Party**) is liable to the other Party for any damage, loss, cost or expense that the other Party may suffer or incur as a result of the first Party, in good faith, acting on the basis of any mass determined in accordance with this Deed.
- (b) Despite any other provision in this Deed, neither Party has any Claim against the other Party as a result of, or arising from, any delay to or cancellation of Train Services as a result of the operation of this **clause 19**.

20 Performance Levels

20.1 Consequences of failure to comply with Performance Levels

- (a) A failure by either Party to achieve the relevant Performance Level does not constitute a breach of this Deed and the only consequences of such failure as between the Parties are the consequences set out in this **clause 20**. For clarity, this clause does not exclude any consequences set out in the Access Agreement.

20.2 Review of Performance Levels

- (a) The Parties must, if requested by either Party, meet to review the Performance Levels subject to such review not occurring within six Months after the Commitment Date or any previous review of the Performance Levels.
- (b) If either Party notifies the other that it considers that the Performance Levels are no longer appropriate, the Parties must use reasonable endeavours to agree, but only with the written consent of the Access Holder, on varied Performance Levels and any associated variations to this Deed (including the applicable Train Descriptions).
- (c) If the Parties and the Access Holder are unable to agree to such variations then the existing Performance Levels will continue to apply unless varied by Aurizon Network in accordance with **clause 14.2(a)(iv)**.

21 Infrastructure management

21.1 Management and control of the Nominated Network

Aurizon Network is responsible for the management of the Nominated Network and retains control over all activities on the Nominated Network.

21.2 Maintenance of the Nominated Network

- (a) This clause 21.2 does not limit and is subject to Aurizon Network's obligations in clause 7A.11 of the Access Undertaking. To the extent of any inconsistency between the Undertaking and any of **clauses 21.2(b), 21.2(c) and 21.2(d)**, the Undertaking will prevail.
- (b) 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.
- (c) Aurizon Network may impose (either temporarily or permanently) such Operational Constraints as it considers necessary, acting reasonably, for the protection of any person or any property (including the Infrastructure) or to facilitate the carrying out of Maintenance Work or Infrastructure Enhancements provided that, in exercising its rights under this **clause 21.2(c)**, Aurizon Network must comply with **clause 21.2(d)**.
- (d) In scheduling Train Services, Aurizon Network must:
 - (i) use reasonable endeavours to plan and implement Operational Constraints (including Maintenance Works and Infrastructure Enhancements) so as to minimise disruption to the operation of

Train Services, including to minimise disruption to Access Rights and Operational Rights; and

- (ii) comply with the relevant procedures specified in the Interface Coordination Arrangements.
- (e) The obligation in **clause 21.2(d)(i)** to use reasonable endeavours includes an obligation for Aurizon Network to bear the reasonable costs (if any) associated with planning and implementing the relevant Operational Constraints so as to minimise disruption to the operation of Train Services.
- (f) The obligation in **clause 21.2(d)(i)** to use reasonable endeavours includes an obligation to provide reasonable notice of Operational Constraints and, where possible, to provide reasonable alternative Scheduled Times for affected Train Services to the Operator having regard to the reasonable requirements of the Operator.
- (g) 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.
- (h) Subject to Aurizon Network complying with its obligations under **clause 21.2(d)(i)**, 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.
- (i) 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.
- (j) Nothing in **clause 21.2(d)(i)** limits provisions of the Access Undertaking or this Deed relating to Emergency Possessions, Urgent Possessions or Safety Standards.
- (k) If there is any inconsistency or ambiguity between the provisions of **clause 21.2(d)(i)** and the Network Management Principles, **clause 21.2(d)(i)** will prevail to the extent of the inconsistency or ambiguity.

22 Incident management

22.1 Compliance

- (a) If requested by Aurizon Network from time to time, the Operator must demonstrate to Aurizon Network's reasonable satisfaction that:

- (i) procedures are in place which ensure compliance by the Operator with any reporting requirements in the Emergency Response Plan and, to the extent relevant, the Emergency Procedures; and
 - (ii) the Operator is complying with such procedures and reporting requirements.
- (b) The Operator must ensure that, at all times:
- (i) sufficient members of the Operator's Staff are appropriately qualified to participate in Investigations; and
 - (ii) the names and positions of those members of the Operator's Staff are maintained in the Emergency Response Plan.

22.2 Obstructions

- (a) Unless permitted under this Deed or authorised by Aurizon Network, the Operator must not cause any Obstruction or permit any Obstruction caused by the Operator to continue.

22.3 Notification

- (a) The Operator must notify the Train Controller as soon as reasonably practicable after the Operator or the Operator's Staff discover or become aware of:
- (i) any Obstruction (including all Incidents) or any breach or suspected breach of Safeworking Procedures;
 - (ii) anything which the Operator or the Operator's Staff observe which may reasonably be considered to cause or contribute to the occurrence of an Incident or Obstruction; or
 - (iii) any harm to the Environment caused or contributed to by the Operator's operation of Train Services on the Nominated Network, which the Operator knows would result in a breach by Aurizon Network of the terms of any environmental authority it holds in connection with the Nominated Network.
- (b) Aurizon Network must notify the Operator of all Incidents involving the Operator's Rollingstock.

22.4 Management of Incident response

- (a) Aurizon Network is responsible for the overall coordination and management of the response to an Incident (including notifying all relevant emergency services) so that Restoration and Recovery are effected as soon as practicable.
- (b) If an Incident occurs
- (i) the Operator:
 - (A) is, subject to **clause 22.4(c)**, responsible for effecting Recovery and Retrieval;
 - (B) must:

- (1) make arrangements to effect Recovery and Retrieval within three hours after the Incident occurred;
 - (2) cooperate with and assist Aurizon Network in Restoration;
 - (3) effect timely Recovery and Retrieval within 12 hours after the Incident occurred (or within such other period as the Parties may agree) in accordance with the Emergency Response Plan;
 - (4) as soon as reasonably practicable, notify Aurizon Network;
 - (5) take action as soon as reasonably practicable in respect of an Incident to prevent or minimise injury to any person or damage to any property (including harm to the Environment) where there is an imminent risk of such injury or damage, but otherwise take no action without the prior approval of Aurizon Network (not to be unreasonably withheld); and
 - (6) comply with the directions of Aurizon Network in respect of the coordination and management of Recovery, Retrieval and Restoration.
- (c) If an Incident occurs and Aurizon Network reasonably believes that it will be able to effect Recovery more quickly than the Operator, then Aurizon Network may, subject to using reasonable efforts to consult with the Operator:
- (i) take such action as is reasonably necessary (including the use of a Railway Operator's Rollingstock to clear the Operator's Rollingstock) to effect Recovery; and
 - (ii) recover such reasonable costs incurred by Aurizon Network in doing so. Subject to **clause 8.4**, the Operator must, within 10 Business Days after receiving such demand, pay to Aurizon Network such reasonable costs incurred by Aurizon Network.
- (d) Subject to **clause 22.4(e)**, each Party must use all reasonable endeavours to ensure that any property damage, actual or potential harm to the Environment or delays to the recommencement of Train Movements arising from Restoration or Recovery are minimised.
- (e) Aurizon Network may, subject to Aurizon Network using its best efforts to first consult with the Operator about such action, take such action (including to give directions to the Operator and the Operator's Staff and to remove or require the Operator to remove any of its Rollingstock from the Nominated Network) as Aurizon Network considers reasonably necessary to recommence Train Movements as soon as practicable and, subject to **clause 22.4(k)(i)**, Aurizon Network will not be liable for any damage to or loss of freight or Rollingstock caused by such action.

- (f) Where:
- (i) Aurizon Network seeks to remove, or require the Operator to remove, any Relevant Rollingstock from the Nominated Network under **clause 22.4(e)**; and
 - (ii) such removal would reasonably be expected to cause material damage to or materially increase the damage to the Relevant Rollingstock,
- then Aurizon Network and the Operator must:
- (iii) use reasonable endeavours to consult and agree on the removal of the Relevant Rollingstock as soon as reasonably practicable and, in any event, within six hours after the occurrence of the Incident or such longer period as the Parties may agree; and
 - (iv) if the Parties do not consult or reach agreement within the period referred to in **clause 22.4(f)(iii)**, then the Parties must refer the decision to their representatives with authority to make the necessary decisions who must in good faith seek to agree a course of action within two hours of the referral to them or such longer period as the Parties may agree.
- (g) If Aurizon Network's and the Operator's representatives with authority to make the necessary decisions do not consult or do not agree within the specified period in **clause 22.4(f)(iv)**, then Aurizon Network must refer its proposed course of action with respect to the removal of the Relevant Rollingstock to an Expert who must determine in accordance with **clause 30.3** whether or not, having regard to:
- (i) the potential to further damage the Relevant Rollingstock or cause damage to any property (including harm to the Environment);
 - (ii) the impact on Aurizon Network's ability to effect Restoration; and
 - (iii) the time critical nature of the decision,
- the course of action proposed by Aurizon Network is reasonable.
- (h) Following completion of the process set out in **clauses 22.4(f)** and **22.4(g)** (as applicable), Aurizon Network may progress with the proposed course of action unless the Expert determines that Aurizon Network's proposed course of action is not reasonable.
- (i) Aurizon Network may, where it is reasonable and practicable in the circumstances to do so, issue a Train Control Direction to the Operator to provide assistance with clearing any Network Incident including providing Rollingstock, where appropriate, for use by or under the direction of Aurizon Network and undertaking any variation in the operation of a Train Service (including coupling its Rollingstock with Rollingstock of Aurizon Network or another Railway Operator). The Operator must comply with any such Train Control Direction. The Operator may recover from Aurizon Network such reasonable costs incurred in complying with

this **clause 22.4(i)** 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 28.3**.

- (j) The assessment of the costs to be recovered under **clause 22.4(c)** or **clause 22.4(i)** for the use of Rollingstock must have regard to any industry or other agreement covering such costs and any payments facilitated by such agreement.
- (k) Except as otherwise provided in this Deed, Aurizon Network is not liable to the Operator and the Operator must not make any Claim against Aurizon Network, Aurizon Network's director and/or Aurizon Network's Staff for:
 - (i) any damage to or loss of freight or Rollingstock caused by a course of action permitted in accordance with **clause 22.4(e)**, except to the extent:
 - (A) such damage or loss is caused by the negligent act or omission or wilful default or misconduct of Aurizon Network or Aurizon Network's Staff; or
 - (B) the Expert determines that Aurizon Network's course of action is not reasonable; and
 - (ii) any delays, cancellation of Train Services or Claims suffered or incurred by, or made or brought by or against, the Operator as a result of complying with a request by Aurizon Network pursuant to **clause 22.4(i)**.
- (l) The Operator is solely liable for, and releases, indemnifies and will keep indemnified Aurizon Network and its directors and Aurizon Network's Staff against all Claims of any nature suffered or incurred by, or made or brought against, Aurizon Network, its directors or Aurizon Network's Staff in respect of any course of action permitted in accordance with **clause 22.4(h)**.

22.5 Investigations

- (a) If an Incident occurs, an Investigation into the Incident must be:
 - (i) commenced as soon as practicable unless otherwise agreed between the Parties; and
 - (ii) conducted in accordance with the Investigation Procedures.
- (b) Each Party must cooperate, and ensure that Aurizon Network's Staff or the Operator's Staff (as applicable) cooperate, fully with any Investigation.
- (c) The Parties must consult in good faith in relation to the implementation of any recommendations arising from an Investigation in accordance with the Investigation Procedures.

22.6 Management of Environmental Incidents

- (a) If:

- (i) the Operator's Activities in connection with this Deed have caused or contributed to an actual or potential Environmental Incident and Aurizon Network reasonably considers that action is required to prevent, mitigate or remedy that Environmental Incident; or
- (ii) Aurizon Network is given a direction, notice or order by an Environmental Regulator that some action is required to prevent, mitigate or remedy any actual or potential Environmental Incident caused or contributed to, or likely to be caused or contributed to, by the Operator's Activities in connection with this Deed,

then:

- (iii) Aurizon Network may notify the Operator of the actions which are required; and
 - (iv) the Operator must, at its cost and as soon as reasonably practicable after receiving such notice from Aurizon Network, ensure such actions are implemented.
- (b) If **clause 22.6(a)(ii)** applies, a notice given under **clause 22.6(a)(iii)** must be accompanied by a copy of the direction, notice or order given by the Environmental Regulator (if given in writing) provided that Aurizon Network can redact from the copy of the document any information which relates to the Activities of a person other than the Operator or Aurizon Network.
 - (c) If any actions which Aurizon Network could require the Operator to implement under **clause 22.6(a)** ought best be undertaken by Aurizon Network, then Aurizon Network may elect to undertake such actions and the Operator must pay to Aurizon Network the reasonable costs and expenses incurred by Aurizon Network in doing so.
 - (d) If the Operator disputes any actions taken by Aurizon Network under this **clause 22.6**, either Party may refer the dispute to an Expert in accordance with **clause 30.3** and if the Expert determines the dispute in favour of the Operator, then Aurizon Network must reimburse the Operator for the costs incurred by the Operator as a result of the actions implemented by the Operator at Aurizon Network's request (or, if applicable, Aurizon Network must bear the costs and expenses incurred by Aurizon Network in accordance with **clause 22.6(b)** and is not entitled to recover those costs from the Operator) to the extent determined by the Expert.

22.7 Environmental Incident reporting

- (a) The Operator must notify:
 - (i) Aurizon Network as soon as reasonably practicable after becoming aware of the occurrence of an Environmental Incident occurring on the Nominated Network caused, or contributed to, by the Operator.

- (ii) all relevant Environmental Regulators of the occurrence of any Environmental Incident which is caused, or contributed to, by the Operator in accordance with the Operator's obligations under Environmental Laws.
- (b) Aurizon Network may report the occurrence of the Environmental Incident to any relevant Environmental Regulator provided it first consults with the Operator about the proposed content of any such report.
- (c) In the event that an Environment Regulator requires information, or undertakes an investigation, in relation to an Environmental Incident, the Operator and Aurizon Network must cooperate with the Environmental Regulator and provide appropriate resources to comply with any lawful requirements of the Environmental Regulator in relation to the Environmental Incident.

23 Operator's staff

23.1 Safety of Operator's Staff

The Operator is fully responsible and liable for the health and safety of the Operator's Staff and the personal property of the Operator's Staff, and, subject to **clause 27**, indemnifies and releases Aurizon Network to the extent permitted by Law from any liability in relation to the Operator's Staff except to the extent that such liability is caused or contributed to by the breach of this Deed by Aurizon Network or any negligent act or omission of Aurizon Network or Aurizon Network's Staff.

23.2 Qualifications of Operator's Staff

The Operator must:

- (a) ensure that:
 - (i) all risks associated with Safety Related Work (including the competence of all Operator's Staff to safely and properly discharge their duties related to the exercise of the Operator's rights or performance of its obligations under this Deed) are addressed in the Interface Risk Assessment;
 - (ii) all Operator's Staff:
 - (A) hold and keep current all qualifications and accreditations required under any Law and as specified in the IRMP; and
 - (B) undertake any additional training from time to time in order to keep current such qualifications and accreditations;
- (b) meet all costs of any training and/or testing required to meet the requirements of this **clause 23.2**; and
- (c) keep Aurizon Network advised of any Required Information in relation to all of the Operator's Staff engaged in Safety Related Work on the Nominated Network and ensure that all Safety Related Work is

performed only by those Operator's Staff whose details have been provided to Aurizon Network in accordance with this **clause 23.2** and who satisfy the requirements of this **clause 23.2**.

23.3 Entry onto Aurizon Network Land

The Operator must ensure that the Operator's Staff do not enter upon the Aurizon Network Land in a manner inconsistent with the Interface Coordination Arrangements, the IRMP or the Emergency Response Plan without the prior written approval of Aurizon Network and that, in the event such approval is given, the relevant Operator's Staff comply with all conditions of the approval and hold the necessary qualifications and accreditations.

24 Interface and environmental risk management

24.1 Compliance with Interface Risk Management Plan

Each Party must advise the other Party of any failure to comply with the IRMP as soon as reasonably practicable after the Party becomes aware of such non-compliance, including details of the nature of the non-compliance and how the Party has rectified or intends to rectify the non-compliance.

24.2 Environmental consultant

The Parties must, at the Operator's cost (unless otherwise agreed between the Parties), engage suitably qualified persons (reasonably acceptable to both Parties) to undertake any specialist assessments required for the purpose of identifying and assessing Environmental Risks as part of an Interface Risk Assessment.

24.3 Interface representative

- (a) Prior to the commencement of any Train Services, each Party must nominate one or more appropriately qualified representatives (by identifying the name, title, experience (including length of experience) and qualifications of each representative) (**Interface Representative**) who is or are (as applicable) to be responsible for:
 - (i) making decisions in relation to interface and environmental issues that arise in connection with this Deed;
 - (ii) liaising and cooperating with representatives of the other Party on those interface and environmental issues; and
 - (iii) meeting with representatives of the other Party at locations, times and by means (including in person) specified by Aurizon Network from time to time.
- (b) Each Party must ensure that any representative it nominates under this **clause 24.3** is available to efficiently and effectively perform the responsibilities of the Interface Representative specified in **clause 24.3(a)** and that it has nominated an Interface Representative under this **clause 24.3** at all times during the Term.

24.4 Operator's Safety Management System

The Operator must develop, implement and maintain a safety management system (**Operator's Safety Management System**) which must specify (as a minimum):

- (a) the Interface Risks identified in the IRMP from time to time and the measures for managing those Interface Risks specified in the IRMP from time to time which the Operator is responsible for implementing, complying with, ensuring compliance with and/or ensuring the ongoing effectiveness of; and
- (b) processes for ensuring that the Operator, its Rollingstock, Rollingstock Configurations and Train Services at all times comply with the requirements of this Deed, including the IRMP from time to time.

24.5 Aurizon Network's Safety Management System

Before the commencement of any Train Services, Aurizon Network must incorporate into its safety management system any measures for managing Interface Risks specified in the IRMP from time to time which Aurizon Network is responsible for implementing, complying with, ensuring compliance with and/or ensuring the ongoing effectiveness of.

24.6 Aurizon Network's environmental management system

Before the commencement of any Train Services, Aurizon Network must incorporate into its environmental management system any measures for managing Environmental Risks specified in the IRMP from time to time which Aurizon Network is responsible for implementing, complying with, ensuring compliance with and/or ensuring the ongoing effectiveness of.

24.7 Carriage of Dangerous Goods on Train Services

- (a) If Dangerous Goods are to be carried on a Train Service, the Operator must ensure that:
 - (i) all requirements of the Dangerous Goods Code in relation to the Train Service are fully complied with (including placement of relevant, accurate and current documentation on Trains);
 - (ii) Aurizon Network is advised of the details of the Dangerous Goods (including a description of them and the applicable Dangerous Goods United Nations (UN) Number) as part of the Train List before the operation of the Train Service; and
 - (iii) any authorisation or prior approvals required under the Dangerous Goods Code in relation to the Train Service have been obtained and are available for inspection by Aurizon Network (if requested).
- (b) Before any Dangerous Goods can be carried on a Train Service, the Operator must ensure that the Emergency Response Plan prepared in accordance with **clause 15.1(a)(i)(B)** includes procedures for responding to an Incident involving Dangerous Goods of the type to be carried on the Train Service.

24.8 Noise management during Train Services

- (a) In addition to any noise attenuation or noise management measures which may form part of or be identified in the IRMP or the Environmental Management Plan, the Operator must contribute to the reasonable costs, as reasonably determined by Aurizon Network, incurred by Aurizon Network in undertaking reasonable noise abatement measures on or adjacent to the Nominated Network where the Noise Levels are (or, but for the taking of these measures by Aurizon Network, would be) exceeded during the Term.
- (b) If, during the Term, the Noise Levels are varied (reduced) such that noise from the Nominated Network exceeds the reduced Noise Levels, then Aurizon Network may elect, acting reasonably, to implement reasonable noise abatement measures on the Nominated Network to ensure compliance with the reduced Noise Levels. The Operator must contribute to Aurizon Network's reasonable costs of those noise abatement measures as reasonably determined by Aurizon Network.
- (c) If the Operator disputes any determination made by Aurizon Network under this **clause 24.8** regarding the contribution of costs, then the Operator may refer that dispute to an Expert for determination in accordance with **clause 30.3**.

24.9 Community liaison and environmental complaint procedures

- (a) Before the commencement of any Train Services the Operator must take all steps necessary to comply with all relevant community liaison requirements required by Law, any Authority or reasonably required by Aurizon Network.
- (b) The Operator must invite Aurizon Network to be represented at any community meetings related to the operation of the Train Services under this Deed organised by the Operator.
- (c) If Aurizon Network or the Operator receives noise complaints or other complaints dealing with Environmental issues in relation to the Nominated Network, then both Aurizon Network and the Operator must:
 - (i) inform each other of those complaints as soon as reasonably practicable; and
 - (ii) cooperate in investigating and responding to those complaints.

24.10 Audit and review

- (a) The Operator must, if requested by Aurizon Network, promptly provide to Aurizon Network copies of those parts of any environmental audits undertaken by or on behalf of the Operator in respect of its Train Services operated on the Nominated Network.
- (b) Aurizon Network must provide the Operator with copies of those parts of Aurizon Network's environmental audits that are relevant to the operation of the Operator's Train Services operated on the Nominated Network.

- (c) Without limiting **clause 15.2**, if Aurizon Network becomes aware of any inadequacy of the IRMP or the Operator's Environmental Management Plan due to:
 - (i) any change in Environmental Laws of relevance to the operation of Train Services on the Nominated Network; or
 - (ii) any Activities of the Operator in connection with this Deed which cause or contribute to, or are to likely cause or contribute to, an Environmental Incident,

then Aurizon Network can give the Operator a notice under **clause 15.2** notifying the Operator that it requests that the IRMP be reviewed.

24.11 Notification

- (a) The Operator must notify Aurizon Network of any failure by the Operator to comply with the Environmental Management Plan or its obligations under any Safety Law or Environmental Law which are directly relevant to the Operator's Activities under this Deed as soon as reasonably practicable after the Operator becomes aware of such failure and provide details of how it intends to address the non-compliance.
- (b) Without limiting any other provisions of this Deed, the Operator must remedy such non-compliance as soon as reasonably practicable having regard to, without limitation, the nature of the non-compliance and any action required by any Safety Regulator or any Environmental Regulator.
- (c) The Operator must comply with all notices given by Aurizon Network requiring the Operator to cease conduct which is causing or threatening to cause:
 - (i) a risk to the safety of persons or property; or
 - (ii) harm to the Environment.
- (d) A Party must promptly provide to the other Party any notices, directions or orders relating to the operation of Train Services under this Deed that it receives from any Safety Regulator or Environmental Regulator.
- (e) Aurizon Network must notify the Operator of any changes to any Environmental Authorities held by Aurizon Network or variations to any other environmental information provided by Aurizon Network to the Operator relevant to the operation of Train Services.

25 Inspection and audit rights

25.1 Right of inspection by Operator

- (a) Subject to **clause 23.1(b)**, the Operator may, before the initial commencement of Train Services for any Train Service Type, at its cost and risk, inspect the Infrastructure comprising the Nominated Network, including fencing and level crossing protection, in order to satisfy itself as to the standard of the Infrastructure and assess the operational,

environmental and safety risks associated with the operation of Train Services on the Nominated Network.

- (b) Any inspection by the Operator under **clause 25.1(a)**:
 - (i) is subject to:
 - (A) the Operator providing reasonable notice to Aurizon Network of its requirement to inspect the Infrastructure and conducting that inspection at reasonable times;
 - (B) any such inspection being conducted in the presence of a representative of Aurizon Network; and
 - (C) such other reasonable conditions as may be imposed by Aurizon Network on such inspection, including compliance with any Safeworking Procedures and Safety Standards; and
 - (ii) must be conducted by the Operator in a manner which does not cause any disruption to any Train Movements or to the carrying out of Maintenance Work or Infrastructure Enhancements.

25.2 Right of inspection of Trains and Rollingstock by Aurizon Network

- (a) If Aurizon Network reasonably believes that Rollingstock or Rollingstock Configurations for a Train Service Type used in the operation of Train Services do not comply with:
 - (i) the Authorised Rollingstock or the Authorised Rollingstock Configurations for the Train Service Type;
 - (ii) the Rollingstock Interface Standards (subject to any Approved Derogations);
 - (iii) the IRMP; or
 - (iv) any applicable Laws relevant to the Operator's Train Services,and Aurizon Network cannot otherwise reasonably determine whether this is the case, then Aurizon Network may inspect any Trains or Rollingstock which is utilised, or intended to be utilised, in the operation of Train Services, or require the Operator to have an inspection conducted, and for this purpose Aurizon Network or Aurizon Network's Staff will be entitled at any time to enter and ride on the Operator's Trains or Rollingstock.
- (b) Subject to Aurizon Network notifying the Operator, if required, under **clause 25.2(a)**, Aurizon Network may require any of the Operator's Rollingstock (either loaded or empty) to be available at such location as Aurizon Network may reasonably require, including locations on the Infrastructure but not on the Nominated Network, for weighing, measurement or other inspection at any reasonable time specified by Aurizon Network. The Operator must comply with any of Aurizon Network's requirements under this **clause 25.2(b)**.

- (c) Any inspection by Aurizon Network under **clause 25.2(b)** is subject to:
 - (i) Aurizon Network providing reasonable notice to the Operator of its requirement to inspect the Rollingstock and conducting that inspection at reasonable times; and
 - (ii) any such inspection being conducted in the presence of a representative of the Operator.
- (d) Despite **clause 19**, if any of the Operator's Rollingstock is loaded in excess of the limits specified in an Authority to Travel or a Train Route Acceptance or reasonably considered by Aurizon Network to be loaded in an unsafe or insecure manner, then Aurizon Network may at any time:
 - (i) require the Operator to discontinue the Train Service until such time that the Rollingstock is loaded in accordance with this Deed and Aurizon Network gives the Operator a Train Control Direction authorising it to recommence the operation of the Train Service; and/or
 - (ii) after notifying the Operator, require the Operator to remove the excess or adjust the load at the Operator's expense.
- (e) If the Operator fails to remove the excess or adjust the load as soon as reasonably practicable after Aurizon Network notifies the Operator under **clause 25.2(d)(ii)**, then Aurizon Network may arrange for its removal or adjustment and the Operator must, within 10 Business Days after receiving such demand, reimburse to Aurizon Network all reasonable costs incurred by Aurizon Network. The Operator must comply with any of Aurizon Network's requirements under this **clause 25.2(e)**.

25.3 Parties' obligations

An inspection or audit by a Party under this Deed does not relieve the other Party of its obligations under this Deed or at Law.

26 Insurance by Operator

26.1 Maintain insurance policies

Before the commencement of Train Services under this Deed, the Operator must, at its expense, take out and subsequently maintain current at all times during the Term insurance with a corporation (as defined in the Corporations Act) licensed to conduct insurance business in Australia (or otherwise reasonably acceptable to Aurizon Network) those policies of insurance required by this Deed.

26.2 Required insurance policies

The Operator must effect and maintain insurance for the risks and on the terms specified in **Schedule 7**.

26.3 Disclosure of insurance policies

The Operator must provide to Aurizon Network evidence of the insurance policies effected and maintained pursuant to this **clause 26** (including evidence that the cover provided under those insurance policies complies with this **clause 26** and of the currency of those insurance policies) to Aurizon Network's reasonable satisfaction:

- (a) at least 10 Business Days before the commencement of Train Services under this Deed;
- (b) within 10 Business Days after renewal of each insurance policy during the Term; and
- (c) within 10 Business Days after being requested to do so in writing by Aurizon Network.

26.4 Failure to disclose insurance policies

Without prejudice to Aurizon Network's other rights and remedies in respect of such default, if the Operator, whenever required to do so under this Deed, fails to produce to Aurizon Network evidence to the reasonable satisfaction of Aurizon Network of insurances that have been effected or maintained by it and does not remedy that default within 10 Business Days after Aurizon Network gives notice to the Operator requiring that default to be remedied, Aurizon Network may effect and maintain the insurance and pay the premiums and any amount so paid will be a debt due from the Operator to Aurizon Network.

26.5 Minimum terms of policies

Each of the policies of insurance effected in accordance with this Deed must, to the extent permitted by Law:

- (a) note the interests of the Operator, any contractor of the Operator engaged by the Operator in relation to the performance of the Operator's obligations under this Deed and Aurizon Network;
- (b) not contain any exclusions, endorsements or alterations to the accepted policy wording that adversely amends the cover provided without the written consent of Aurizon Network (not to be unreasonably withheld or delayed); and
- (c) include the terms and be for the amounts referred to in **Schedule 7**.

26.6 Operator not to render policy void

The Operator must not render any of the insurances effected in accordance with this **clause 24** void or voidable or liable to refusal of any claim.

26.7 Compliance

The Operator must at all times comply with the terms and conditions of all insurance policies effected pursuant to this **clause 26**.

26.8 Notice of potential claims

In addition to any other obligation on the Operator under this Deed, the Operator must:

- (a) notify Aurizon Network as soon as practicable after the making of any Claim under any insurance policy required by this Deed;
- (b) notify Aurizon Network of the Claim in reasonable detail; and
- (c) keep Aurizon Network informed of subsequent developments concerning any Claim,

to the extent that such Claim is in connection with this Deed.

26.9 Operator to pay all excess/deductibles

- (a) The Operator must in respect of any Claims by it or any other insured for which it is responsible, pay and bear all excesses/deductibles provided for in any insurances effected in accordance with this **clause 26**.
- (b) If the Operator fails to pay any excesses/deductibles provided for in any insurances effected in accordance with this **clause 26**, Aurizon Network may pay the relevant excesses/deductibles and any amount so paid will be a debt due from the Operator to Aurizon Network.

26.10 Settlement of claims

If:

- (a) Aurizon Network makes a Claim against the Operator for damage to the Infrastructure;
- (b) the Claim is in respect of the same matter as the Operator claims under a policy required by this Deed for damage to Infrastructure; and
- (c) the Operator has not disputed Aurizon Network's Claim,

then upon settlement of the Operator's claim, under such policy, the portion of monies owed by the Operator to Aurizon Network must be paid to Aurizon Network from the monies received by the Operator under the policy against which the Operator made a claim.

27 Indemnities

27.1 Indemnity for personal injury and property damage

Subject to **clause 28**, each Party is solely liable for, and releases, indemnifies and will keep indemnified the other Party, its directors and Staff against, all Claims of any nature suffered or incurred by, or made or brought against, the other Party, its directors or Staff in respect of:

- (a) any loss of, damage to or destruction of property (including property of the other Party); or
- (b) personal injury to or death of any person,

in each case caused by or contributed to (to the extent of the contribution) by:

- (c) any breach of this Deed by the Party; or
- (d) any negligent act or omission of, the Party or the Party's Staff in connection with this Deed.

27.2 Indemnity by Operator for certain liabilities to Third Parties

Subject to **clause 28**, the Operator is solely liable for, and releases, indemnifies and must keep indemnified Aurizon Network, Aurizon Network's directors and Aurizon Network's Staff against, all Claims of any nature made or brought against, Aurizon Network, Aurizon Network's directors or Aurizon Network's Staff by a Third Party in respect of:

- (a) any loss of, damage to or destruction of real or personal property; or
- (b) personal injury to or death of any person,

where such person or property is being transported on a Train Service except to the extent that such damage, loss, injury or death is caused by or contributed to (to the extent of the contribution) by:

- (c) any breach of this Deed by Aurizon Network; or
- (d) any negligent act or omission of Aurizon Network or Aurizon Network's Staff.

27.3 Duty to mitigate

Each Party must use all reasonable endeavours to mitigate the damage, loss, cost, liability or expense in respect of which an indemnity in this Deed applies.

27.4 General provisions regarding indemnities

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the Parties and survives the expiry or termination of this Deed.
- (b) It is not necessary for a Party to incur expense or make a payment before enforcing any indemnity in this Deed.

28 Limitations and exclusions of liability

28.1 Exclusion of Consequential Loss

Except as expressly provided otherwise in **clause 32.6(c)** or the Interface Risk Provisions which form part of this Deed under **clause 3**, neither Party is liable to the other under or in connection with this Deed (including under an indemnity) for any Consequential Loss however caused (including any breach of this Deed or negligent act or omission of a Party).

28.2 Time limit and minimum threshold on Claims

Neither Party (**first Party**) is liable for, and the other Party must not make any Claim against the first Party under or in connection with this Deed unless:

- (a) notice of the Claim has been given to the first Party within 12 Months after the other Party becomes aware of the occurrence of the event or circumstance giving rise to the Claim; and
- (b) the amount of the Claim exceeds \$100,000 in respect of any one event or cause of action or series of related events or causes of action, provided

that if this condition is satisfied then the other Party may proceed for the full amount of the Claim and not only the amount in excess of \$100,000.

28.3 Claims and exclusions in respect of Infrastructure standard

Despite any other provision of this Deed, Aurizon Network, its directors and Aurizon Network's Staff are not liable to the Operator for any Claim, and the Operator must not make any Claim against Aurizon Network, its directors and/or Aurizon Network's Staff, in respect of any:

- (a) loss of or damage to real or personal property, including property of the Operator;
- (b) personal injury to or death of any person; or
- (c) any other damage, expense, injury, cost or loss whatsoever,

arising out of or in connection with the standard of the Infrastructure or any failure of or defect in the Infrastructure, except to the extent that such loss, damage, injury or death, cost or expense results directly from the failure of Aurizon Network to perform its obligations under **clause 21.2(b)** or Aurizon Network's negligence in performing those obligations.

28.4 Claims and exclusions in respect of non-provision of Operational Rights

- (a) Subject to **clause 28.4(b)** 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 **clauses**:
 - (A) **16.2** or **16.3** if required to do so under **clause 16.2** or **16.3**;
or
 - (B) **21.2(c)** and **(d)**; 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 (including of **clauses 21.2(c)** and **(d)**) 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 (including of **clauses 21.2(c) and (d)**) 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 undertaken in accordance with **clause 21.2(c) and (d)** and scheduled in a manner consistent with the Network Management Principles;
 - (F) the circumstances described in clause 25.4(b)(iv)(F) of the Access Agreement existing;
 - (G) a breach of an Infrastructure Lease by an Infrastructure Lessor or any negligent act or omission of an Infrastructure Lessor; or
 - (H) any action taken by Aurizon Network, acting reasonably, in response to an emergency or a genuine safety risk; and
- (v) either:
 - (A) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of **clause 20** and the total number of Train Services (expressed as a percentage) cancelled in a Billing Period as a result of a failure by Aurizon Network to make the Infrastructure available (other than any failure by Aurizon Network to make the Infrastructure available which is attributable to an event or circumstance specified in **clauses 28.4(b)(iv)(A) to 28.4(b)(iv)(H)**) exceeds five percent of the total number of Train Services scheduled in the Daily Train Plan for that Billing Period; or
 - (B) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of **clause 20**, but the failure to make the Infrastructure available is of a magnitude which is beyond the scope of that performance and adjustment regime.

- (c) For clarification, if **clause 28.4(b)(iv)** applies, that clause operates to reduce the potential liability of Aurizon Network to the extent only that the failure to make the Infrastructure available was attributable to matters listed in **clause 28.4(b)(iv)**.

28.5 Claims and exclusions in respect of delays to Train Movements

Despite any other provision of this Deed, a Party (**Defaulting Party**) is not liable to the other Party (**Affected Party**) for any Claim, and the Affected Party must not make any Claim against the Defaulting Party, in respect of delays to Train Movements unless (and then only to the extent that):

- (a) the delay was a result of a breach of this Deed (including **clauses 21.2(c) and (d)**) or an Access Agreement 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 (including **clauses 21.2(c) and (d)**) 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 undertaken in accordance with **clauses 21.2(c) and (d)**, and 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 20**; or

- (ii) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of **clause 20**, but the delays are of a magnitude which is beyond the scope of that performance and adjustment regime.
- (e) For clarification, if **clause 28.5(c)** applies, that clause operates to reduce the potential liability of the Defaulting Party to the extent only that the failure to make the Infrastructure available was attributable to matters listed in **clause 28.5(c)**.

28.6 Defence of Claims by Third Parties

- (a) Each Party must provide such reasonable assistance as requested by the other Party in the defence of any Claim made against the other Party by a Third Party arising out of any Incident or other event giving rise to the Claim.
- (b) The Party that requested assistance under **clause 28.6(a)** must, within five Business Days after a demand is made, pay to the other Party any costs and expenses reasonably incurred by the other Party in providing the assistance requested under **clause 28.6(a)**.

29 Determination of liability and loss adjustment

29.1 Determination of liability

In the event of an Incident involving the Operator or any other event which results or could result in a Claim by or against the Operator or Aurizon Network, liability as between the Operator and Aurizon Network is determined, for the purposes of **clauses 27** and **28.3**:

- (a) as agreed between the Parties;
- (b) subject to **clause 29.1(c)**, failing such agreement within one Month of either Party giving notice to the other requiring agreement on liability, by a loss adjuster appointed under **clause 29.2**; or
- (c) where the amount of the Claim exceeds \$200,000 and either Party is dissatisfied with the report of the loss adjuster, by a court of competent jurisdiction.

29.2 Loss Adjuster

Subject to **clause 37**, where a matter is to be referred to a loss adjuster in accordance with **clause 29.1**:

- (a) the loss adjuster:
 - (i) must be appointed by the Parties; or
 - (ii) in default of such appointment within 10 Business Days after the need to appoint a loss adjuster, is to be nominated at either Party's request by the President of The Australasian Institute of Chartered Loss Adjusters;

- (b) if the loss adjuster is to be nominated under **clause 29.2(a)(ii)** and the President of The Australasian Institute of Chartered Loss Adjusters declines to nominate a person as the loss adjuster but provides a list of people that could be appointed as the loss adjuster, then:
 - (i) the first person specified in that list will be taken to be nominated as the loss adjuster;
 - (ii) if the first person specified in that list does not accept the appointment as the loss adjuster, the next person specified in that list will be taken to be the first person specified in that list and will be nominated as the loss adjuster; and
 - (iii) the process specified in **clause 29.2(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the loss adjuster accepts the appointment as the loss adjuster;
- (c) the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated loss adjuster (including providing relevant indemnities and paying any charges or fees (which charges or fees must be borne equally by the Parties)) that must be satisfied or complied with as a condition of the President of The Australasian Institute of Chartered Loss Adjusters agreeing to nominate a loss adjuster;
- (d) the loss adjuster must:
 - (i) be a Fellow of the Australasian Institute of Chartered Loss Adjusters or have equivalent qualifications and experience;
 - (ii) have no interest or duty which conflicts or may conflict with the loss adjuster's function as a loss adjuster (the loss adjuster being required to fully disclose any such interest or duty before their appointment); and
 - (iii) not be, or have been in the last five years, an employee of the Access Holder, the Operator, any other contracted operator of the Access Holder utilising the Access Rights or Aurizon Network or of a Related Body Corporate of any of them;
- (e) the loss adjuster appointed under this **clause 29.2**:
 - (i) is not permitted to act until the loss adjuster has given written notice of the acceptance of the appointment to both Parties;
 - (ii) is required to undertake to keep confidential all matters coming to the loss adjuster's knowledge by reason of their appointment and the performance of their duties; and
 - (iii) is deemed to be and act as an expert and not an arbitrator, and the Law relating to arbitration, including the *Commercial Arbitration Act 2013* (Qld), does not apply to the loss adjuster or their

determination or the procedures by which they may reach a determination.

29.3 Parties to assist loss adjuster

- (a) Each Party must ensure to the best of its ability that the loss adjuster appointed under **clause 29.2** is given the opportunity to interview any employee, agent or contractor involved in, or with knowledge of, the Incident or event giving rise to the Claim or with any other relevant information that may be of use to the loss adjuster.
- (b) Each Party must make available to the loss adjuster appointed under **clause 29.2** any files, documents, data, recordings or other information in the possession or control of the Party that may be of use to, or is requested by, the loss adjuster for the purposes of their investigation.

29.4 Decision of the loss adjuster

- (a) The loss adjuster appointed under **clause 29.2** must determine the quantum of the relevant Claim and the liability of the Operator and/or Aurizon Network in respect of such Claim and must provide a copy of their report on such matters to each of the Parties within a reasonable time after their appointment.
- (b) In the absence of manifest error, the decision of the loss adjuster is final and binding upon the Parties where the total claims arising from the Incident or event giving rise to the Claim are equal to or less than \$200,000.

29.5 Costs of the loss adjuster

The costs of the loss adjuster must be borne by the Parties in such proportions as liability is determined by the loss adjuster, or where the liability is ultimately determined by a court of competent jurisdiction, in such proportions as liability is determined by the court.

30 Disputes

30.1 Method

If any claim, dispute or question (**Dispute**) arises under this Deed, then unless otherwise expressly provided to the contrary in this Deed, such Dispute must be resolved in accordance with this **clause 30** and either Party may give to the other Party a notice in writing (**Dispute Notice**) specifying the Dispute and requiring that it be dealt with in accordance with this **clause 30**.

30.2 Authorised representative resolution

- (a) Except as otherwise provided in this Deed, within five Business Days after a Dispute Notice is given, the Dispute must be referred for resolution to an authorised representative of each of the Parties with authority to settle the Dispute on behalf of the relevant Party.
- (b) Within 10 Business Days after a Dispute Notice is given, the officers referred to in **clause 30.2(a)** must meet to resolve the Dispute.

- (c) Meetings referred to in **clause 30.2(b)** may be held in person or by telephone, video conference or other means of instantaneous communication.
- (d) If the Dispute is not resolved within 10 Business Days (**Resolution Period**) after:
 - (i) the date that authorised representatives first meet to resolve the Dispute in accordance with **clause 30.2(b)**; or
 - (ii) if the authorised representatives do not meet within the time required under **clause 30.2(b)**, the date the Dispute Notice is given,
 then the relevant Dispute may, by agreement between the Parties within 10 Business Days of expiration of the Resolution Period, be referred for determination by an Expert in accordance with **clause 30.3** or by arbitration in accordance with **clause 30.4**.
- (e) If the Parties fail to agree, within 10 Business Days of expiration of the Resolution Period, whether to refer the Dispute to an Expert or to arbitration, either Party may refer the Dispute to the courts of the State in accordance with **clause 30.6**.

30.3 Expert

Subject to **clause 37**, where any matter may be referred to an expert (**Expert**) pursuant to **clause 30.2(d)**, or is expressly required by this Deed to be referred to an Expert, then except as otherwise provided for in this Deed:

- (a) an Expert must be appointed by agreement between the Parties, or in default of such appointment within 10 Business Days of the requirement or right (as applicable) to refer the matter to an Expert, then that person is to be nominated at either Party's request by:
 - (i) if the Parties agree the Dispute is purely of:
 - (A) a financial or accounting nature; or
 - (B) a technical nature,
 the President (for the time being) of the Resolution Institute in Australia; or
 - (ii) in any other case, the President (for the time being) of the Queensland Law Society Inc;
- (b) if the Expert is to be nominated by a person referred to in **clause 30.3(a)** and that person declines to nominate a person as the Expert but provides a list of people that could be appointed as the Expert, then:
 - (i) the first person specified in that list will be taken to be nominated as the Expert;
 - (ii) if the first person specified in that list does not accept the appointment as the Expert, then the next person specified in that list will be taken to be nominated as the Expert; and

- (iii) the process specified in **clause 30.3(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the Expert accepts the appointment as the Expert;
- (c) subject to **clause 30.3(b)**, if the Expert is to be nominated by a person referred to in **clause 30.3(a)** and the person nominated as the Expert does not accept appointment as the Expert, then an alternative person is to be nominated as the Expert at either Party's request by the same person referred to in **clause 30.3(a)**;
- (d) if the Expert is to be nominated by a person referred to in **clause 30.3(a)** the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees (which charges or fees must be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person agreeing to nominate an Expert;
- (e) the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated Expert (including providing relevant indemnities and paying any charges or fees (which charges or fees must be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person accepting the appointment as an Expert;
- (f) the Expert must:
 - (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (ii) have no interest or duty which conflicts or may conflict with their function as Expert, the Expert being required to fully disclose any such interest or duty by notice to the Parties before their appointment;
 - (iii) not be, or have been in the last five years, an employee of the Operator, any other contracted operator of the Access Holder utilising the Access Rights or the Access Holder in respect of the Access Rights which are the subject matter of the Dispute, or Aurizon Network or of a Related Body Corporate of any of them;
 - (iv) not be permitted to act until the Expert has given notice to the Parties that the Expert is willing and able to accept the appointment;
 - (v) have regard to the provisions of this Deed and consider all submissions (including oral submissions by either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter provided to the Expert by the Parties;

- (vi) provide both Parties with a copy of the Expert's determination in the form of a report setting out reasonable details of the reasons for the Expert's determination within a reasonable time after their appointment; and
- (vii) be required to undertake to keep confidential all matters coming to their knowledge by reason of their appointment and performance of their duties (including, if required by a Party, by entering into a confidentiality agreement in favour of the Parties);
- (g) the Expert is deemed to be and must act as an expert and not an arbitrator and the Law relating to arbitration (including the *Commercial Arbitration Act 2013* (Qld)) will not apply to the Expert or the determination or the procedures by which the Expert may reach a determination;
- (h) in the absence of manifest error, the decision of the Expert is final and binding upon the Parties;
- (i) the costs of the Expert (and the costs of any advisers to the Expert) must be borne, severally (and not jointly and severally), by the Parties in equal shares, with each Party bearing its own costs of participating in the dispute resolution process (unless otherwise agreed by the Parties);
- (j) the expert determination must be conducted in accordance with the expert determination rules adopted by the Resolution Institute from time to time, except that to the extent of any inconsistency between those rules and this Deed, the terms of this Deed prevail;
- (k) any determination made by an Expert must be consistent with the provisions of this Deed; and
- (l) the Parties must:
 - (i) procure the Expert to use reasonable endeavours to make its determination or finding in respect of the Dispute within 2 Months from the date the initial statement regarding the Dispute is submitted by the claimant to the Expert; and
 - (ii) do everything reasonably requested by the Expert to assist the Expert in determining the Dispute, including providing or making available to the Expert, as soon as reasonably practicable, all information and materials in their possession or control requested by the Expert and attending any hearing convened by the Expert.

30.4 Arbitration

- (a) Subject to **clause 35**, the Parties may agree to refer any Dispute to arbitration by a single arbitrator sitting in Brisbane agreed upon between the Parties and, failing agreement upon such arbitrator within 10 Business Days after the date of notice from one Party to the other requiring the appointment of an arbitrator, by an arbitrator appointed by the President of the Resolution Institute. Every such reference will be an arbitration within the meaning of the *Commercial Arbitration Act 2013*

(Qld), and subject to the provisions relating to arbitration contained in that Act.

- (b) If the Resolution Institute declines to nominate a person as the arbitrator but provides a list of people that could be appointed as the arbitrator, then:
 - (i) the first person specified in that list will be taken to be nominated as the arbitrator;
 - (ii) if the first person specified in that list does not accept the appointment as the arbitrator, then the next person specified in that list will be taken to be nominated as the arbitrator; and
 - (iii) the process specified in **clause 30.4(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the arbitrator accepts the appointment as the arbitrator;
- (c) subject to **clause 30.4(b)**, if the person nominated as the arbitrator under **clause 30.4(a)** does not accept appointment as the arbitrator, then either Party may request that the Resolution Institute appoints an alternative person as the arbitrator.

30.5 Queensland Competition Authority (QCA)

Subject to **clause 35** the Parties may agree to refer, and where required by this Deed must refer, any Dispute to the QCA.

30.6 Determination by Court

If any Dispute is not:

- (a) resolved in accordance with **clause 30.2**;
- (b) referred to an Expert in accordance with **clause 30.3**; nor
- (c) referred to the QCA in accordance with **clause 30.5**,

then either Party may refer the Dispute to the courts of the State.

31 Force Majeure

31.1 Notice of Force Majeure

- (a) If, by reason of a Force Majeure Event affecting a Party, that Party (**Affected Party**) is prevented or hindered (or likely to be prevented or hindered) from carrying out, whether wholly or in part, its obligations under this Deed (other than an obligation to pay money), then:
 - (i) if the Affected Party is Aurizon Network and the Force Majeure Event also affects the Access Agreement, Aurizon Network must provide a copy of each notice it gives to the Access Holder in respect of that Force Majeure Event to the Operator; and
 - (ii) if **clause 31.1(a)** does not apply, that Party must, as soon as reasonably practicable after it becomes aware of the Force

Majeure Event, give to the other Party and the Access Holder prompt (and in any event within 5 Business Days after it becomes aware of the event or circumstance causing the Force Majeure Event) notice (which may be provided in electronic form) of the Force Majeure Event including:

- (A) details of the Force Majeure Event and (if applicable) that part of the Nominated Network affected or likely to be affected; and
 - (B) details of the obligations affected or likely to be affected.
- (b) The Affected Party must provide the other Party with a further notice as soon as reasonably practicable but in any event within 2 Business Days of the notice provided under **clause 29.1(a)** if the notice provided in **clause 31.1(a)** is either in electronic form or does not include the following information:
- (i) the information in **clause 31.1(a)**; and
 - (ii) full particulars of all relevant matters including:
 - (A) details of the action that the Affected Party has taken to remedy the situation and details of the action that the Affected Party proposes to take to remedy the situation (to the extent they are known); and
 - (B) a reasonable estimate of the time during which the Affected Party will be (or is likely to be) prevented or hindered from carrying out, whether wholly or in part, its obligations under this Deed due to the Force Majeure Event.
- (c) Without prejudice to its rights under this **clause 31.1**, the Affected Party may issue further notices in respect of the Force Majeure Event as the Affected Party considers reasonably necessary to update the other Party and the Access Holder as to each of the matters set out in this **clause 31.1**.
- (d) Aurizon Network must:
- (i) include the Operator (and the Access Holder or Customer, if any) in any meeting which Aurizon Network may have in respect of the Force Majeure Event; and
 - (ii) provide a copy of any notice given to the Operator to the Access Holder or Customer, if any.

31.2 Suspension of obligations

- (a) Subject to compliance with the requirements of **clause 31.1**, the obligations of the Affected Party under this Deed are suspended during the time and to the extent that the Affected Party's performance of its obligations is prevented or hindered by the Force Majeure Event.

- (b) If the notice is not provided in accordance with **clause 31.1(a)** or **31.1(b)**, then the obligations of the Affected Party under this Deed will be suspended on and from the later of the time the notice requirements of **clauses 31.1(a)** and **31.1(b)** are satisfied.

31.3 Duty to mitigate

- (a) Subject to **clause 31.3(b)**, a Party must use all reasonable endeavours to remedy or overcome the effect of the Force Majeure Event affecting the Party's obligations under this Deed as soon as possible and must attempt to:
 - (i) mitigate the effect of the Force Majeure Event; and
 - (ii) in the case of a Force Majeure Event affecting Aurizon Network, identify alternative viable means of providing the Operational Rights affected (if applicable).
- (b) The Affected Party is not obliged to settle any strike, lockout or other labour dispute other than on terms acceptable to it.

31.4 End of period of Force Majeure

Subject to **clauses 31.6** and **31.7**, the suspension of the obligations of the Parties due to a Force Majeure Event ends when, but only to the extent that, the Affected Party is able to resume performance of its obligations under this Deed, at which time it must promptly:

- (a) notify the other Party and the Access Holder advising the extent to which it is recommencing the performance of its obligations; and
- (b) recommence the performance of its obligations to the extent outlined in the notice.

31.5 Reduction of Access Rights

- (a) If:
 - (i) any part of the Nominated Network specified in item 2 of **Schedule 3** is damaged or destroyed by a Force Majeure Event; and
 - (ii) in Aurizon Network's reasonable opinion the cost of repairing such damage or destruction or replacing that part of the Nominated Network is not economic on the basis of the then and committed future utilisation of that part of the Nominated Network,

then Aurizon Network may, by notice, advise the Operator, the Access Holder (and its Customer, if applicable), other affected Access Holders, each affected Railway Operator and the QCA of:
 - (iii) the estimated cost of effecting the necessary repairs or replacement;
 - (iv) the level of insurance available to effect the necessary repairs and replacement;

- (v) a detailed explanation as to why the cost of repairing or replacing is not economic; and
 - (vi) Aurizon Network's intention to not repair or replace the relevant part of the Nominated Network unless the Operator (or the Access Holder or its Customer, as applicable) using that part of the Nominated Network pay the difference between the amount of insurance available to effect the necessary repairs or replacement and the actual anticipated cost to effect those repairs or replacements.
- (b) If the Operator (or the Access Holder or its Customer, as applicable) notifies Aurizon Network that:
- (i) it agrees to bear the whole incremental cost of necessary repairs or replacement (after the amount of insurance available has been applied); or
 - (ii) it agrees to bear that part requested by Aurizon Network of the incremental cost of necessary repairs or replacement (and subject to Aurizon Network being satisfied that all other relevant Access Holders (or their Customers or Railway Operators, as applicable) have also agreed to bear their respective part of such costs) (after the amount of insurance available has been applied),
- then Aurizon Network will proceed with the repairs or replacement within a reasonable time after:
- (iii) if **clause 31.5(b)(i)** applies, receipt by Aurizon Network from the Operator (or the Access Holder or its Customer) of payment of the relevant amount; and
 - (iv) if **clause 31.5(b)(ii)** applies, receipt by Aurizon Network from the Operator (or the Access Holder or its Customer) of the last payment of the relevant amount.
- (c) If the Operator (or the Access Holder or its Customer, as applicable) pays to Aurizon Network any of the costs under **clause 31.5(b)**, 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).
- (d) If, within 40 Business Days after receipt of a notice from Aurizon Network under **clause 31.5(a)**, the Operator (or Access Holder or Customer, as applicable) has not given notice to Aurizon Network under **clause 31.5(b)**, then Aurizon Network may, by giving not less than 20 Business

Days' notice to the Access Holder (**Nominated Network FM Reduction Notice**), reduce the FM Access Rights, in which case, the FM Access Rights will cease to form part of the Access Rights of the Access Holder on and from the date specified in the Nominated Network FM Reduction Notice (which must be at least 20 Business Days from the date of the Nominated Network FM Reduction Notice).

31.6 Effect of Nominated Network FM Reduction Notice on Operator nomination

- (a) If a Nominated Network FM Reduction Notice is given under the Access Agreement, then the FM Access Rights will cease to form part of the Access Rights on and from the date specified in the notice (which must be at least 20 Business Days from the date of the notice).
- (b) As soon as practicable after the expiry of the period set out in clause 25.4(a) of the Access Agreement, Aurizon Network must issue a notice to the Operator summarising, in respect of each Train Service Type affected by the FM Access Rights, the changes to the "Nominated Monthly Operational Rights (for a 30 day Month)" in **Schedule 2**.

31.7 Termination after extended Force Majeure Event

If the Affected Party is wholly prevented or hindered from carrying out its obligations under this Deed (other than an obligation to pay money) for a period of more than three consecutive Months, then:

- (a) the Parties must meet to endeavour to identify any alternative viable means to perform the suspended obligations; and
- (b) failing any alternative means being agreed within one Month after the end of the three Month period, the other Party may terminate this Deed by 20 Business Days notice to the Affected Party and the Access Holder and **clauses 31.4 and 31.5** apply without prejudice to any of the rights of the Parties which accrued before the date of such termination.

32 Suspension

32.1 Suspension of Train Services for a Train Service Type

If a Suspension Event specified in **Part A of Schedule 8** occurs in respect of a Train Service Type, Aurizon Network may, by notice in writing to the Operator and the Access Holder (which must be given before or immediately after the suspension) (**Suspension Notice**), suspend the right of the Operator to operate some or all of the Train Services for that Train Service Type on the Nominated Network.

32.2 Suspension of Train Services generally

If a Suspension Event specified in **Part B of Schedule 8** occurs, Aurizon Network may, by notice in writing to the Operator and the Access Holder (which must be given before or immediately after the suspension) (also a **Suspension Notice**), suspend the right of the Operator to operate some or all

of the Train Services (for any one or more Train Service Types) on the Nominated Network.

32.3 Suspension of certain Rollingstock or Rollingstock Configurations

- (a) If:
- (i) Rollingstock or Rollingstock Configurations used by the Operator in the operation of Train Services:
 - (A) are not Authorised Rollingstock or Authorised Rollingstock Configurations for that Train Service Type; or
 - (B) do not comply with:
 - (1) applicable Laws; or
 - (2) the Rollingstock Interface Standards (subject to any Approved Derogations); or
 - (ii) the Operator otherwise fails to comply with the Rollingstock Interface Standards,
- and
- (iii) the Operator fails to rectify such non-compliance within a reasonable period of time (being at least 20 Business Days) notified by Aurizon Network to the Operator; or
 - (iv) such non-compliance creates a risk to the safety of any person or a material risk to property,

then Aurizon Network may, by notice in writing to the Operator and the Access Holder (which must be given before or immediately after the suspension) (also a **Suspension Notice**), suspend the right of the Operator to operate Train Services using such Rollingstock or Rollingstock Configurations.

32.4 Suspension due to suspension under Access Agreement

If any of the Access Holder's rights under the Access Agreement are suspended under the Access Agreement for any reason, then Aurizon Network may, by notice in writing to the Operator (which must be given before or immediately after the suspension) (also a **Suspension Notice**), suspend the right of the Operator to operate Train Services for a Train Service Type, which would otherwise be operated utilising the Access Holder's Access Rights which have been suspended.

32.5 Details of suspension

A Suspension Notice given by Aurizon Network to the Operator and the Access Holder under **clause 32.1, 32.2, 32.3 or 32.4** must set out:

- (a) the rights of the Operator which are affected by the suspension; and
- (b) the reason for the suspension; and

- (c) except for a suspension under **clause 32.4**, the actions the Operator must take to have the suspension lifted.

32.6 Effect of suspension

- (a) If Aurizon Network exercises a right of suspension under this **clause 32**, then the Operator and the relevant Operator's Staff must immediately cease to operate:
 - (i) the relevant Train Services; or
 - (ii) the Train Services using the relevant Rollingstock or Rollingstock Configurations,as applicable, until such time as the suspension is lifted by Aurizon Network.
- (b) The suspension of any rights under this **clause 32** does not affect or suspend any other obligation of the Operator under this Deed, and is without prejudice to Aurizon Network's other rights and remedies in respect of that or any other default.
- (c) Where Aurizon Network suspends the Operator's right to operate some or all of the Train Services:
 - (i) Aurizon Network will only be liable to the Operator in respect of loss or damage (including damages for Consequential Loss) arising from the suspension if, and only if, no reasonable person in Aurizon Network's position could have formed the view that the stated grounds for the suspension existed, provided that the Operator must use all reasonable endeavours to mitigate the loss or damage arising from the suspension; and
 - (ii) Aurizon Network bears the burden of establishing that a reasonable person in Aurizon Network's position could have formed that view.
- (d) Notwithstanding **clause 32.6(c)**, Aurizon Network will not be liable to the Operator for any Third Party claim (including a claim for Consequential Loss), made against the Operator in relation to a suspension where the Third Party is the Access Holder and the Access Holder has a direct contractual relationship with Aurizon Network in respect to the Access Rights to which the suspension relates.

32.7 Duration of suspension

- (a) The suspension of any rights under **clause 32.1, 32.2 or 32.3** continues until such time as the Operator has remedied the relevant default or non-compliance notified in the Suspension Notice.
- (b) The suspension of any rights under **clause 32.4** continues until such time as the relevant suspension of the Access Holder's rights under the Access Agreement is lifted.

33 Termination

33.1 Termination of Train Services for a Train Service Type by Aurizon Network

- (a) Subject to **clause 33.1(b)** and without limiting any rights of termination contained elsewhere in this Deed, Aurizon Network may, by notice in writing to the Operator and the Access Holder, reduce the Operational Rights by the Train Services for a Train Service Type if a Termination Event specified in **Part A of Schedule 8** occurs in relation to that Train Service Type.
- (b) If there is a Corresponding Suspension Event in respect of the Termination Event referred to in **clause 33.1(a)**, then Aurizon Network may only exercise its rights under **clause 33.1(a)** if it has first exercised its right of suspension in respect of the Corresponding Suspension Event under **clause 32**.

33.2 Termination of Agreement

- (a) Subject to **clause 33.2(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.
- (b) If there is a Corresponding Suspension Event in respect of the Termination Event referred to in **clause 33.2(a)**, then Aurizon Network may only exercise its rights under **clause 33.2(a)** if it has first exercised its right of suspension in respect of the Corresponding Suspension Event under **clause 32**.

33.3 Termination by the Operator

Without limiting any rights of termination contained elsewhere in this Deed, the Operator may, by notice in writing to Aurizon Network and the Access Holder, terminate this Deed if any of the following occurs:

- (a) an Insolvency Event in relation to Aurizon Network occurs and continues for a period of 40 Business Days;
- (b) Aurizon Network's Accreditation is suspended, cancelled or amended such that it cannot perform its obligations generally under this Deed, and such default continues for at least 20 Business Days after the Operator gives Aurizon Network notice of the default;
- (c) Aurizon Network fails to pay when due any amount payable under this Deed, and such default continues for at least 20 Business Days after the Operator gives Aurizon Network notice of the default; or
- (d) Aurizon Network is in default of the due performance of any other obligation under this Deed, and such default continues for at least 40 Business Days after the Operator gives Aurizon Network notice of the default.

33.4 Grounds for termination to be specified

A notice given under **clause 33.1, 33.2 or 33.3** must set out the grounds for the termination.

33.5 Obligations and other rights upon termination or expiry

- (a) Neither termination of this Deed by a Party under this **clause 33** nor expiry of this Deed prejudices:
 - (i) a Party's right to make a Claim, recover damages or avail itself of other remedies under this Deed or at law; or
 - (ii) either Party's rights to recover money due to it under this Deed.
- (b) On termination of this Deed, Aurizon Network and the Operator are released from all further obligations or liabilities under this Deed, except for:
 - (i) rights which accrued on or before termination, including for any breach of this Deed which occurred before termination. Any liability in respect of such prior breach will be limited in the manner provided in this Deed; or
 - (ii) any provisions which are expressed as surviving the expiry or termination of this Deed.

33.6 Removal of Rollingstock following termination

- (a) Immediately on expiry of the Term, and within 12 hours (or such other period as the Parties may agree) after termination of this Deed for any other reason, the Operator must, at the Operator's cost, remove all of the Operator's Rollingstock operated under this Deed from the Nominated Network.
- (b) If the Operator fails to remove the Operator's Rollingstock from the Nominated Network, then Aurizon Network may give a notice to the Operator demanding the removal of the Rollingstock within a further 12 hours (or such longer period as the Parties may agree).
- (c) If the Operator fails to remove any of the Operator's Rollingstock from the Nominated Network the subject of the notice under **clause 33.6(b)** within the time required under **clause 33.6(b)**, then Aurizon Network is entitled to remove the Rollingstock and recover the reasonable costs of removal from the Operator, provided it notifies the Operator reasonably in advance of its intention to exercise the rights under this clause.
- (d) Subject to **clause 28.1**, the Operator is liable for, and indemnifies Aurizon Network against, any costs reasonably incurred by Aurizon Network in relation to any damage or obstruction caused to the Infrastructure or the Nominated Network by the Operator in removing any Rollingstock in accordance with this **clause 33.6**.
- (e) The Operator must comply with all reasonable directions issued by Aurizon Network in relation to the removal of the Rollingstock in

accordance with this **clause 33.6**.

34 Assignment

34.1 Assignment by Aurizon Network

- (a) Aurizon Network may Assign the whole or any part of its rights or obligations under this Deed without the prior consent of the Operator, provided that:
 - (i) the Assignee is Accredited; and
 - (ii) Aurizon Network procures that the Assignee covenants with the Operator by deed to be bound by and to perform the obligations of Aurizon Network under this Deed to the extent of the rights and obligations Assigned to the Assignee.
- (b) On the Assignee entering into the deed referred to in **clause 34.1(a)**, Aurizon Network is released and discharged from further liability under this Deed in respect of the obligations which the Assignee has undertaken under that deed to be bound by and to perform.

34.2 Assignment by the Operator

- (a) The Operator may not Assign its rights or obligations under this Deed other than in accordance with this **clause 34.2**.
- (b) The Operator may, provided it is not in default in the performance or observance of any of its obligations under this Deed, Assign the whole of its rights and obligations under this Deed to:
 - (i) a Related Body Corporate of the Operator which is Accredited to operate Train Services and is otherwise capable of performing the obligations of the Operator under this Deed, provided that:
 - (A) the Operator remains liable for the performance of the duties, responsibilities and obligations assumed by the Assignee; and
 - (B) the performance by the Assignee will (to the extent of such performance) discharge the Operator's liability for the performance of the duties, responsibilities and obligations Assigned; or
 - (ii) a person other than a Related Body Corporate of the Operator with the prior written consent of Aurizon Network which must not be unreasonably withheld if Aurizon Network is satisfied that such person is:
 - (A) financially sound;
 - (B) Accredited to operate Train Services; and
 - (C) otherwise capable of performing the obligations of the Operator under this Deed.

- (c) Any Assignment by the Operator of its rights and obligations under this Deed is conditional on and will not take effect until:
 - (i) Aurizon Network has been provided with written evidence of the Access Holder's consent to the Assignment;
 - (ii) the Assignee covenants with Aurizon Network by deed, in such terms as Aurizon Network may reasonably require, to be bound by and to perform the obligations of the Operator under this Deed.
- (d) Subject to **clause 34.2(e)**, if a Change in Control of the Operator occurs without Aurizon Network's prior written consent, the occurrence of the Change in Control will be taken to be an Assignment of the Operator's rights and obligations under this Deed which is not permitted under this **clause 34.2**.
- (e) **Clause 34.2(d)** does not apply to a Change in Control where:
 - (i) the Operator or its Ultimate Holding Company is listed on a recognised stock exchange;
 - (ii) the Change in Control is a result of a Change in Control of that listed entity; and
 - (iii) that listed entity remains listed on that recognised stock exchange both before and after that Change in Control.

34.3 Charging

A Party (**Chargor**) may create a Charge over all of its rights under this Deed in favour of a recognised financial institution (**Chargee**) to secure financial accommodation provided to the Chargor in relation to its obligations under this Deed, provided that the Chargee must first covenant in writing in favour of the other Party (**Non-Charging Party**), pursuant to a deed in such terms as the Non-Charging Party may reasonably require, that in relation to the exercise of any power of sale or other right or remedy under the Charge granted to the Chargee, the Chargee and any person (including any receiver or receiver and manager or agent) claiming through the Chargee must comply with the provisions of this **clause 32** as if it were originally a party to this Deed, and must not exercise any power of sale of the rights and/or obligations of the Chargor under this Deed except in accordance with this **clause 34**.

35 GST

35.1 Construction

In this **clause 33**:

- (a) words and expressions which are not defined in this Deed but which have a defined meaning in GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*; and

- (c) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

35.2 Consideration GST exclusive

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

35.3 Payment of GST

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

35.4 Timing of GST payment

The recipient must pay the amount referred to in **clause 35.3** in addition to, and at the same time that, the consideration for the supply is to be provided under this Deed.

35.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under **clause 35.3**. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

35.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Deed, the amount payable by the recipient under **clause 35.3** must be recalculated to reflect the adjustment event and a payment must be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.

35.7 Reimbursements

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

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

36 Confidentiality

36.1 Confidentiality

Subject to **clause 34.2**, the Recipient must:

- (a) keep confidential, and must not disclose to any Third Party, any Confidential Information disclosed to the Recipient by the Discloser; and

- (b) not use the Confidential Information for any purpose other than for the purposes of this Deed or, if Aurizon Network is the Recipient, for the purposes of:
 - (i) capacity assessment and capacity modelling;
 - (ii) investigation and planning of Maintenance Work;
 - (iii) planning Infrastructure Enhancements; and
 - (iv) complying with its obligations under the Access Undertaking.

36.2 Permitted disclosures

The Recipient may disclose Confidential Information disclosed to it by the Discloser to a Third Party where:

- (a) the Recipient has obtained the prior written approval of the Discloser to such disclosure. The Discloser must not unreasonably withhold such approval if the Recipient has procured a confidentiality undertaking in respect of the information from such Third Party in favour of both Parties on terms and conditions satisfactory to both Parties, acting reasonably; or
- (b) disclosure is:
 - (i) required or compelled by any order of a court of competent jurisdiction;
 - (ii) required or compelled by any Law;
 - (iii) required or compelled by notice validly issued by any Authority;
 - (iv) necessary for the conduct of any legal proceedings, including any dispute resolution process under this Deed;
 - (v) reasonably required for the performance of Train Control functions;
 - (vi) required under any stock exchange listing requirement or rule;
 - (vii) required by the Rail Safety Regulator or an Environmental Regulator;
 - (viii) to the Access Holder provided that:
 - (A) the Disclosure is:
 - (1) required by the terms of this Deed;
 - (2) reasonably necessary for the performance of obligations or the exercise of rights under this Deed or the Access Agreement; or
 - (3) reasonably necessary in connection with the safe operation of the Nominated Network; and
 - (B) the Discloser must ensure that the Access Holder keeps the Confidential Information confidential on terms no less onerous than this **clause 36**;

- (ix) to the Recipient's banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the Discloser;
- (x) to an expert for the purposes of a dispute resolution process, or an auditor for the purposes of an audit, under a "User Funding Agreement" (as defined in the Access Undertaking), if such expert or auditor has executed a legally enforceable confidentiality deed in favour of the Discloser;
- (xi) to legal practitioners and accountants of the Recipient or a Related Body Corporate of it:
 - (A) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;
 - (B) who are under a duty of confidentiality to the Recipient; and
 - (C) who have been advised of the confidential nature of the Confidential Information; or
- (xii) otherwise permitted or required in accordance with this Deed or the Access Undertaking (as amended by any Change in Access Undertaking).

36.3 Discloser may give certain directions

On expiry or termination of this Deed, the Discloser may direct the Recipient to do any combination of the following in respect of some or all of the Confidential Information disclosed by the Discloser to the Recipient:

- (a) subject to the lawful requirements of the Recipient to retain copies of Confidential Information for business records and document control registers, to immediately deliver to the Discloser the Confidential Information specified by the Discloser;
- (b) to immediately destroy the Confidential Information specified by the Discloser; and
- (c) where the Recipient has disclosed the Confidential Information to any Third Party, to procure the compliance by that Third Party with the requirements of this **clause 36.3** as if that Third Party were the Recipient.

36.4 PPS Act

In addition to the obligations imposed under this **clause 36**, each Party agrees to not disclose any information of the kind described in section 275(1) of the PPS Act, including:

- (a) information about this Deed including a copy of it;

- (b) information about the amount or the obligation secured by any Security Interest created by or under this Deed and the terms of such payment or performance at any time; or
- (c) information about Relevant Collateral at any time.

36.5 Survival

Without limiting **clause 37.1**, this **clause 34** survives the destruction or return of Confidential Information in accordance with this Deed.

36.6 Injunctive relief

The Recipient acknowledges and agrees that a breach of this **clause 36** 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 34** in addition to any other remedies available at law or in equity under or independently of this Deed.

37 Relationship with Access Agreements

- (a) Prior to any referral of a matter to a loss adjuster, expert, arbitrator or the QCA (**Adjudicator**) in accordance with **clause 29.1** or **30**, either Party may notify the other Party that the Access Holder should be a party to that referral and, if such a notice is given, then the Party which has given the notice must:
 - (i) notify the Access Holder of the matter to be referred to the Adjudicator; and
 - (ii) provide the Access Holder with a copy of the provisions of this Deed governing the referral of a matter to, the determination of a matter by, and the payment of the costs of, the Adjudicator.
- (b) If the Access Holder is given a notice under **clause 37(a)**, then:
 - (i) where the Adjudicator is to be a loss adjuster, expert or arbitrator, the Parties are deemed not to have agreed the appointment of the loss adjuster, expert or arbitrator unless the Access Holder has also agreed to the appointment of that loss adjuster, expert or arbitrator;
 - (ii) the Parties must comply with **clause 29.1, 27.1** or **28**, as applicable, in respect of the Access Holder as though the Access Holder was a Party to this Deed for the purposes of the matter referred to the Adjudicator; and
 - (iii) the Adjudicator in addition to determining the matter between the Parties must also determine any claim, dispute, question or liability involving the Access Holder and the Access Agreement arising in connection with any of the events or facts the subject of the matter referred to the Adjudicator (unless that claim, dispute, question or

liability has already been agreed by Aurizon Network and the Access Holder or otherwise determined).

- (c) If the Operator is notified of a matter to be referred to an Adjudicator in accordance with the Access Agreement, then the Operator:
- (i) must comply with the provisions of that agreement governing the referral of a matter to, the determination of a matter by, and the payment of the costs of, an Adjudicator;
 - (ii) must provide the Adjudicator with a copy of this Deed;
 - (iii) agrees that **clauses 29.1 and 30** do not apply to any claim, dispute, question or liability involving the Operator and this Deed arising in connection with the matter referred to the Adjudicator; and
 - (iv) agrees that, for the avoidance of doubt, the decision of the Adjudicator, in the absence of manifest error, will be final and binding upon the Operator.

38 Notices

38.1 Form of Notice

- (a) Any notice, demand, invoice, certification, process or other communication authorised or required to be given by a Party to another under this Deed (other than a Train Control Direction or a direction from the Incident Commander) (**Notice**) must be in writing and signed by an authorised officer of that Party and may, if agreed by the Parties, be in electronic form.
- (b) If a Party gives a Notice under this Deed, that Party must promptly notify the Access Holder. Such notification may be in electronic form.

38.2 Method of service

Subject to **clause 36.5**, a Notice may be given by being:

- (a) personally delivered to a Party;
- (b) left at the Party's current address for service;
- (c) sent to the Party's current address for service by pre-paid ordinary mail;
- (d) sent by facsimile transmission to the Party's current facsimile number for service; or
- (e) if agreed by the Parties, sent by email to the Party's current email address for service.

38.3 Deemed Notice

Subject to **clause 38.5**, a Notice given in accordance with this **clause 38** is deemed to be given if:

- (a) personally delivered, upon delivery;

- (b) posted to an address in Australia, three Business Days after posting;
- (c) posted to an address outside Australia, 10 Business Days after posting;
- (d) sent by facsimile, on the next Business Day after being sent if following transmission the sender receives a transmission report indicating that the facsimile was sent to the addressee's facsimile number; or
- (e) sent by email, on the next Business Day after being sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

38.4 Addresses for notices

- (a) Each Party's address for notices is as set out in **item 2 of Schedule 1**.
- (b) A Party may from time to time change its particulars for service by giving notice of that change to the other Party.

38.5 Train Control Direction or Incident Commander's direction

- (a) A Train Control Direction is deemed to have been given at the time the direction is given, issued or made.
- (b) A direction from the Incident Commander is deemed to have been given at the time the direction is communicated by the Incident Commander.

39 General

39.1 Survival

This **clause 39** and **clauses 7, 19.6, 26, 28, 29, 30, 33, 35, 36** and **38** survive the expiration or termination of this Deed.

39.2 Amendment

- (a) Except as otherwise provided in this Deed, any variation or amendment to this Deed must be in writing signed by:
 - (i) both Parties; and
 - (ii) except where the amendment solely relates to operational matters that do not have consequential impacts on the Access Holder's Access Rights, the utilisation of the Access Holder's Access Rights or Access Agreement, the Access Holder.
- (b) The Operator must provide the Access Holder with a copy of any written agreement to variations or amendments to this Deed.

39.3 Entire agreement

- (a) This Deed, the Schedules and other documents referred to in the Schedules constitute the entire understanding and agreement between the Parties as to the subject matter of this Deed.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Deed are merged in and superseded by this Deed

and are of no force or effect whatever, and no Party is liable to any other Party in respect of those matters.

- (c) Neither Party has relied on any representations made by the other Party relating to the subject matter of this Deed or otherwise.
- (d) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of this Deed; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

39.4 Counterparts

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

39.5 Non-merger

Each representation, covenant and obligation under this Deed continues in full force and effect until such representation, obligation or covenant is satisfied or completed.

39.6 Authority to enter into agreement

- (a) Each Party warrants to the other Party that, in respect of itself, it has full power to enter into and perform its obligations under this Deed, and that this Deed constitutes valid and binding obligations on it, enforceable in accordance with its terms.
- (b) If this Deed is executed by an attorney, the attorney states, by such execution, that as at the time of such execution the attorney has received no notice of the revocation of the power of attorney pursuant to which the attorney has executed this Deed.

39.7 Consents and approvals

Unless otherwise stated in this Deed, if a Party has a right to accept, reject, decide, determine, consent or make any decision or exercise any discretion or decide to give any notice under this Deed, the Party may do so conditionally or unconditionally at its discretion.

39.8 Relationship

The relationship between the Parties is entirely contractual. Nothing in this Deed creates, or is to be taken to create, any partnership, joint venture or relationship of employer and employee between the Parties or any of them.

39.9 Certificate

A certificate signed by any duly authorised officer of Aurizon Network as to a matter or as to a sum payable to Aurizon Network in connection with this Deed is prima facie evidence of the matter stated in it or the sum payable.

39.10 Costs

Subject to any express provision in this Deed to the contrary, each Party bears its own legal and other expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Deed.

39.11 Duty

- (a) The Operator is, as between the Parties, liable for and must duly pay all stamp duty (including any fine or penalty) on or relating to this Deed and any document executed under or in connection with it.
- (b) If Aurizon Network pays any stamp duty (including any fine or penalty) on or relating to this Deed, or any document executed under or in connection with it, the Operator must, within 10 Business Days after receiving such demand, reimburse Aurizon Network the amount paid.

39.12 Waiver and exercise of rights

- (a) A single or partial exercise or waiver of a right relating to this Deed does not prevent any other exercise of that right or the exercise of any other right.
- (b) No failure or delay by either Party to exercise any right or remedy under this Deed may be construed or operate as a waiver or be evidence of delay, laches or acquiescence in equity or at law in respect of such right or remedy.
- (c) A waiver or consent by any Party of any default or breach of any term of this Deed does not constitute a waiver of later defaults or breaches of the same or any other term.
- (d) A Party's election not to exercise any rights under this Deed does not prejudice any other rights which that Party may have against the other Party arising out of any failure by the other Party to comply with this Deed.

39.13 Computation of time

Where time is to be calculated by reference to a day or event, that day or the day of the event will be excluded.

39.14 Severance of invalid or illegal terms

- (a) If any term of this Deed, or its application to any Party, person or circumstance, is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatever, then:
 - (i) that term, or its application to such Party, person or circumstance, is severed from this Deed;
 - (ii) the remainder of this Deed, excluding the severed part, remains in force, and any term which includes the severed part applies to such Party, person or circumstance without reliance on the part severed; and
 - (iii) to the extent permissible by Law, the Parties must agree to replace the severed term, effective from the date of severance, with a valid

and enforceable term which so far as possible achieves the same purpose, object or effect as the invalid, void, voidable or otherwise unenforceable term was intended to achieve and does not cause any substantial reduction in the benefits of either Party or material re-allocation of risks between the Parties.

- (b) The Parties must act reasonably and in good faith in seeking an agreement under this **clause 39.14** as to a replacement term.
- (c) If the Parties cannot agree upon a replacement term, this Deed is continued in accordance with **clauses 39.14(a)(i)** and **39.14(a)(ii)**.

39.15 Rights cumulative

Subject to any express provision in this Deed to the contrary, the rights of any Party under this Deed are cumulative and are in addition to any other rights of that Party.

39.16 Approvals and consents

Subject to any express provision in this Deed to the contrary, a Party may conditionally or unconditionally give or withhold any consent to be given under this Deed.

39.17 Third Party Land

The Operator acknowledges that:

- (a) the land specified in **item 4 of Schedule 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 Implementation of agreement

Each Party must promptly execute all documents and do all such acts and things as are necessary or desirable to implement and give full effect to the provisions of this Deed.

39.19 Governing law and jurisdiction

- (a) This Deed is governed by, and is to be construed in accordance with, the law in force in the State.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State, and any courts which have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.

39.20 PPS Act

- (a) If a Party (**first party**) reasonably determines that this Deed contains a "Security Interest" for the purposes of the PPS Act (**Security Interest**), the other Party (**second party**) agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the first party (after consultation with the second party) reasonably asks and considers necessary for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
 - (ii) enabling the first party to apply for any registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the first party; or
 - (iii) enabling the first party to exercise rights in connection with the Security Interest.
- (b) A Party is not required to give any notice under the PPS Act to the other Party or any other person and each Party waives the right to receive any such notice (including a notice of Verification Statement) unless the notice is required by the PPS Act and that obligation cannot be excluded.
- (c) To the extent that this Deed gives rise to a Security Interest, the Parties agree that for the purposes of section 115 of the PPS Act, the following sections of the PPS Act will not apply to any Relevant Collateral:
 - (i) section 95 (notice by Secured Party of removal of Accession);
 - (ii) section 121(4) (notice by Secured Party of enforcement of Security Interest in liquid assets);
 - (iii) section 125 (obligation of Secured Party to dispose of or retain Collateral after seizure);

- (iv) section 130, to the extent that it requires a party to give any notice to the other party (notice by Secured Party of disposal of Collateral);
- (v) section 132(3)(d) (obligation of Secured Party to show amounts paid to other Secured Parties in statement of account);
- (vi) section 132(4) (statement of account by Secured Party if it does not dispose of Collateral within prescribed period);
- (vii) section 135 (notice by Secured Party of retention of Collateral);
- (viii) section 142 (redemption of Collateral); and
- (ix) section 143 (reinstatement of Security Agreement).

[Drafting note: Additional clauses for inclusion in Train Operations Deeds for non-coal carrying train services:

1. Insert the following definition of 'Wilful Breach' in clause 1.1 of Train Operations Deed – Coal:

Wilful Breach means a breach arising from or pursuant to a deliberate act or omission which occurs pursuant to an express policy or program to plan and implement Operational Constraints (including Maintenance Works and Infrastructure Enhancements) in a manner contrary to **clauses 21.2(b) and (c)**.

2. Insert the following clause 28.4(c):

- (c) The five percent threshold in **clause 28.4(b)(v)(A)** does not apply in circumstances of Wilful Breach by Aurizon Network.

3. Delete clause 21.2 in Train Operations Deed – Coal and replace with the following clause:

21.2 Maintenance of the Nominated Network

- (a) Aurizon Network must carry out Maintenance Work on the Nominated Network such that, subject to any criteria or derogations for the Nominated Network specified in the IRMP and the Network Management Principles:
 - (i) the Infrastructure is consistent with the Rollingstock Interface Standards; and
 - (ii) the Operator can operate Train Services in accordance with their Scheduled Times.
- (b) Aurizon Network may impose (either temporarily or permanently) such Operational Constraints as it considers necessary, acting reasonably, for the protection of any person or any property (including the Infrastructure) or to facilitate the carrying out of Maintenance Work or Infrastructure Enhancements provided that, in exercising its rights under this **clause 21.2(b)**, Aurizon Network must comply with **clause 21.2(c)**.

- (c) In scheduling Train Services, Aurizon Network must:
 - (i) use reasonable endeavours to plan and implement Operational Constraints (including Maintenance Works and Infrastructure Enhancements) so as to minimise disruption to the operation of Train Services, including to minimise disruption to Access Rights and Operational Rights; and
 - (ii) comply with the relevant procedures specified in the Interface Coordination Arrangements.
- (d) The obligation in **clause 21.2(c)(i)** to use reasonable endeavours includes an obligation for Aurizon Network to bear the reasonable costs (if any) associated with planning and implementing the relevant Operational Constraints so as to minimise disruption to the operation of Train Services.
- (e) The obligation in **clause 21.2(c)(i)** to use reasonable endeavours includes an obligation to provide reasonable notice of Operational Constraints and, where possible, to provide reasonable alternative Scheduled Times for affected Train Services to the Operator having regard to the reasonable requirements of the Operator.
- (d) 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.
- (e) Subject to Aurizon Network complying with its obligations under **clause 21.2(c)(i)**, 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.
- (f) 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.
- (g) Nothing in **clause 21.2(c)(i)** limits provisions of the Access Undertaking or this Deed relating to Emergency Possessions, Urgent Possessions or Safety Standards.
- (h) If there is any inconsistency or ambiguity between the provisions of **clause 21.2(c)(i)** and the provisions of Part 7A of the Access Undertaking or of the Network Management Principles, **clause 21.2(c)(i)** will prevail to the extent of the inconsistency or ambiguity.

4. The schedules to Train Operations Deeds for non-coal carrying train services are to

be the subject of negotiation between the parties and are not required to reflect the System Operating Parameters.

5. Update cross-referencing accordingly.]

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

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

Nominated Monthly Operational Rights

1 Train Service Type #1

Nominated Monthly Operational Rights (for a 30 day Month)	[insert]
Maximum Payload	[insert] tonnes
Nominal Payload	[insert] tonnes
Indicative Tonnage (for a 30 day Month)	[insert] tonnes

Note for information purposes only: The Nominated Monthly Operational Rights (for a 30 day Month) for a Train Service Type is the number of Train Services calculated in accordance with the following formula:

$$\text{NMTS} = 2 \times \text{Loaded Train Services}$$

where:

NMTS = the Nominated Monthly Operational Rights (for a 30 day Month) for the Train Service Type

Loaded Train Services = IT/AAP (rounded to the nearest whole Train Service on the basis that where the first decimal place is greater than three, the number of Train Services is to be rounded up to the nearest number of whole Train Services and, where the first decimal place is three or less, the number of Train Services is to be rounded down to the nearest number of whole Train Services)

IT = the Indicative Tonnage (for a 30 day Month) for the Train Service Type

AAP = the Nominal Payload for the Train Service Type as specified in the relevant Notice of Intention to Increase Nominal Payload

Schedule 3

Nominated Network

1 Nominated Network

The Nominated Network is that part of the Infrastructure described by reference to the diagrams and/or tables set out below, but does not include any freight terminals, railway stations, passenger facilities, workshops or maintenance depots (including provisioning facilities).

[Insert line diagram(s) depicting the Nominated Network]

2 Parts of Nominated Network subject to clause 31.5

For the purpose of **clause 31.5**, the specified parts of the Nominated Network are those parts of the Nominated Network described by reference the diagrams and/or tables set out below:

[Insert line diagram(s) depicting the Nominated Network]

[Drafting note: Aurizon Network may specify parts of the Nominated Network for the purpose of **clause 31.5** 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</i>

Location	Party responsible for Weighbridge	Tolerance
		<i>Measurement Act 1960 (Cth)</i>

5.2 Overload Detectors

Location	Party responsible for Overload Detector	Tolerance
[insert]	[insert]	+/- [insert] %

Schedule 4

Rollingstock and Rollingstock Configurations

[Operator to include all of its Rollingstock]

1 Maximum Gross Mass and Tare Weight

Rollingstock	Maximum Gross Mass (tonnes)	Tare Weight (tonnes)
Wagons		
[Wagon type]	[insert]	[insert]
Other Rollingstock		
[Rollingstock type]	[insert]	[insert]

2 Relevant Rollingstock

[To be inserted as applicable]

Schedule 5

Performance Levels

1 Development of Performance Levels

- 1.1 The Parties must meet as soon as practicable after the Commencement Date to negotiate in good faith to endeavour to agree the Aurizon Network Performance Level (other than the Aurizon Network Performance Levels set out in **item 2.1** of this **Schedule 5** which are already agreed between the Parties) and the Operator Performance Level within twelve Months (or such longer period as the Parties may agree) after the Commencement Date.
- 1.2 The Performance Levels may involve financially based incentives and sanctions and, unless otherwise agreed, will be applicable for the Term.
- 1.3 A failure to agree the Performance Levels is not a Dispute for the purposes of **clause 30**.
- 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:

- (d) cancellations;
- (e) delays resulting from compliance with a Passenger Priority Obligation;
- (f) delays due to a Possession and Major Periodic Maintenance where, the Possession Protocols have been followed;
- (g) delays resulting from a Force Majeure Event; and
- (h) 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** must:

- (a) include a principal's indemnity endorsement specifically noting Aurizon Network as an interested party in respect of its interest arising out of or under this Deed;
- (b) include a cross liability clause;
- (c) provide that a notice of claim given to the insurer by one insured party will be accepted by the insurer as a notice of claim given by each of the insured parties; and
- (d) provide that a breach of or failure to observe and fulfil the terms of the policy by any party comprising the insured must not prejudice the rights of the remaining parties comprising the insured.

Schedule 8

Part A – Suspension Events and Termination Events applicable to specific Train Service Types

Item	Suspension Event	Termination Event
1	<p>The Operator materially fails to provide, before the operation of a Train Service for a Train Service Type in a material respect, information that is required to be provided to Aurizon Network in relation to the Train Service under clause 16.5.</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</p>	

Item	Suspension Event	Termination Event
	<p style="text-align: center;">risk to Aurizon Network or an adverse impact on any Access Holder (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,</p> <p>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 occurring) and such default continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the default.</p>	<p>The Operator fails, in a material respect, to comply with any obligation under this Deed which is specific to a Train Service Type (other than any obligation which, if not complied with by the Operator, may (either of itself or if other requirements are satisfied) result in any other Termination Event referred to in Part A of this Schedule 8 occurring) and such default continues for at least 40 Business Days after Aurizon Network gives the Operator notice of the default.</p>

Part B – Suspension Events and Termination Events applicable to all Train Services Types

Item	Suspension Event	Termination Event
1	The Operator fails to pay by the due date any amount payable under this Deed, and such default continues for at least 10 Business Days after Aurizon Network gives the Operator notice of the default (and always subject to clause 8.4).	The Operator fails to pay by the due date any amount payable under this Deed, and such default continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the default (and always subject to clause 8.4).
2	<p>The Operator fails, in a material respect, to comply with any of its obligations under clause 14, 22 or 24 (other than clauses 22.3 or 24.9) 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 14, 22 or 24 (other than clause 22.3 or 24.9) 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>

Item	Suspension Event	Termination Event
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 that it cannot lawfully operate the Train Services or otherwise perform its obligations generally under this Deed.	The Operator's Accreditation is suspended, cancelled or amended so that it cannot lawfully operate the Train Services or otherwise perform its obligations generally under this Deed, and such default continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the default.
6	The Operator fails to comply in a material respect with clause 24.11(c) .	The Operator fails to comply with clause 24.11(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, 	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,

Item	Suspension Event	Termination Event
	<p>or in any stay or other court order made in relation to such direction, notice or order; or</p> <p>(ii) otherwise agreed to by the Environmental Regulator,</p> <p>to</p> <p>(c) comply with the direction, notice or order, as modified by any court order (if applicable); or</p> <p>(d) take other measures (including, for example, agreeing to implement an environmental management program) acceptable to the Environmental Regulator in relation to the requirements of the direction, notice or order.</p>	<p>or in any stay or other court order made in relation to such direction, notice or order; or</p> <p>(ii) otherwise agreed to by the Environmental Regulator,</p> <p>to</p> <p>(c) comply with the direction, notice or order, as modified by any court order (if applicable); or</p> <p>(d) take other measures (including, for example, agreeing to implement an environmental management program) acceptable to the Environmental Regulator in relation to the requirements of the direction, notice or order,</p> <p>and such failure continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the failure.</p>
8	<p>The Operator fails to comply with the requirements of a notice given by Aurizon Network (within the reasonable time specified in the notice) requiring the Operator to cease an Activity of the Operator in connection with this Deed which causes, or threatens to cause, serious Environmental Harm.</p>	
9	<p>The Operator fails to:</p> <p>(a) effect or maintain the insurances required under clause 26.2; or</p> <p>(b) provide evidence of the insurances required under clause 26.2 having been effected and maintained,</p> <p>and such default continues for at least</p>	<p>The Operator fails to:</p> <p>(a) effect or maintain the insurances required under clause 26.2; or</p> <p>(b) provide evidence of the insurances required under clause 26.2 having been effected and maintained,</p> <p>and such default continues for at least</p>

Item	Suspension Event	Termination Event
	five Business Days after Aurizon Network gives the Operator notice of the default.	20 Business Days after Aurizon Network gives the Operator notice of the default.
10	The Operator purports to Assign any of its rights or interests in this Deed other than as permitted in this Deed.	The Operator purports to Assign any of its rights or interests in this Deed other than as permitted by this Deed.
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 30 that the Suspension Notice was invalid, the Suspension Notice must not be taken into account for the purposes of this provision.
12	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.	
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
 - (l) 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**, 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 19.4(c)

- (a) The Operator must provide to Aurizon Network (and keep current at all times during the Term) the contact details for any party responsible for loading the Operator’s Trains.
- (b) As at the date of this Deed, the parties responsible for loading the Operator’s Trains are set out below:

Name	Phone	Fax
[insert]	[insert]	[insert]
[insert]	[insert]	[insert]
[insert]	[insert]	[insert]

2 Train Operations Procedures

2.1 Safety Alerts and Safety Notices

(a) Safety Alerts

- (i) In this **item 2 of Schedule 9, Safety Alert** means a document specified as a “Safety Alert” which notifies the recipient that a serious safety incident that has affected or could affect Aurizon Network, the Operator or any other user of the Infrastructure has occurred. A Safety Alert may include:
 - (A) details in relation to the serious safety incident (for information purposes); and/or
 - (B) information in relation to any immediate actions to be taken in relation to the serious safety incident.
- (ii) Aurizon Network must give a Safety Alert as soon as reasonably practicable after the occurrence of a serious safety incident.
- (iii) Aurizon Network may give the Operator a Safety Alert using the Operator’s address for notices specified in **item 2 of Schedule 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]
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- (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