

QCA Final Decision

Aurizon Network Pty Ltd

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

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

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Date

Parties

Aurizon Network Pty Ltd ABN 78 132 181 116 of Level 17, 175 Eagle Street, Brisbane
(**Aurizon Network**)

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

Background

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

1 Interpretation

(a) In this Agreement:

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

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

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

Annual Service Charge means, in respect of a Maintenance Year, the charge determined in accordance with **clause 3(b)(v)** or **3(b)(vi)**, as applicable.

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

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

Aurizon Party means a Related Body Corporate of Aurizon Network.

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

Authority means any:

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

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

[Examples of current Branch Lines include:

- Blackwater West – rail transport infrastructure from west of Burngrove;
- Blackwater East – rail transport infrastructure between Burngrove and Gracemere;
- Moura West – rail transport infrastructure west of Callide;
- Moura East – rail transport infrastructure between the Callide Junction and Byellee Fly Over;
- NCL South – rail transport infrastructure between Gracemere and Byellee and Gladstone Ports;
- Goonyella South – rail transport infrastructure between Burngrove Junction and Coppabella;
- Goonyella Central – rail transport infrastructure between Coppabella and Jilalan;
- Goonyella North – rail transport infrastructure between North Goonyella and Coppabella;
- Goonyella Far West – rail transport infrastructure between Blair Athol and Caval Ridge Junction;
- Goonyella West – rail transport infrastructure between Caval Ridge Junction and Wotonga Junction;

- Goonyella East – rail transport infrastructure between Jilalan and the Ports of Dalrymple Bay Coal Terminal and Hay Point;
- GAPE – rail transport infrastructure between North Goonyella and the Newlands Junction;
- Newlands West – rail transport infrastructure between the Newlands Junction and Kaili;
- Newlands East – rail transport infrastructure between Kaili and the Abbot Point coal terminal].

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

CI Criteria has the meaning given in **clause 6(c)(iii)**.

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

CLMP means the Coal Loss Mitigation Provisions forming part of the Aurizon Network Access Undertaking.

Coal System has the meaning given in the Aurizon Network Access Undertaking.

Commencement Date means the date of execution of this Agreement.

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

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

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

as modified, upgraded or replaced from time to time.

[Connecting Infrastructure Work Notice means the notice referred to in **clause 6(d)(iii)(B)**.] *[Definition only to be included if **clauses 6(a)-6(d)** are included]*

Consequential Loss means:

- (a) any loss of revenue, loss of profits or loss of production;

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

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

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

[Construction Agreement means the agreement referred to in **clause 7(b)(i).**
[Definition only to be included if clause 7(a) is included]

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

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

- (a) 2%; and
- (b) The Commonwealth Bank of Australia's "Corporate Overdraft Reference Rate" (monthly cycle) quoted by the Commonwealth Bank of Australia on

its public website for the last trading day of the previous month (or in the event that such a rate is not so quoted at or in respect of any relevant date, such other similar rate as is quoted by a major commercial bank as agreed by the Parties or, failing agreement, as determined by an expert under **clause 19**).

Design means the design of the Connecting Infrastructure.

Dispute has the meaning given in **clause 19(a)**.

Dispute Notice has the meaning given in **clause 19(a)**.

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

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

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

- (a) as at the date of this Agreement being in the form set out in **Schedule 4**; and
- (b) as subsequently amended in accordance with **clause 13**.

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

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

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

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

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

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

- (c) compliance with a lawful requirement, order, demand or direction of an Authority or an order of any court having jurisdiction other than where

that requirement, order, demand or direction results from any act or omission of the affected Party;

- (d) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the affected Party is a party to industrial action or would be able to influence or procure the settlement of such industrial action;
- (e) act of God;
- (f) war, invasion, terrorist act, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade or civil commotion;
- (g) equipment failure or breakdown where such failure or breakdown could not have been prevented by Good Engineering Practices;
- (h) malicious damage or sabotage;
- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (j) failure of electricity supply from the electricity grid;
- (k) delay, restraint, restriction, embargo or other material adverse effect arising from any act or omission of any Authority;
- (l) fire, flood, storm surge, cyclone, tornado, earthquake, washaway, landslide, explosion, severe weather conditions or other catastrophe or natural calamity;
- (m) epidemic and quarantine restriction; and
- (n) delay of a supplier due to any of the foregoing whether any such cause of delay exists before, at the time, or after the Commencement Date.

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

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

GST Inclusive Reimbursement is the amount calculated by the formula:

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

Where:

A = the GST inclusive amount paid by Aurizon Network for a Reimbursable Item

B = the rate of GST (expressed as a decimal) applicable at the time the calculation is made

C = any GST input tax credit that Aurizon Network can claim in respect of that Reimbursable Item

Incident means any rollingstock derailment, rollingstock disablement or breakdown, accident, collision or any other unplanned occurrence, on or affecting the use of the Connecting Infrastructure or the Network which causes or contributes to, or could cause or contribute to:

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

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

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

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

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

- (a) as at the date of this Agreement being in the form set out in **Schedule 4**; and
- (b) as subsequently amended in accordance with **clause 13**.

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

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

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

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

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

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

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

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

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

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

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

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

Private Land has the meaning given to that term in **clause 28(c)**.

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

Railway Operator has the meaning given in the Aurizon Network Access Undertaking.

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

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

Reimbursable Item means an item of expense incurred by Aurizon Network in respect of which Aurizon Network is entitled under this Agreement to be reimbursed by the Private Infrastructure Owner for the cost of the item (subject to **clause 1(b)(iv)**).

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

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

Security Amount means the amount specified in Item 3 of **Schedule 1** as it may be adjusted from time to time in accordance with **clause 22(b)**.

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

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

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

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

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

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

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

- (b) Unless expressed to the contrary:
- (i) words importing the singular include the plural and vice versa;
 - (ii) a reference to:
 - (A) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (B) a person includes its legal personal representatives, successors and permitted assigns;
 - (C) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations,

- amendments, re-enactments or replacements of any of them;
- (D) any code, guideline, recommendation or policy, or any provision of any code, guideline, recommendation or policy, includes any modification of it, or the substitution of it or any of its provisions for others, unless otherwise specified or directed by Aurizon Network;
 - (E) any Authority, association or body whether statutory or otherwise (first body) is, if the first body ceases to exist or is re-constituted, re-named or replaced or the powers or functions of the first body are transferred to any other Authority association or body (replacement body), deemed to refer to the replacement body established or constituted in lieu of the first body or as nearly as may be succeeding to the powers or functions of the first body;
 - (F) "\$" or "dollars" is a reference to the lawful currency of Australia;
 - (G) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties; and
 - (H) a clause of the Aurizon Network Access Undertaking is a reference to the Aurizon Network Access Undertaking in force at the Commencement Date and, if that clause is subsequently altered or replaced, the reference will be taken to be to the altered or replacement clause of the Aurizon Network Access Undertaking;
- (iii) where any Party comprises more than one person, then all of those persons together as well as each of them individually must comply with that Party's obligations under this Agreement;
 - (iv) where under this Agreement the Private Infrastructure Owner is required to reimburse a cost to Aurizon Network, the Parties agree that:
 - (A) other than with the prior written approval of the Private Infrastructure Owner, the Private Infrastructure Owner will not be required to reimburse any:
 - (1) profit;
 - (2) margin; or
 - (3) overheads,which is paid or payable to Aurizon Network or a Related Body Corporate of Aurizon Network; and

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

$$\text{Escalated Amount} = \text{Amount} \times \frac{MCI_n}{MCI_x}$$

where:

Escalated Amount is the amount as escalated;

Amount is the amount to be escalated;

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

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

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

2 Term

This Agreement commences on the Commencement Date and expires on the Expiry Date, subject to earlier termination in accordance with **clause 20 (Term)**.

3 Charges, invoicing and payment

- (a) Subject to **clause 1(b)(iv)**, the Private Infrastructure Owner must pay to Aurizon Network the following costs, fees and charges at the times and in the manner specified:
- (i) the Annual Service Charge (if any);
 - (ii) the reasonable and prudent costs of the design, construction and commissioning of modifications to, or upgrade or replacement of, the Connecting Infrastructure in accordance with **clauses 8(e)** and **8(f)**, excluding any costs incurred by Aurizon Network in the performance of its maintenance, operation or reinstatement obligations under this Agreement in relation to the Connecting Infrastructure; and
 - (iii) the reasonable and prudent costs of decommissioning and removing the Connecting Infrastructure upon the expiry, or earlier

termination in accordance with **clause 20**, of this Agreement so as to remove the connection between the Network and the Private Infrastructure and restore the affected section of the Network to a condition consistent with the adjacent sections of the Network,

as adjusted in accordance with **clause 3(b)**.

- (b) (i) The amounts payable by the Private Infrastructure Owner under **clause 3(a)** represent consideration for Aurizon Network meeting all obligations under this Agreement including maintenance and inspection charges for the Connecting Infrastructure and administration of the Agreement.
- (ii) The amounts payable by the Private Infrastructure Owner under **clause 3(a)** must be adjusted by Aurizon Network where an audit undertaken in accordance with **clause 3(e)** has identified an error in the levy, allocation or calculation of the reasonable and prudent costs which have been invoiced to the Private Infrastructure Owner in accordance with **clause 3(c)**.
- (iii) The value of any adjustment required in accordance with **clause 3(b)(ii)** must be:
 - (A) if the Private Infrastructure Owner has already paid the relevant invoice reflecting the unadjusted amount at the time the audit results are released in accordance with **clause 3(e)(iv)**, refunded to the Private Infrastructure Owner by Aurizon Network no later than 5 Business Days after the date the audit results are released; or
 - (B) if the Private Infrastructure Owner has not already paid the relevant invoice reflecting the unadjusted amount at the time the audit results are released in accordance with **clause 3(e)(iv)**, reflected in a new invoice that Aurizon Network must issue to the Private Infrastructure Owner in accordance with **clause 3(c)** together with a cancellation of the invoice reflecting the unadjusted amount no later than 5 Business Days after the date the audit results are released to the Parties and which invoice must specify the relevant adjusted costs, fees and charges to be paid by the Private Infrastructure Owner.
- (iv) To avoid doubt, where Aurizon Network is required to issue a new invoice to the Private Infrastructure Owner on accordance with **clause 3(b)(iii)(b)**, the Private Infrastructure Owner will not be required to pay the relevant prior invoice issued by Aurizon Network which reflected the unaudited value of the relevant costs, fees and charges.
- (v) If for any Maintenance Year, all Train Services which utilised the Connecting Infrastructure to enter and/or exit the Network were

Reference Train Services, no Annual Service Charge will be payable.

(vi) If for any Maintenance Year, some or all of the Train Services which utilised the Connecting Infrastructure to enter and/or exit the Network were not Reference Train Services, the Annual Service Charge will be the proportion of the reasonable and prudent incremental and direct costs actually incurred by Aurizon Network during that Maintenance Year in connection with performing its operation and maintenance activities in relation to the Connecting Infrastructure in accordance with this Agreement, excluding costs:

(A) which are included in access charges for access rights utilised by Train Services entering and/or exiting the Network via the Connecting Infrastructure; and

(B) excluded in accordance with **clause 1(b)(iv)**,

which the non-Reference Train Services which utilised the Connecting Infrastructure during the Maintenance Year bears in proportion to the total number of all Train Services which utilised the Connecting Infrastructure during the Maintenance Year.

(c) Aurizon Network must issue an invoice to the Private Infrastructure Owner for:

(i) the Annual Service Charge (if any) referable to a Maintenance Year, within 30 Business Days of the expiry of that Maintenance Year (with an invoice for an Annual Services Charge calculated pursuant to **clause 3(b)(vi)** being required to provide details of how the relevant proportion and exclusions were calculated); and

(ii) other costs payable under **clause 3(a)** or other clauses of this Agreement, following the incurring of any such costs by Aurizon Network provided that such invoices cannot be issued more regularly than monthly.

The Private Infrastructure Owner must pay the amount invoiced by Aurizon Network within 20 Business Days after the Private Infrastructure Owner's receipt of the invoice.

(d) (i) If the Private Infrastructure Owner disputes an amount or amounts claimed by Aurizon Network in an invoice issued to the Private Infrastructure Owner, the Private Infrastructure Owner may, within 10 Business Days of the invoice being issued, give a Dispute Notice to Aurizon Network specifying that the Dispute will be resolved in accordance with **clause 19** of this Agreement. The Private Infrastructure Owner must pay the undisputed portion of the amount claimed in the relevant invoice on or before the due date for payment. If the Dispute is subsequently resolved in such a way that the Private Infrastructure Owner is required to pay the amount the subject of the Dispute Notice, the Private Infrastructure

Owner must pay the relevant amount to Aurizon Network within 10 Business Days after resolution of the Dispute under **clause 19**.

- (ii) If the Private Infrastructure Owner fails to pay in full any costs, fees or charges payable by the Private Infrastructure Owner under this Agreement on or before the due date for payment, the Private Infrastructure Owner will be liable to pay interest on the outstanding amount at the Default Rate.
 - (iii) Interest payable under **clause 3(d)(ii)** will be calculated on daily balances on the amounts outstanding from the date following the date on which payment of the amount was due until such amount, together with interest thereon, has been paid in full. All interest accrued but unpaid at the end of each month will itself bear interest.
- (e) The Private Infrastructure Owner may at any time require that an audit is undertaken of the costs, fees and charges referred to in **clause 3(a)** for the purpose of verifying that the costs, fees and charges invoiced to the Private Infrastructure Owner have been properly allocated to the Private Infrastructure Owner, and are reasonable and prudent incremental and direct costs. If the Private Infrastructure Owner requires that such an audit is undertaken:
- (i) The auditor must:
 - (A) be a person agreed by the Parties (or failing agreement nominated by the President for the time being of [the Chartered Accountants of Australia]) who is appropriately skilled and qualified to carry out the audit;
 - (B) be impartial and have no interest or duty which conflicts or may conflict with their function as the auditor, the auditor being required to fully disclose any such interest or duty by notice to the Parties before its appointment; and
 - (C) undertake to be bound by reasonable duties of confidence;
 - (ii) the Private Infrastructure Owner must bear the costs of the audit, except where the audit identifies an error in the levy, allocation or calculation of the reasonable and prudent costs which have been invoiced to the Private Infrastructure Owner in which case Aurizon Network must bear the costs of the audit;
 - (iii) Aurizon Network must make available to the auditor such information as the auditor reasonably requires to conduct the audit no later than 2 Business Days following a verbal or written request from the auditor;
 - (iv) promptly following completion of the audit, the results of the audit (which must include findings as to whether the Private Infrastructure Owner has been invoiced the correct amounts and, if not, the financial adjustment required to rectify that error) must be

- made available to Aurizon Network and the Private Infrastructure Owner;
- (v) in the absence of manifest error, the decision of the auditor is final and binding upon Aurizon Network and the Private Infrastructure Owner; and
 - (vi) the auditor must keep confidential all matters coming to their knowledge by reason of their appointment and performance of their duties (including, if required by Aurizon Network or the Private Infrastructure Owner, by entering into a confidentiality agreement).
- (f) Any rights and obligations relating to payments (including any exclusions, restrictions and limitations from or on payments) by Aurizon Network to, or to Aurizon Network from, the Private Infrastructure Owner are only in relation to the transaction expressly set out in this Agreement and the Private Infrastructure Owner's capacity as the owner of the Private Infrastructure. Nothing in this Agreement prevents Aurizon Network or the Private Infrastructure Owner receiving payments under different agreements between them.

4 GST

- (a) Unless otherwise stated, all amounts payable or other consideration to be provided under this Agreement are exclusive of GST.
- (b) If Aurizon Network is required to pay GST on any amount payable or other consideration to be provided under this Agreement then, subject to **clause 4(e)**, the Private Infrastructure Owner must pay to Aurizon Network the amount of that GST on the same date as the payment giving rise to the GST.
- (c) If the supply of a Reimbursable Item under this Agreement is subject to GST, the Private Infrastructure Owner must pay Aurizon Network in respect of that Reimbursable Item the GST Inclusive Reimbursement.
- (d) All invoices prepared pursuant to this Agreement will take the form of a tax invoice.
- (e) If a dispute between Aurizon Network and the Private Infrastructure Owner arises out of or in connection with this **clause 4**, then either Party must give to the other Party a notice of dispute in writing adequately identifying and providing details of the dispute. If the dispute has not been resolved within 10 Business Days after service of a notice of dispute, the dispute must be referred for determination by an expert in accordance with **clause 19(d)**.

5 Access to operate rollingstock on Private Infrastructure, Network and Connecting Infrastructure

- (a) This Agreement does not constitute an agreement between the Parties for:
 - (i) access by Aurizon Network or any third party to operate rollingstock on the Private Infrastructure; or
 - (ii) access by the Private Infrastructure Owner or any third party to operate rollingstock on the Network or the Connecting Infrastructure.
- (b) Arrangements for access to operate rollingstock on the Private Infrastructure, the Network and/or the Connecting Infrastructure will be the subject of a separate agreement or agreements between the relevant entities.

6 Connecting Infrastructure – Private Infrastructure Owner construction

[Under clause 9.1 of the Aurizon Network Access Undertaking, Aurizon Network must design, project manage, construct and commission the Connecting Infrastructure unless otherwise agreed with the Private Infrastructure Owner.]

- (a) This **clause 6** applies if the Private Infrastructure Owner is responsible for the planning, design and construction of the Connecting Infrastructure (as specified in Item 5 of **Schedule 1**).
- (b) To enable the Private Infrastructure Owner to plan, design, construct and otherwise carry out the construction of the Connecting Infrastructure, Aurizon Network must, promptly following a written request from the Private Infrastructure Owner, provide all information and assistance reasonably requested by the Private Infrastructure Owner, at the Private Infrastructure Owner's reasonable and prudent cost, so that the Connecting Infrastructure satisfies the minimum technical, engineering and safety standards required to connect the Private Infrastructure to the Network, including:
 - (i) the provision of technical and engineering information in relation to the Network, including all information relating to the design specifications, infrastructure standards and scope of the rail infrastructure adjacent to the Private Infrastructure or to which the Private Infrastructure will connect;
 - (ii) advice in connection with the design specifications, infrastructure standards and the scope of the rail infrastructure for the coal system which the Private Infrastructure Owner is developing;

- (iii) providing access to planning procedures developed and maintained by Aurizon Network which would reasonably have an impact on the operation of Train Services using the Connecting Infrastructure including any planned or anticipated upgrades or augmentation of the Network;
 - (iv) the provision of information relating to any capacity analysis associated with the Private Infrastructure and Connecting Infrastructure, including capacity modelling assumptions and modelled simulation outputs required for planning and design purposes; and
 - (v) reasonable access to employees, agents and officers of Aurizon Network who have knowledge of the Network, in particular of the matters identified in **clauses 6(b)(i) to (iv)**.
- (c) (i) Prior to commencing construction of the Connecting Infrastructure, the Private Infrastructure Owner may submit the Design to Aurizon Network for approval in accordance with this **clause 6(c)**. Any such submission must be accompanied by details of the Train Services the Private Infrastructure Owner anticipates entering and/or exiting the Network via the Connecting Infrastructure.
- (ii) Within 10 Business Days of submission of the Design in accordance with **clause 6(c)(i)**, Aurizon Network must give written notice to the Private Infrastructure Owner:
- (A) where the Design is unusually complex or otherwise especially difficult to assess, informing the Private Infrastructure Owner that additional time is required to consider the Design, and the reason that additional time is required;
 - (B) approving the Design; or
 - (C) rejecting the Design, in which case Aurizon Network:
 - (1) must give reasons for the rejection; and
 - (2) must give details of any modifications that it requires to be made to the Design so that it is suitable for the purpose of connecting the Private Infrastructure to the Network and for the operation of the Train Services anticipated by the Private Infrastructure Owner.
- (iii) Aurizon Network must approve the Design of the Connecting Infrastructure where the Design:
- (A) meets the technical specifications reasonably required by Aurizon Network for connection to the Network;
 - (B) provides for the Connecting Infrastructure to be constructed to a standard appropriate to the nature of the traffic and the

current service standards of the adjoining part of the Network;

- (C) will have no adverse impact on safety; and
- (D) will not, after completion and commissioning of the proposed connection and any relevant Expansion, reduce capacity of the Network or supply chain capacity,

(together, the **CI Criteria**), provided that Aurizon Network cannot refuse to approve the Design on the basis of **clauses 6(c)(iii)(A) – (C)** above if that would result in the Connecting Infrastructure being required to be of a standard or to be of any condition which exceeds the standard and condition of any relevant part of the Network (including any planned or anticipated Expansion).

- (iv) Within 20 Business Days of giving a notice in accordance with **clause 6(c)(ii)(A)**, Aurizon Network must give written notice to the Private Infrastructure Owner:
 - (A) approving the Design; or
 - (B) rejecting the Design, in which case Aurizon Network:
 - (1) must give reasons for the rejection; and
 - (2) must give details of any modifications that it requires to be made to the Design so that it is suitable for the purpose of connecting the Private Infrastructure to the Network and for the operation of the Train Services anticipated by the Private Infrastructure Owner.
 - (C) Aurizon Network must approve the Design where the Design meets the CI Criteria,

provided that Aurizon Network cannot refuse to approve the Design on the basis that it does not meet the CI Criteria if that would result in the Connecting Infrastructure being required to be of a standard or to be of any condition which exceeds the standard and condition of any relevant part of the Network (including any planned or anticipated Expansion).

- (v) Following receipt of a notice under **clauses 6(c)(ii)(C), 6(c)(iv)(B) or 6(c)(vi)**, the Private Infrastructure Owner may:
 - (A) modify and resubmit the Design, in which case **clause 6(c)(ii)** will reapply; or
 - (B) dispute any of Aurizon Network's reasons for rejecting the Design in which case the matter will be resolved in accordance with clause 11.1 of the Aurizon Network Access Undertaking.
- (vi) If, following approval of the Design by Aurizon Network but prior to the commencement of construction of the Connecting

Infrastructure, Aurizon Network reasonably considers there has been a material change in circumstances such that it would no longer be required to approve the Design pursuant to **clause 6(c)(iii)** it must, as soon as practicable of becoming aware of that change, give notice to the Private Infrastructure Owner of the nature of the material change in circumstances and details of any modifications that it requires to be made to the Design so that it is suitable for the purpose of connecting the Private Infrastructure to the Network and for the operation of the Train Services anticipated by the Private Infrastructure Owner. Where it is the conduct of Aurizon Network or an Aurizon Party in respect of the Network which would cause the material change in circumstances:

- (A) Aurizon Network must consult with the Private Infrastructure Owner before implementing any such change; and
 - (B) the Private Infrastructure Owner will not be required to pay any costs associated with such change if the material change in circumstances is the result of Aurizon Network or an Aurizon Party's wilful misconduct, wilful default or gross negligence.
- (d) (i) At the request of the Private Infrastructure Owner, Aurizon Network must, at the Private Infrastructure Owner's cost (to the extent that such costs are reasonable), inspect works in progress for the Connecting Infrastructure to determine:
- (A) whether the Design approved in accordance with **clause 6(c)** (including any modifications made following a notice under **clause 6(c)(vi)**) appears to have been complied with to the date of inspection; and
 - (B) whether there is any evidence of defects or issues with the works in progress to the date of inspection that may result in the Connecting Infrastructure not meeting the suitability requirements in **clause 6(d)(ii)**,
- and advise the Private Infrastructure Owner as soon as reasonably practicable of the results of that inspection, and how it considers any such potential non-compliances, defects or issues could be rectified.
- (ii) Prior to the Commitment Date, Aurizon Network must inspect the Connecting Infrastructure within 10 Business Days of a written request from the Private Infrastructure Owner, to determine whether it is suitable for the purpose of connecting the Private Infrastructure to the Network and for the operation of the Train Services contemplated to enter or exit the Network via the Connecting Infrastructure under any access agreement. The Connecting Infrastructure will be suitable for these purposes where it:

(A) complies with any Design approved in accordance with **clause 6(c)** (including any modifications made following a notice under **clause 6(c)(vi)**); or

(B) complies with the CI Criteria,

provided that the Connecting Infrastructure will be deemed to meet the CI Criteria if a contrary treatment would result in Aurizon Network requiring the Connecting Infrastructure to be of a standard or to be of any condition which exceeds the standard and condition of any relevant part of the Network (including any planned or anticipated Expansion).

(iii) If Aurizon Network has, in accordance with **clause 6(d)(ii)**, determined that modification or upgrade to, or replacement of, the Connecting Infrastructure is required in order to make it suitable for those purposes, Aurizon Network must:

(A) first, consult with the Private Infrastructure Owner in respect of the work which Aurizon Network believes is required with a view to agreeing the most efficient and effective means of making the Connecting Infrastructure suitable for the purposes set out in **clause 6(d)(ii)**; and

(B) second, if Aurizon Network believes that work is still required and having regard to the consultation with the Private Infrastructure Owner, give to the Private Infrastructure Owner a written notice setting out comprehensive details of the work required (including a scope of work) and comprehensive reasons why Aurizon Network considers that the work is required (**Connecting Infrastructure Work Notice**).

(iv) The Private Infrastructure Owner may dispute all or any part of the Connecting Infrastructure Work Notice in accordance with this Agreement.

(v) Within the period of 15 Business Days (or such longer period as the Parties may agree) from the date on which the Connecting Infrastructure Work Notice was issued and provided that the Private Infrastructure Owner has not disputed the Connecting Infrastructure Work Notice, the Private Infrastructure Owner must commence carrying out, or cause to be carried out, those modifications, upgrades or replacement, at the Private Infrastructure Owner's cost (to the extent that such costs are reasonable). If the Private Infrastructure Owner has disputed the Connecting Infrastructure Work Notice and it is determined in a dispute resolution carried out in accordance with this Agreement that the work described in the Connecting Infrastructure Work Notice is reasonably required, the Private Infrastructure Owner

must carry out, or cause to be carried out, that work following and in accordance with the determination of the dispute.

7 Connecting Infrastructure – Aurizon Network construction

- (a) This **clause 7** applies if Aurizon Network is responsible for the planning, design and construction of the Connecting Infrastructure (as specified in Item 5 of **Schedule 1**).
- (b)
 - (i) Aurizon Network will design, construct, project manage and commission the Connecting Infrastructure, at the cost of the Private Infrastructure Owner, in accordance with the terms of the separate construction agreement between the Parties (**Construction Agreement**), subject to compliance with the terms of this **clause 7**.
 - (ii) Prior to commencing construction of the Connecting Infrastructure, and in any event within [x timeframe] of approving the Private Infrastructure Owner's access proposal under clause 9.1 of the Aurizon Network Access Undertaking, Aurizon Network must submit to the Private Infrastructure Owner for review and comment a draft of the Construction Agreement and the Design (these two documents are not required to be submitted to the Private Infrastructure Owner simultaneously).
 - (iii) Within [10 Business Days] of submission of the Design and the Construction Agreement by Aurizon Network in accordance with **clause 7(b)(ii)**, the Private Infrastructure Owner must give written notice to Aurizon Network:
 - (A) where the Design or the Construction Agreement (or both) are unusually complex or otherwise especially difficult to assess, informing Aurizon Network that additional time is required to consider the Design or the Construction Agreement (or both) and the reason that additional time is required, such additional time not to exceed a further [x timeframe]; or
 - (B) approving the Design or the Construction Agreement (or both); or
 - (C) rejecting the Design or the Construction Agreement (or both), in which case the Private Infrastructure Owner must give:
 - (1) reasons for the rejection; and
 - (2) details of any amendments it requires to be made to the Design or the Construction Agreement (or both) so that they are each suitable for the purpose of

connecting the Private Infrastructure to the Network for the operation of the Train Services anticipated by the Private Infrastructure Owner.

(iv) The Private Infrastructure Owner may only request amendments under **clause 7(b)(iii)(C)** above if they relate to:

- (A) the CI Criteria; or
- (B) project management or timing issues that the Private Infrastructure owner considers will result in non-prudent or unreasonable costs or delays being incurred,

provided that the Private Infrastructure Owner cannot refuse to approve the Design or the Construction Agreement (or both) on the basis of **clauses (A) or (B)** above if that would result in the Connecting Infrastructure being required to be of a standard or to be of any condition which exceeds the standard and condition of any relevant part of the Network (including any planned or anticipated Expansion).

(v) Within [20 Business Days] of giving a notice in accordance with **clause 7(b)(iii)(A)**, the Private Infrastructure Owner must give written notice to Aurizon Network under either **clause 7(b)(iii)(B)** or **(C)**, in accordance with **clause 7(b)(iv)**.

(vi) Following:

(A) receipt of a notice under **clauses 7(b)(iii)(C) or 7(b)(vii)**, Aurizon Network must, within [20 Business Days]:

- (1) modify and resubmit the Design or the Construction Agreement (as applicable); or
- (2) dispute any of the Private Infrastructure Owner's reasons for rejecting the Design or the Construction Agreement (as applicable) in which case the matter will be resolved in accordance with Part 11 of the Aurizon Network Access Undertaking; or

(B) a failure by Aurizon Network to make a submission in accordance with **clause 7(b)(ii)**, the Private Infrastructure Owner may refer to the matter to be resolved in accordance with Part 11 of the Aurizon Network Access Undertaking.

(vii) If, following approval of the Design and the Construction Agreement by the Private Infrastructure Owner but prior to execution of the Construction Agreement, the Private Infrastructure Owner reasonably considers there has been a material change in circumstances such that it would no longer be able to approve the Design pursuant to **clause 7(b)(iv)** it must, as soon as practicable of becoming aware of that change, give notice to Aurizon Network of the nature of the material change in circumstances and details

of any modifications that it requires to be made to the Design and the Construction Agreement so that it is suitable for the purpose of connecting the Private Infrastructure to the Network and for the operation of the Train Services anticipated by the Private Infrastructure Owner. Where it is the conduct of the Private Infrastructure Owner or a PIO Party in respect of the Network which would cause the material change in circumstances:

- (A) the Private Infrastructure Owner must consult with Aurizon Network before implementing any such change; and
 - (B) Aurizon Network will not be required to pay any costs associated with such change if the material change in circumstances is the result of the Private Infrastructure Owner or a PIO Party's wilful misconduct, wilful default or gross negligence.
- (viii) The Construction Agreement must contain at least the following terms and these terms prevail over other terms in the Construction Agreement to the extent of any inconsistency:
- (A) Aurizon Network must give the Private Infrastructure Owner a reasonable period within which to provide comments to Aurizon Network on any design or construction matters, or project management issues which the Private Infrastructure Owner considers will result in non-prudent or unreasonable costs or delays being incurred;
 - (B) any dispute arising out of or in relation to the negotiation of the Construction Agreement which relates to a matter which the Aurizon Network Access Undertaking provides for the parties to have a right to resolve via the dispute provisions in the Aurizon Network Access Undertaking, will be resolved in accordance with the Aurizon Network Access Undertaking;
 - (C) the Private Infrastructure Owner must pay (under and in accordance with the Construction Agreement) to Aurizon Network the reasonable and prudent costs of the work carried out by or for Aurizon Network in accordance with **clause 7(b)(i)**, provided that the Private Infrastructure Owner may dispute the amount of those costs in accordance with the Construction Agreement or with **clause 7(b)(viii)(B)**;
 - (D) Aurizon Network must provide reasonable substantiation of the costs sought to be recovered by it;
 - (E) Aurizon Network must give the Private Infrastructure Owner written notice of completion of the construction of the Connecting Infrastructure and an estimate of the further time required for commissioning and other activities before the Connecting Infrastructure will be available for utilisation by Train Services;

- (F) Aurizon Network is not permitted to contract work to an Aurizon Party without the written approval of the Private Infrastructure Owner; and
- (G) Aurizon Network must not materially vary the works for the Connecting Infrastructure from the initial design without notifying the Private Infrastructure Owner.

8 Connecting Infrastructure – post commissioning

- (a) For the avoidance of doubt:
 - (i) as between the Parties, the Connecting Infrastructure must at all times (including during the construction process) be owned by Aurizon Network;
 - (ii) Aurizon Network must not Assign the Connecting Infrastructure except as expressly permitted in this Agreement unless at the same time it also:
 - (A) Assigns the adjoining Branch Line in favour of the same assignee; and
 - (B) procures that the assignee enters into a deed of novation in favour of the Private Infrastructure Owner in respect of its obligations under this Agreement on such terms as the Private Infrastructure Owner may reasonable require;
 - (iii) Aurizon Network must not remove, relocate or part with possession of the Connecting Infrastructure except as expressly permitted in this Agreement; and
 - (iv) Aurizon Network must ensure that, once constructed, the Connecting Infrastructure is connected to the Network immediately.
- (b) Aurizon Network must inspect the Connecting Infrastructure at least once per year during the term of this Agreement, to assess the state of repair of the Connecting Infrastructure.
- (c) Aurizon Network must maintain and repair the Connecting Infrastructure to the standard required to maintain the connection between the Network and the Private Infrastructure including the standards outlined in **clause 9(d)**.
- (d) Subject to **clause 20(h)**, Aurizon Network must reinstate or replace any part of the Connecting Infrastructure that is damaged or destroyed to the standard required to maintain the connection between the Network and the Private Infrastructure.
- (e) At any time Aurizon Network may require modifications or upgrades to, or replacement of, the Connecting Infrastructure, but only to the extent that such modifications, upgrades or replacement are reasonably

required to ensure that the Connecting Infrastructure complies with the CI Criteria

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

- (f) Aurizon Network must give to the Private Infrastructure Owner comprehensive written details of any modifications, upgrades or replacement that it requires to be made to the Connecting Infrastructure under **clause 8(e)**, and thereafter provide the Private Infrastructure Owner with a reasonable opportunity to consult with Aurizon Network about the proposed modifications, upgrades or replacements. If after consulting with the Private Infrastructure Owner Aurizon Network considers that it is required to carry out, or cause to be carried out, those modifications, upgrades or replacement it must give the Private Infrastructure Owner a written notice (including full details) and carry out or cause to be carried out that work at the Private Infrastructure Owner's cost (subject to the Private Infrastructure Owner's right to dispute). The Private Infrastructure Owner may dispute the amount of the costs payable in respect of any modifications, upgrade or replacement, the scope of work and/or who Aurizon Network chooses to carry out the work.
- (g) The Parties acknowledge that the construction and commissioning of modifications or upgrades to, or replacement of, the Network or Connecting Infrastructure, and the maintenance or repair of the Network or Connecting Infrastructure, may cause disruption to Train Services which cannot reasonably be avoided. Aurizon Network must:
 - (i) subject to **clause 8(g)(ii)**, give the Private Infrastructure Owner reasonable prior written notice of any such works and any reasonably expected disruptions;
 - (ii) in the case of emergency maintenance and emergency repairs, notify the Private Infrastructure Owner as soon as reasonably practicable of any such works and any reasonably expected disruptions (to avoid doubt, this **clause 8(g)(ii)** does not prevent Aurizon Network from carrying out any such works or causing any disruptions to the extent reasonably necessary in the case of an emergency without prior written notice to the Private Infrastructure Owner); and
 - (iii) minimise any disruptions and the effects of any disruptions insofar as it is reasonably practicable to do so.
- (h) Aurizon Network will, upon reasonable notice to the Private Infrastructure Owner and the Rail Infrastructure Manager of the Private Infrastructure (to the extent it is not the Private Infrastructure Owner or Aurizon Network), be entitled to enter and remain upon the Private Infrastructure,

with such workmen and machinery as may be necessary, to the extent reasonably necessary to exercise its rights, and fulfil its obligations in relation to maintenance and repair of the Connecting Infrastructure, under this Agreement. Aurizon Network must, and must procure that any persons it authorises to access the Connecting Infrastructure, comply with the requirements of **clause 28(d)** in relation to access to Private Land.

- (i) If Aurizon Network proposes to make changes to the System Operating Parameters (as defined under the Aurizon Network Access Undertaking) relevant to that part of the Network of which the Branch Line and Connecting Infrastructure form a part, then Aurizon Network must:
 - (i) notify the Private Infrastructure Owner and any other person affected by the changes to the System Operating Parameters of those changes as soon as reasonably practicable, which notice must include a timeframe in which the Private Infrastructure Owner may request a consultation meeting with Aurizon Network in respect of those changes; and
 - (ii) within [x timeframe] of a request from the Private Infrastructure Owner under **clause 8(i)(i)** meet with the Private Infrastructure Owner to negotiate in good faith and agree the proposed changes.

If the Private Infrastructure Owner and Aurizon Network are unable to agree within the [x timeframe] specified in **clause 8(i)(ii)**, the matter must be referred to an expert for resolution in accordance with the process outlined in **clause 19(d)**.

9 Maintenance of and modification or upgrade to Private Infrastructure

- (a) Aurizon Network may require modifications or upgrades to be made to the Private Infrastructure to the extent that such modifications or upgrades are reasonably required to rectify a non-compliance with the standard described at **clause 9(d)**.
- (b) Any modifications or upgrades to the Private Infrastructure required by Aurizon Network must be carried out by or on behalf of the Private Infrastructure Owner at the Private Infrastructure Owner's cost, and must in all respects comply with the minimum technical, engineering and safety standards that would be expected of a competent Accredited Rail Infrastructure Manager, as determined by an independent appropriately qualified person acceptable to both Parties (or failing agreement by the President for the time being of Engineers Australia, Queensland Division).
- (c) The Private Infrastructure Owner must carry out, or cause to be carried out, the construction and commissioning of any modifications or upgrades to the Private Infrastructure in such a way as to minimise the

disruption to Train Services insofar as it is reasonably practicable to do so.

- (d) The Private Infrastructure Owner must, at its cost, at all times ensure that the Private Infrastructure is operated and maintained and any future modifications are designed and constructed to a standard which:
 - (i) satisfies the minimum technical, engineering and safety standards that would be expected of a competent Accredited Rail Infrastructure Manager in accordance with all applicable laws and standards;
 - (ii) enables Trains to fully depart the Network and run onto the Private Infrastructure, or to fully depart the Private Infrastructure and run onto the Network, at the speed for which the relevant sections of the Network were originally designed;
 - (iii) maintains the integrity of all electrical, signalling and telecommunications interfaces between the Private Infrastructure and the connecting sections of the Network (including the Connecting Infrastructure);
 - (iv) maintains the integrity of any weighbridge or overload detector on the Private Infrastructure; and
 - (v) does not have an adverse impact on the safety or operation of the Connecting Infrastructure or the Network,

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

- (e) If coal is loaded and transported from a Transfer Facility utilising the Private Infrastructure onto the Network via the Connecting Infrastructure, the Private Infrastructure Owner must ensure that all coal Trains that depart the Private Infrastructure and enter the Network comply with CLMP.
- (f) If the Private Infrastructure Owner reaches an arrangement with Aurizon Network for Aurizon Network to carry out the design construction and/or maintenance of the Private Infrastructure, that arrangement will be the subject of a separate written agreement between the Parties.
- (g) The Private Infrastructure Owner must provide to Aurizon Network all information collected by any weighbridge or overload detector which is located on the Private Infrastructure before departing the Transfer Facilities (or for non-coal related Train Services, the relevant loading facility), or at such other reasonable intervals and in such reasonable manner as may be specified in writing by Aurizon Network to the Private Infrastructure Owner from time to time.

- (h) The Private Infrastructure Owner must, in relation to the Private Infrastructure and solely in its capacity under this Agreement, provide to Aurizon Network, in a form reasonably requested by Aurizon Network from time to time, all electrical, signalling and telecommunications information required by Aurizon Network to manage and operate the Network (including the Connecting Infrastructure and all Trains entering or running on the Network).
- (i) Aurizon Network may, and the Private Infrastructure Owner must permit Aurizon Network to, have reasonable access to inspect (from time to time) the connecting sections of the Private Infrastructure and any construction or maintenance of those connecting sections of the Private Infrastructure, in relation to the Private Infrastructure Owner's compliance with this **clause 9**. Aurizon Network must:
 - (i) give the Private Infrastructure Owner at least 5 Business Days' written notice of any such inspection, except in an emergency when Aurizon Network must give as much notice as is practicable in the circumstances; and
 - (ii) at all times comply with the requirements of **clause 28(d)** in relation to access to Private Land, including in the event of an emergency.
- (j) The Private Infrastructure Owner is responsible for all electrical safety obligations for the Private Infrastructure.

10 Safety training

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

11 Accreditation requirements

- (a) The Private Infrastructure Owner must be Accredited, or procure another person or entity to be Accredited, as the Rail Infrastructure Manager for the Private Infrastructure prior to the Commitment Date.
- (b) The Private Infrastructure Owner must:
 - (i) if the Private Infrastructure Owner:
 - (A) is the Rail Infrastructure Manager for the Private Infrastructure, maintain its Accreditation and comply with all conditions of its Accreditation prior to the Commitment Date and thereafter until the Expiry Date; or
 - (B) is not the Rail Infrastructure Manager for the Private Infrastructure, ensure that the Rail Infrastructure Manager for the Private Infrastructure maintains its Accreditation and complies with all conditions of its Accreditation prior to the Commitment Date and thereafter until the Expiry Date;
 - (ii) notify Aurizon Network immediately if at any time during the Term the Rail Infrastructure Manager for the Private Infrastructure ceases to be Accredited in respect of the Private Infrastructure.
- (c) Aurizon Network must:
 - (i) maintain its Accreditation and comply with all conditions of its Accreditation as the Rail Infrastructure Manager for the Connecting Infrastructure and the Network prior to the Commitment Date and thereafter until the Expiry Date;
 - (ii) notify the Private Infrastructure Owner immediately if at any time during the Term it has ceased to be Accredited in respect of the Connecting Infrastructure or the Network.

12 Exchange of safety and interface information

- (a) This **clause 12** applies where the Private Infrastructure Owner is the Rail Infrastructure Manager for the Private Infrastructure or has contracted an entity other than Aurizon Network to do so. Where this **clause 12** applies, references to a Party or Parties in this **clause 12** will include the Rail Infrastructure Manager for the Private Infrastructure which is contracted by the Private Infrastructure Owner from time to time.
- (b) If the Private Infrastructure Owner intends to act as, or contract an entity other than Aurizon Network to act as, the Rail Infrastructure Manager for the Private Infrastructure, the Private Infrastructure Owner must notify Aurizon Network of that intention no less than:
 - (i) where such an entity will be the Rail Infrastructure Manager for the Private Infrastructure on the Commitment Date, 90 days prior to the Commitment Date; or

- (ii) where such an entity will become the Rail Infrastructure Manager for the Private Infrastructure subsequent to the Commitment Date, 90 days prior to the date on which they are scheduled to become the Rail Infrastructure Manager.
- (c) Within 10 Business Days of receiving a notification under **clause 12(b)**, Aurizon Network must notify the Private Infrastructure Owner of all interface standards required by Aurizon Network for the Private Infrastructure to connect to the Network and to maintain that connection.
- (d) The Parties must collaborate with each other for the purpose of the development, management and continuous improvement of all interface matters relating to the Private Infrastructure, the Connecting Infrastructure and the Network, including:
 - (i) implementing and maintaining measures for managing interface and safety risks;
 - (ii) evaluating, testing and, if necessary, revising of those measures;
 - (iii) identifying accountabilities, authorities and reporting requirements of each Party, including safety requirements, roles and responsibilities of staff; and
 - (iv) monitoring compliance with obligations of the parties to this and any related interface agreements.
- (e) (i) As required by the Rail Infrastructure Manager for the Private Infrastructure or Aurizon Network (**Requesting Party**), the other entity (**Providing Party**) must provide the Requesting Party (and all other personnel nominated by the Requesting Party) with the latest published versions of all documents relating to the following interface matters that may occur, or have an impact, on the operation of the Connecting Infrastructure:
 - (A) the Providing Party's safety policies, including compliance arrangements with legislative safety requirements;
 - (B) safety documentation associated with all accountabilities, authorities and reporting of safety requirements and relevant competencies for relevant staff and safety audit regimes;
 - (C) procedures for managing notifiable occurrences or reportable incidents;
 - (D) interface risk management plans;
 - (E) interface management plans;
 - (F) where Aurizon Network is the Providing Party, changes to rail infrastructure standards of the section of the Network the Private Infrastructure connects to and between the Connecting Infrastructure and the destination of the Train

- Services entering and/or exiting the Network via the Connecting Infrastructure;
- (G) where Aurizon Network is the Providing Party, Network operating requirements and operating procedures that are relevant to the operation of the Connecting Infrastructure or to Train Services entering and/or exiting the Network via the Connecting Infrastructure;
 - (H) relevant timetabling and scheduling information and procedures;
 - (I) operational interface procedures;
 - (J) emergency response plans;
 - (K) rollingstock standards;
 - (L) train operating protocols;
 - (M) planning and management of possessions;
 - (N) communications protocols; and
 - (O) such other procedures and protocols as the Providing Party publishes or develops relating to functions associated with undertaking the role of Rail Infrastructure Manager.
- (ii) Each Party must participate in:
 - (A) reviews of the safety management systems and safety assurance matters in respect of interface issues;
 - (B) meetings, workshops and forums reasonably requested by the other Party which involve safety and operational interface matters (including general engineering standards and operational safety requirements);
 - (C) identification of relevant engineering standards and procedures and operational systems safety standards; and
 - (D) development of interface risk management planning activities reasonably required by the other Parties.
- (f) (i) Prior to disclosing any information pursuant to this **clause 12**, a Providing Party may require that the Requesting Party enter into a confidentiality deed in the form set out in **Schedule 6** except to the extent that any information to be disclosed by either entity under this **clause 12** is already subject to confidentiality obligations under another agreement between the entities (including any interface agreement entered into in accordance with **clause 13(k)**).
 - (ii) Where the Private Infrastructure Owner or the Rail Infrastructure Manager for the Private Infrastructure requests amendments to the form of confidentiality deed set out in **Schedule 6**, the Parties must negotiate those amendments in good faith.

- (iii) If the Rail Infrastructure Manager for the Private Infrastructure executes a confidentiality deed in the form set out in **Schedule 6**, the Private Infrastructure Owner may require that Aurizon Network sign the confidentiality deed.

13 Interface Risk Assessment and Emergency Response Plan

- (a) If at any time during the Term either Party notifies the other Party that it believes that the then current Interface Risk Management Plan is no longer effective in managing the interface risks associated with the Connecting Infrastructure, the Parties must promptly meet to jointly review the Interface Risk Management Plan (including conducting a revised Interface Risk Assessment to the extent considered necessary) and in good faith endeavour to agree upon any amendments to the Interface Risk Management Plan to ensure all interface risks, including any risks which have arisen subsequently to the Interface Risk Management Plan, are effectively managed.
- (b) If the Parties are unable to agree on any aspects of the Interface Risk Assessment or the Interface Risk Management Plan within [20] Business Days of commencement of the joint review of the Interface Risk Management Plan under **clause 13(a)**, either Party may give a Dispute Notice to the other Party and the Dispute will be referred to an expert for resolution in accordance with **clause 19(d)**. The Parties agree that the expert for the purposes of this **clause 13(b)** and **clause 19(d)(i)** will be the Safety Regulator. If the Safety Regulator refuses or is unable (for any reason whatsoever) to determine the Dispute, the expert will be appointed by the President for the time being of Engineers Australia, Queensland Division.
- (c) If, after a review pursuant to **clause 13(a)** or **13(b)**, the Parties agree or an expert determines that the Interface Risk Management Plan requires amendment to effectively manage the interface risks, the plan will be so amended and the amended plan will be taken to be the Interface Risk Management Plan.
- (d) The Private Infrastructure Owner must during the Term maintain an Emergency Response Plan reasonably satisfactory to Aurizon Network. The Private Infrastructure Owner must incorporate any findings arising from the joint review conducted pursuant to **clause 13(a)** or an investigation pursuant to **clause 13(j)** into the Emergency Response Plan or Interface Risk Management Plan (as applicable) as soon as possible.
- (e) The Parties must at all times comply with the Emergency Response Plan and the Interface Risk Management Plan, and must ensure that their officers, employees, agents and independent contractors (including, in respect of the Private Infrastructure Owner, any Rail Infrastructure

Manager for the Private Infrastructure that is not Aurizon Network) also comply.

- (f) The Private Infrastructure Owner must not knowingly cause or permit any obstructions on the Connecting Infrastructure or the Network except where otherwise agreed with Aurizon Network.
- (g) Subject to **clause 13(h)**, following an Incident the Parties must (and the Private Infrastructure Owner must procure that the Rail Infrastructure Manager for the Private Infrastructure must) cooperate and use all reasonable endeavours to restore the Connecting Infrastructure, the Network and the Private Infrastructure to normal operation as soon as possible, including taking any reasonable action necessary in respect of recovery of rollingstock and repairs to the Connecting Infrastructure, the Network and the Private Infrastructure. Where necessary, a Party must permit the other (or the Rail Infrastructure Manager for the Private Infrastructure) to enter and remain upon the Connecting Infrastructure, the Network or the Private Infrastructure (subject to compliance with **clause 28(d)**) with such workmen and machinery as may be necessary, to enable prompt recommencement of Train Movements.
- (h) The Parties acknowledge that Aurizon Network will give priority to any action necessary to restore the Network to normal operation as soon as possible following an Incident. Nothing in **clause 13(g)** will be interpreted to require Aurizon Network to take or refrain from taking any action which would cause or be likely to cause any delay in restoring the Network to normal operation or which would or would be likely to hinder Aurizon Network in restoring the Network to normal operation as soon as possible, notwithstanding that such action may result in a delay in restoration of the Private Infrastructure or Connecting Infrastructure.
- (i) Subject to any requirement of the TRSA, if an Incident arises on the Private Infrastructure and causes damage to or affects the operation of the Connecting Infrastructure or the Network, the Private Infrastructure Owner must procure that the Rail Infrastructure Manager for the Private Infrastructure assume responsibility for the overall coordination and management of the response to the Incident (including notifying all relevant emergency services). The parties must cooperate with and assist the Rail Infrastructure Manager for the Private Infrastructure in responding to the Incident.
- (j) Subject to any requirement of the TRSA, where an Incident arising on the Private Infrastructure causes damage to or affects the operation of the Connecting Infrastructure or the Network:
 - (i) an investigation into the Incident will be commenced as soon as practicable unless otherwise agreed;
 - (ii) the Private Infrastructure Owner must at its cost procure that such investigation is conducted by the Rail Infrastructure Manager for the Private Infrastructure;

- (iii) subject to any obligations on Aurizon Network in relation to “Protected Information” in Part 3 of Aurizon Network’s Access Undertaking, each Party must cooperate and ensure their respective staff cooperate fully with any investigation, and must ensure that any such investigation has reasonable access to all relevant files, documents, employees (including the taking of statements), equipment, copies of train graphs, voice recordings, data log recordings, maintenance records and any other information which may be relevant to any investigation, and all such information will be treated as confidential;
 - (iv) each Party must consult with the other in relation to the implementation of any recommendations arising from an investigation; and
 - (v) the Private Infrastructure Owner must (or will procure that the Rail Infrastructure Manager for Private Infrastructure) provide to Aurizon Network a copy of the report produced as a result of the investigation, except that any information within the report that is market sensitive, confidential or subject to legal professional privilege need not be disclosed.
- (k) Subject to any requirement of the TRSA, if an Incident arises on the Connecting Infrastructure or the Network and causes damage to or affects the operation of the Private Infrastructure, Aurizon Network must assume responsibility for the overall coordination and management of the response to the Incident (including notifying all relevant emergency services). The Private Infrastructure Owner (and the Rail Infrastructure Manager for the Private Infrastructure, if not Aurizon Network) must cooperate with and assist Aurizon Network in responding to the Incident.
- (l) Subject to any requirement of the TRSA, where an Incident arising on the Connecting Infrastructure or the Network causes damage to or affects the operation of the Private Infrastructure:
- (i) Aurizon Network must:
 - (A) commence an investigation into the Incident as soon as practicable unless otherwise agreed; and
 - (B) to the extent applicable, comply with the Investigation Procedures;
 - (ii) subject to any obligations on Aurizon Network in relation to “Protected Information” in Part 3 of Aurizon Network’s Access Undertaking, each Party must cooperate and ensure their respective staff cooperate fully with any investigation, and must ensure that any such investigation has reasonable access to all relevant files, documents, employees (including the taking of statements), equipment, copies of train graphs, voice recordings, data log recordings, maintenance records and any other

information which may be relevant to any investigation, and all such information will be treated as confidential

- (iii) each Party must consult with the other in relation to the implementation of any recommendations arising from an investigation; and
 - (iv) Aurizon Network must provide to the Private Infrastructure Owner (and the Rail Infrastructure Manager for the Private Infrastructure, if not Aurizon Network) a copy of the report produced as a result of the investigation, except that any information within the report that is market-sensitive, confidential or subject to legal professional privilege need not be disclosed.
- (m) If the Private Infrastructure Owner is not the Rail Infrastructure Manager for the Private Infrastructure, then the Private Infrastructure Owner must procure that prior to:
- (i) the Commitment Date; and
 - (ii) the appointment of any new Rail Infrastructure Manager for the Private Infrastructure,
- the existing or new (as applicable) Rail Infrastructure Manager for the Private Infrastructure enters into an interface agreement (as defined in section 71 of the TRSA) with Aurizon Network in accordance with section 59 of the TRSA.
- (n) To the extent that the Rail Infrastructure Manager for the Private Infrastructure has not entered an interface agreement in accordance with **clause 13(k)** Aurizon Network may suspend, until such an interface agreement is entered, some or all of the Private Infrastructure Owner's rights under this Agreement and the running of Train Services across the Connecting Infrastructure by giving written notice to the Private Infrastructure Owner of the extent of rights being suspended, but Aurizon Network must lift the suspension immediately after the Rail Infrastructure Manager for the Private Infrastructure enters an interface agreement in accordance with **clause 13(m)**.

14 Train Control

- (a) Aurizon Network is responsible for the scheduling and control of all Train Movements entering and exiting the Private Infrastructure from or to the Network.
- (b) Aurizon Network may, in its absolute discretion, not schedule Trains to and from the Private Infrastructure if:
 - (i) Aurizon Network is notified by the Private Infrastructure Owner under **clause 15(a)** that it is unsafe to do so or that there is an obstruction on the Network, Connecting Infrastructure or Private

- Infrastructure which would prevent such Trains from reaching their origin or destination;
- (ii) the Private Infrastructure Owner is in breach of any of its obligations under **clause 9(d)** and the breach continues unremedied for 20 Business Days after notice from Aurizon Network to remedy such breach;
 - (iii) the Rail Infrastructure Manager for the Private Infrastructure has not entered into an Interface Agreement with Aurizon Network, or such agreement is terminated; or
 - (iv) the Rail Infrastructure Manager for the Private Infrastructure ceases to be Accredited in respect of the Private Infrastructure, except where the loss of Accreditation is caused or contributed to by the wilful misconduct, wilful default or gross negligence of Aurizon Network or an Aurizon Party.
- (c) Subject to its rights under **clause 14(b)** and its obligations under the Network Management Principles (as defined in the Aurizon Network Access Undertaking), Aurizon Network must use reasonable endeavours to schedule Train Movements to and from the Private Infrastructure to ensure Train Services utilising the Connecting Infrastructure enter and exit the Network and Connecting Infrastructure in a manner that enables such a Train Service to utilise any corresponding access rights held in respect of the Network.
- (d) The Private Infrastructure Owner must, or must procure that any contracted Rail Infrastructure Manager for the Private Infrastructure that is not Aurizon Network must, co-operate with Aurizon Network to seek to achieve the scheduling outcomes described in **clause 14(c)** and comply with directions of Aurizon Network's train controllers regarding entry to and exit from the Connecting Infrastructure.

15 Notification of matters affecting the Private Infrastructure

- (a) The Private Infrastructure Owner (or its contracted Rail Infrastructure Manager for the Private Infrastructure) must verbally advise the Aurizon Network contact specified in Item 7 of **Schedule 1** immediately upon becoming aware of any circumstances which:
- (i) make it unsafe to schedule Trains onto the Private Infrastructure, or have affected, or could potentially affect, the security or safety of the Private Infrastructure or persons or property on or near the Private Infrastructure;
 - (ii) have affected, or could potentially affect, the ability of any Train Service to conform with its scheduled time;

- (iii) could cause, or has caused, an Incident or a Claim involving Train Services or an obstruction on the Network, Connecting Infrastructure or Private Infrastructure (including overloading on any Train Service);
 - (iv) if coal is loaded and transported from a Transfer Facility utilising the Private Infrastructure onto the Network via the Connecting Infrastructure, constitutes a breach of the CLMP; or
 - (v) constitute, or could constitute, a breach of the Emergency Response Plan.
- (b) Such verbal notification must be confirmed in writing by the Private Infrastructure Owner (or its contracted Rail Infrastructure Manager for the Private Infrastructure) as soon as practicable thereafter, where the circumstance notified is relevant to Aurizon Network's management and operation of the Network or Connecting Infrastructure.
 - (c) If coal is loaded and transported from a Transfer Facility utilising the Private Infrastructure onto the Network via the Connecting Infrastructure, the Private Infrastructure Owner must comply with the reporting obligations in the CLMP.

16 No requirement to take action jeopardising Accreditation

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

17 Force Majeure Event

- (a) Subject to **clause 17(b)**, if by reason of a Force Majeure Event affecting a Party, that Party (**Affected Party**) is delayed in or prevented from carrying out, whether wholly or in part, its obligations under this Agreement (other than an obligation to make any payment) then the obligations of that Party will be suspended during that time and to the extent that performance of such obligations is prevented or hindered by the Force Majeure Event.
- (b) The Affected Party must:
 - (i) notify the other Party as soon as reasonably practicable of the occurrence of the Force Majeure Event (including details of the Force Majeure Event and the obligations affected) and its

proposed course of action to remedy or abate the Force Majeure Event;

- (ii) use all reasonable diligence to remedy or abate, and mitigate the effects of, the Force Majeure Event (provided that no Party will be obliged to settle any strike, lockout or other labour dispute on terms not reasonably acceptable to it); and
- (iii) resume performance, or partial performance, as soon as reasonably practicable.

18 Insurance

- (a) The Private Infrastructure Owner must, at its expense, take out and subsequently maintain current at all times during the Term, or procure the Rail Infrastructure Manager for the Private Infrastructure to take out and subsequently maintain current at all times during the Term, insurance with a corporation licensed to conduct insurance business in Australia for the risks and on the terms specified in **Schedule 3**.
- (b) Aurizon Network must, at its expense, take out and subsequently maintain current at all times during the Term, insurance with a corporation licensed to conduct insurance business in Australia for the risks and on the terms specified in **Schedule 3**.
- (c) Prior to the Commitment Date and then within 10 Business Days after a written request is made by the other Party, a Party must provide the other Party with a certificate of currency in respect of the insurance policies effected pursuant to this **clause 18** and within 10 Business Days after receiving a request from the other Party in writing, make available for inspection at a reasonable time, a copy of such insurance policies.
- (d) Aurizon Network and the Private Infrastructure Owner must in respect of any Claims by it or any other insured for which it is responsible, pay all excesses and deductibles provided for in any insurances effected in accordance with this **clause 18**.
- (e) Aurizon Network and the Private Infrastructure Owner must not do, or suffer to be done, anything whereby any policy of insurance required to be maintained by Aurizon Network or the Private Infrastructure Owner will be or become void or voidable.
- (f) Within three months of every third anniversary of the Commencement Date, Aurizon Network will review the adequacy of the sum insured specified in **Schedule 3**. If Aurizon Network reasonably considers that the sum insured is not adequate or is excessive, then Aurizon Network will by notice advise the Private Infrastructure Owner of the amount which it requires to be the new sum insured (which must be the same for both Aurizon Network and the Private Infrastructure Owner), and Aurizon Network and the Private Infrastructure Owner will adjust accordingly all policies held pursuant to this **clause 18**.

- (g) Aurizon Network will from time to time review whether the insurances specified in **Schedule 3** remain available in the market for reasonable commercial pricing (having regard to the likelihood and possible financial exposure arising from the risks insured). If Aurizon Network forms the view that such insurances are no longer available in the market for reasonable commercial pricing, Aurizon Network and the Private Infrastructure Owner will discuss in good faith whether the insurances required under this Agreement should be varied.

19 Disputes

- (a) If any claim, dispute, disagreement or question (**Dispute**) arises between the Parties under this Agreement, then either Party may give to the other Party a notice in writing (**Dispute Notice**) specifying details of the Dispute and requiring that it be dealt with:
 - (i) in the manner set out in this **clause 19**; or
 - (ii) where the dispute relates to a matter which the Aurizon Network Access Undertaking provides for the Parties to have a right to resolve via the dispute provisions in the Aurizon Network Access Undertaking, in the manner set out in the Aurizon Network Access Undertaking.
- (b) Within five Business Days of the date of the Dispute Notice any Dispute (other than those to be dealt with under the Aurizon Network Access Undertaking pursuant to **clause 19(a)(ii)** or those of the type described in **clause 19(e)**) will be referred to the Chief Executive Officer of Aurizon Network (or his nominee) and the Chief Executive Officer (or equivalent) of the Private Infrastructure Owner (or his nominee) for resolution. Failing such resolution within 10 Business Days, the relevant Dispute may be referred by either Party to an expert in accordance with this **clause 19**.
- (c) The Parties must seek to agree on the expert to be appointed, and failing agreement within 10 Business Days of referral of the Dispute to an expert, the expert will be appointed by:
 - (i) in the case of what the Parties agree are financial matters, the President for the time being of [The Institute of Chartered Accountants in Australia];
 - (ii) in the case of what the Parties agree are nonfinancial matters, the President for the time being of the Resolution Institute; and
 - (iii) in the case of what the Parties agree are combined financial and non-financial matters, where the Parties cannot agree on the appropriate categorisation of a matter or where the Parties agree that it is appropriate, by the President for the time being of the [Queensland Law Society Incorporated].
- (d) Where a Party refers a Dispute to an expert for resolution:

- (i) the expert must have appropriate qualifications and practicable experience having regard to the nature of the Dispute, have no interest or duty which conflicts or may conflict with his function as expert, and must not be an employee of the Private Infrastructure Owner or Aurizon Network or a Related Body Corporate of either Party;
- (ii) the expert must have regard to the provisions of this Agreement and must:
 - (A) have the power to inform himself independently as to the facts and if necessary technical and/or financial matters to which the Dispute relates;
 - (B) consult with such other professional qualified persons as he in his absolute discretion thinks fit; and
 - (C) consider oral and/or written submissions from the Parties as to the subject matter of the Dispute, but will not be bound by the rules of evidence;
- (iii) the Parties must upon request by the expert, provide or make available to the expert:
 - (A) all information in their possession or control; and
 - (B) all assistance,
that the expert may reasonably require;
- (iv) the expert will be required to determine the Dispute no later than 60 Business Days following appointment under **clause 19(c)**;
- (v) the expert must provide both Parties with a copy of his determination as soon as reasonably practicable following determination of the Dispute;
- (vi) the expert appointed will be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties. In any dispute dealt with pursuant to this **clause 19**, any financial records of Aurizon Network required to assist the determination of the dispute must be supplied to the expert only and will not be available to the Private Infrastructure Owner. The expert's determination must not include details of Aurizon Network's financial records but may contain conclusions based on the expert's assessment of Aurizon Network's financial records;
- (vii) any person nominated as an expert hereunder will be deemed to be and will act as an expert and not an arbitrator, and the law relating to arbitration will not apply to him or his determination or the procedures by which he may reach his determination;

- (viii) in the absence of manifest error the determination of the expert will be final and binding upon the Parties; and
 - (ix) the costs of the expert and any advisors will be borne by the Parties in such proportion as determined by the expert.
- (e) Where the right to terminate which provided the grounds for a suspension under **clause 20(f)** is in relation to serious safety and serious environmental matters and becomes the subject of a bona fide Dispute between the Parties, such Dispute will be resolved in accordance with **clause 19(c)** provided that:
- (i) despite **clause 19(d)(v)**, the expert will be required to provide both Parties with a copy of its determination as soon as is practicable following its appointment; and
 - (ii) without limiting the Parties' obligations under **clause 19(d)(iii)**, the Parties must use their best endeavours to assist the expert in making a determination as soon as is practicable.

20 Termination and suspension

- (a) Without prejudice to any other rights of Aurizon Network and subject to **clause 20(b)**, Aurizon Network may terminate this Agreement by notice to the Private Infrastructure Owner (which notice must set out the specific grounds for the termination), upon the occurrence of any one or more of the following events or circumstances:
- (i) the Private Infrastructure Owner:
 - (A) abandons, terminates or permanently ceases operation of the whole of the Private Infrastructure; or
 - (B) there are no entities holding access rights or seeking access rights to the Network in respect of Train Services utilising (or proposed to utilise) the Connecting Infrastructure to enter and/or exit the Network and the Private Infrastructure Owner fails to satisfy Aurizon Network (acting reasonably), within 20 Business Days after notice from Aurizon Network, that there is likely to be any continuing demand for the connection of the Private Infrastructure to the Network;
 - (ii) subject to **clause 3(d)(i)**, the Private Infrastructure Owner fails to pay when due any amount payable under this Agreement, and such default continues for 20 Business Days after notice from Aurizon Network demanding payment of the outstanding amount;
 - (iii) the Private Infrastructure Owner is in default of its obligation to establish or to maintain a security as required under **clause 22**, and such default continues for 20 Business Days after notice from Aurizon Network of such default;

- (iv) the Private Infrastructure Owner is in default of its obligation to maintain insurance in accordance with **clause 18** of this Agreement, and such default continues for 20 Business Days after notice from Aurizon Network to the Private Infrastructure Owner of the default;
- (v) an Insolvency Event occurs in relation to the Private Infrastructure Owner;
- (vi) the Private Infrastructure Owner, and if the Private Infrastructure Owner is not the Rail Infrastructure Manager for the Private Infrastructure, the Rail Infrastructure Manager for the Private Infrastructure, fails, in any material respect, to comply with the Emergency Response Plan, the Interface Risk Management Plan or the interface agreement entered into under **clause 13(k)** (as applicable) or any relevant laws, and that default is not remedied within 20 Business Days after notice from Aurizon Network to the Private Infrastructure Owner of the default;
- (vii) the Private Infrastructure Owner fails to comply with:
 - (A) **clause 11** (Accreditation Requirements), including, if the Private Infrastructure Owner is not the Rail Infrastructure Manager for the Private Infrastructure, where the Private Infrastructure Owner fails to ensure that the Rail Infrastructure Manager for the Private Infrastructure maintains its Accreditation or complies with all conditions of its Accreditation; or
 - (B) **clause 9(d)** (Operation and Maintenance Standards),
and such default continues for 20 Business Days after notice from Aurizon Network to the Private Infrastructure Owner of the default;
- (viii) the Private Infrastructure Owner conducts activities which cause or contribute to Environmental Harm on the Connecting Infrastructure or the Network and does not remedy the Environmental Harm (to the extent caused or contributed to by the Private Infrastructure Owner) within 20 Business Days after notice from Aurizon Network to remedy the Environmental Harm;
- (ix) the Private Infrastructure Owner is in default of the due performance of any other material obligation under this Agreement and the Private Infrastructure Owner has not remedied the default within 20 Business Days after notice from Aurizon Network specifying the nature of such default and requiring such default to be remedied; or
- (x) the termination of [*the Construction Agreement or*] any [*other*] agreement to which Aurizon Network and the Private Infrastructure Owner are parties to the extent they have agreed that termination of that agreement should result in termination of this Agreement.

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

- (b) Aurizon Network may not terminate this Agreement under **clause 20(a)** to the extent that the right to terminate is the subject of a bona fide dispute between the Parties pursuant to **clause 19** or the Aurizon Network Access Undertaking that has not been resolved in favour of Aurizon Network having the right to terminate this Agreement.
- (c) Without prejudice to any other rights of the Private Infrastructure Owner, the Private Infrastructure Owner may terminate this Agreement by notice (which notice must set out the specific grounds for the termination) to Aurizon Network if:
 - (i) Aurizon Network is in default of the due performance of any obligation under this Agreement and Aurizon Network has not remedied the default within 20 Business Days after notice from the Private Infrastructure Owner specifying the nature of such default and requiring such default to be remedied;
 - (ii) an Insolvency Event occurs in relation to Aurizon Network; or
 - (iii) the termination of [*the Construction Agreement or*] any [*other*] agreement to which Aurizon Network and the Private Infrastructure Owner are parties to the extent they have agreed that termination of that agreement should result in termination of this Agreement.
[Wording in italics to only be included where Aurizon Network is responsible for construction of the Connecting Infrastructure]
- (d) Upon expiry or earlier termination of this Agreement for any reason whatsoever, Aurizon Network:
 - (i) if requested by the Private Infrastructure Owner within 20 Business Days of such expiry or termination, must enter into good faith negotiations regarding the terms and conditions upon which the Connecting Infrastructure will remain connected to the Network, having regard to interface safety and Aurizon Network's reasonable ongoing maintenance costs (where such costs will not otherwise be recovered by Aurizon Network through access charges or taken into account in calculation of Reference Tariffs);
 - (ii) if an agreement is reached pursuant to **clause 20(d)(i)**, must do all things required to transfer ownership and possession of the Connecting Infrastructure to the Private Infrastructure Owner (except any part of the Connecting Infrastructure which Aurizon Network reasonably requires for the purpose of continued operation of the Network), subject to Aurizon Network having legal title to the Connecting Infrastructure and not being required to do anything that would be inconsistent with its land or infrastructure tenure rights, or other relevant arrangements with third parties, relating to any relevant part of the Network; and

- (iii) where agreement has not been reached pursuant to **clause 20(d)(i)** within 6 months of the expiry or termination of this Agreement (or such longer period as the Parties agree), Aurizon Network may, at its election and cost, forthwith remove all or any part of the Connecting Infrastructure.
- (e) Upon termination of this Agreement, Aurizon Network and the Private Infrastructure Owner will be released from all further obligations or liabilities under this Agreement except for:
 - (i) Rights which accrued on or before termination, including for any breach of this Agreement which occurred prior to termination and any liability in respect of such prior breach will be limited in the manner provided in this Agreement; and
 - (ii) any provisions which are expressed as surviving the expiry or termination of this Agreement.
- (f) Subject to **clause 20(g)**, upon the occurrence of an event or circumstance which would entitle Aurizon Network to terminate this Agreement under **clause 20(a)** either immediately or upon the expiration of a remedy period, Aurizon Network may immediately, and prior to the expiration of any applicable remedy period under **clause 20(a)**, suspend some or all of the Private Infrastructure Owner's rights under this Agreement and the running of Trains across the Connecting Infrastructure, by giving a notice in writing to the Private Infrastructure Owner (and the Rail Infrastructure Manager for the Private Infrastructure where that is not the Private Infrastructure Owner or Aurizon Network). Aurizon Network must include in the notice:
 - (i) details of the proposed or likely period of suspension;
 - (ii) the reasons for the suspension;
 - (iii) whether the suspension relates to a serious safety and serious environmental matter;
 - (iv) the actions Aurizon Network requires (acting reasonably) the Private Infrastructure Owner to take to have the suspension lifted; and
 - (v) the particular rights which have been suspended.
- (g) Except in relation to any suspensions occurring in relation to serious safety and serious environmental matters which are to be dealt with in accordance with **clause 19(e)**, any suspension occurring under **clause 20(f)** will cease to the extent that the grounds for suspension become the subject of a bona fide dispute between the Parties pursuant to **clause 19** unless and until such dispute is resolved in favour of Aurizon Network having the right to suspend the Private Infrastructure Owner's rights under this Agreement.

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

21 Assignment

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

22 Security

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

Amount for the due and proper performance by the Private Infrastructure Owner of its obligations under this Agreement in the form of:

- (i) a parent company guarantee from a holding company (as defined in the Corporations Act) of the Private Infrastructure Owner that has an Acceptable Credit Rating in a form reasonably acceptable to Aurizon Network;
 - (ii) a bank guarantee from a trading bank holding a current Australian banking licence and with an Acceptable Credit Rating and in the form set out in **Schedule 5** or such other form as is reasonably acceptable to Aurizon Network; or
 - (iii) any other security reasonably acceptable to Aurizon Network, and Aurizon Network must not unreasonably withhold or delay its acceptance of any security delivered under this **clause 22(a)**.
- (b)
- (i) Following each 30 June occurring from the Commencement Date Aurizon Network will have a right to request the Security Amount be increased from that listed in Item 3 of **Schedule 1** in proportion to the change in the MCI over the most recent financial year (with the calculation and timing of that indexation to occur in accordance with **clause 1(b)(v)**).
 - (ii) If Aurizon Network purports to vary the Security Amount in accordance with **clause 22(b)(i)**, and the Private Infrastructure Owner disputes whether that varied Security Amount properly reflects the changes permitted to be made pursuant to **clause 22(b)(i)**, **clause 19** will apply. In such cases, there will be no variation to the Security Amount until the dispute between the parties has been properly resolved.
- (c) If Aurizon Network calls up any amount from the security provided by or on behalf of the Private Infrastructure Owner, the Private Infrastructure Owner must deliver to Aurizon Network, within 10 Business Days of Aurizon Network making such call up, further security in favour of Aurizon Network, in a form permitted by this **clause 22**, undertaking to pay Aurizon Network on demand an amount equal to the amount called up. Such further security will form part of the security provided by the Private Infrastructure Owner under this Agreement from the date on which the Private Infrastructure Owner provides such further security.
- (d) Aurizon Network must, subject to the rights of recourse to the security under this **clause 22**, account to the Private Infrastructure Owner for the security:
- (i) as soon as is reasonably practicable and in no event later than three months after the expiration or termination of this Agreement;
 - (ii) as soon as is reasonably practicable in the event that the Private Infrastructure Owner's credit rating becomes an Acceptable Credit Rating; and

- (iii) where the Private Infrastructure Owner provides a replacement security which meets the requirements in **clause 22(a)**.

23 Liability

- (a) Despite any other provision in this Agreement, neither Party will in any circumstances be liable to the other for any Consequential Loss.
- (b) Neither Party will make any Claim against the other under or in connection with this Agreement unless notice of the Claim has been given to the other Party within twelve (12) months of the later of the Claim arising or becoming reasonably apparent to the relevant Party.
- (c) Subject to **clauses 23(a), 23(d) and 24(c)**, to the extent permitted by law, the liability of:
 - (i) Aurizon Network to the Private Infrastructure Owner; and
 - (ii) the Private Infrastructure Owner to Aurizon Network,in respect of this Agreement will be limited to the aggregate of the amount specified in Item 6 of **Schedule 1**.
- (d) The limitation in **clause 23(c)** does not apply in respect of:
 - (i) liability for fraud, criminal conduct or unlawful acts or omissions;
 - (ii) liability for wilful default, wilful damage, wilful misconduct or gross negligence;
 - (iii) liability for death or personal injury;
 - (iv) liability for third party claims including death, personal injuries or property damage; and
 - (v) loss which is covered by an insurance policy in favour of a Party, or which would have been covered by an insurance policy in favour of a Party if that Party had maintained in force the insurance policies that that Party is required to maintain in force under this Agreement.
- (e) Nothing in this Agreement creates or constitutes any contract between Aurizon Network and any haulage operator contracted by the Private Infrastructure Owner or otherwise responsible for the operation of the Train Services utilising the Connecting Infrastructure.

24 Indemnities

- (a) The Private Infrastructure Owner indemnifies and releases, and agrees to keep indemnified, Aurizon Network, its officers, employees, agents and contractors from and against all Claims arising out of, or which in any way relate to, the Private Infrastructure and/or Connecting Infrastructure or operations thereon, which may be made or brought

against Aurizon Network, its officers, employees, agents and/or contractors or which Aurizon Network, its officers, employees, agents and/or contractors may pay, incur, sustain or be put to, by reason of or in consequence of, any act or omission of the Private Infrastructure Owner and/or its officers, employees, agents or contractors which is negligent or is a breach of this Agreement, except to the extent such Claims occur as the result of a negligent or wilful act or omission of Aurizon Network and/or its officers, employees, agents or contractors.

- (b) Aurizon Network indemnifies and releases, and agrees to keep indemnified, the Private Infrastructure Owner, its officers, employees, agents and contractors from and against all Claims arising out of, or which in any way relate to, the Network and/or Connecting Infrastructure or operations thereon, which may be made or brought against the Private Infrastructure Owner, its officers, employees, agents and/or contractors or which the Private Infrastructure Owner, its officers, employees, agents and/or contractors may pay, incur, sustain or be put to, by reason of or in consequence of, any act or omission of Aurizon Network and/or its officers, employees, agents or contractors which is negligent or is a breach of this Agreement, except to the extent such Claims occur as the result of a negligent or wilful act or omission of the Private Infrastructure Owner and/or its officers, employees, agents or contractors.
- (c) The indemnities provided in this **clause 24** will not extend to and neither Aurizon Network nor the Private Infrastructure Owner will be liable for, any Consequential Loss suffered by the other or for which the other becomes liable.
- (d) Each Party must use all reasonable endeavours to mitigate the damage, loss, cost, liability or expense in respect of which an indemnity in this Agreement applies.

25 Notices

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

- (vi) if at any time agreed by the Parties, being sent by another agreed electronic form.
- (c) (i) The addresses and numbers for service are initially:
 - Aurizon Network Pty Ltd:**
Address: Level 17, 175 Eagle Street, Brisbane QLD 4000
Facsimile: 07 3235 3637
Email: [access.services@aurizon.com.au]
Attention: Chief Executive Officer, Aurizon Network Pty Ltd
 - The Private Infrastructure Owner:**
Address: as set out in Item 1 of **Schedule 1**
Facsimile: as set out in Item 1 of **Schedule 1**
Email: as set out in Item 1 of **Schedule 1**
Attention: as set out in Item 1 of **Schedule 1**
- (ii) A Party may from time to time change its address or number for service by notice to the other Party.
- (d) A communication is deemed given if:
 - (i) personally delivered, upon delivery;
 - (ii) sent by post, on the third Business Day after posting;
 - (iii) sent by facsimile, on the next Business Day after being sent if the sender's facsimile machine produces a transmission report stating that the facsimile was sent to the addressee's facsimile number; and
 - (iv) sent by email, on the next Business Day after the sender receives confirmation by read receipt that the message has been transmitted.
- (e) If a communication to a Party is received by it after 5.00 pm or on a day which is not a Business Day, it will be deemed to have been received on the next Business Day.

26 Confidentiality

- (a) Each Party must keep the terms of this Agreement confidential, and must not disclose the terms of this Agreement to any third party except:
 - (i) to the extent required by law, under an order or direction of any Authority, the Aurizon Network Access Undertaking or by the rules of any stock exchange on which a Party or its Related Bodies Corporate are listed;
 - (ii) to its officers, employees and agents, legal and other professional advisers, Related Bodies Corporate, and officers, employees, agents, legal and other professional advisers of such Related Bodies Corporate provided that any such disclosure by Aurizon

Network must not breach the ring-fencing and confidentiality obligations included in the Aurizon Network Access Undertaking;

- (iii) to an existing or proposed Rail Infrastructure Manager for the Private Infrastructure which first executes a Confidentiality Deed in the form contained in **Schedule 6**, and its legal and other professional advisers;
- (iv) to a bona fide potential financier of a Party or its Related Bodies Corporate and their legal and other professional advisers;
- (v) to a bona fide potential purchaser of a Party (directly or indirectly), the Network or the Private Infrastructure and their legal and other professional advisers;
- (vi) to an expert or the Queensland Competition Authority in a dispute resolution process in connection with this Agreement or under the Aurizon Network Access Undertaking;
- (vii) in legal proceedings in connection with enforcement of this Agreement;
- (viii) to the extent the terms of this Agreement are in the public domain through means other than a breach of this **clause 26(a)**; or
- (ix) with the prior written consent of the other Party, such consent not to be unreasonably withheld,

provided that a recipient pursuant to **clause 26(a)(iii)**, **(iv)** or **(v)** must first undertake to keep the terms of this Agreement confidential.

- (b) Each Party must keep confidential any intellectual property, trade secrets, operating procedures and financial or other information disclosed by the other Party as required under this Agreement (including, without limitation, any information provided in accordance with **clauses 6, 12 and 13**) and must not:
 - (i) use such information for any purpose other than the purpose for which it was provided;
 - (ii) disclose such information to any third party except:
 - (A) in accordance with this Agreement;
 - (B) to an existing or proposed Rail Infrastructure Manager for the Private Infrastructure and their legal and other professional advisers in connection with the performance of the Rail Infrastructure Manager's obligations under this Agreement or an interface agreement with Aurizon Network and subject to the execution of a confidentiality deed in accordance with **clause 12(f)**, if necessary;
 - (C) to the extent the information is in the public domain through means other than a breach of this **clause 26(b)**; or
 - (D) with the other Party's written consent.

- (c) If a Party does not comply with **clause 26(a)** or **clause 26(b)** and the other Party suffers any detriment as a result of or in connection with that non-compliance, the Party which suffers detriment will be entitled to bring a Claim against the non-complying Party for breach of confidence.
- (d) Any obligation of confidence under this Agreement survives termination and remains binding for a period of 10 years from termination of this Agreement.

27 Compliance with laws

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

28 Access to land

- (a) (i) To the extent that some part of the Private Infrastructure or the Connecting Infrastructure has been, or will be, constructed upon land owned or controlled by Aurizon Network or an Aurizon Party or the construction or operation of the Private Infrastructure or Connecting Infrastructure otherwise reasonably requires access to such land, then Aurizon Network must provide reasonable access to the relevant land for the Private Infrastructure Owner, the Railway Infrastructure Manager, and their respective employees, officers, agents and contractors to the extent that access to the relevant land is reasonably required for construction of the relevant infrastructure or ongoing operation and maintenance of the Private Infrastructure or to enable the Private Infrastructure Owner or the Railway Infrastructure Manager for the Private Infrastructure to comply with its obligations under this Agreement or an interface agreement with Aurizon Network, provided that:
 - (A) the land is owned by Aurizon Network or an Aurizon Party or Aurizon Network has, through a lease, licence or other arrangement with the owners of the land or pursuant to the TIA, the authority to authorise access to that land; and
 - (B) the access is not inconsistent with the terms of any lease, license or other arrangement to which Aurizon Network or an Aurizon Party is a party in respect of the land.
- (ii) If Aurizon Network does not have authority to authorise the Private Infrastructure Owner to access land as provided by **clause 28(a)**, then Aurizon Network must provide the following in relation to access to that land within 10 Business Days of receiving a written request from the Private Infrastructure Owner to access the relevant land:

- (A) details of the relevant entity (including that entity's name, address and contact details) that the Private Infrastructure Owner would need to obtain approval from to gain access to that land, where this information is reasonably available to Aurizon Network;
 - (B) advice as to the nature and extent of the rights, if any, that Aurizon Network holds in relation to the relevant land; and
 - (C) a notice to be provided to that entity identifying that Aurizon Network has no objection to the Private Infrastructure Owner negotiating for access to that land.
- (b) Where the Private Infrastructure Owner or the Railway Infrastructure Manager for the Private Infrastructure access land pursuant to **clause 28(a)**, the Private Infrastructure Owner or the Railway Infrastructure Manager for the Private Infrastructure, as applicable, must, and must procure that its representatives and contractors who access the relevant land, comply with all site and safety rules applicable to the land and all Aurizon Network rail corridor access processes notified by Aurizon Network to the Private Infrastructure Owner or Rail Infrastructure Manager for the Private Infrastructure (as applicable) prior to such access, be accompanied by an Accredited Personal Protection Officer, and comply with any reasonable direction given by any Aurizon Network representative and any other reasonable conditions specified by Aurizon Network.
- (c) (i) If Aurizon Network requires access to any land on which the Private Infrastructure or Connecting Infrastructure is or will be constructed (**Private Land**), the Private Infrastructure Owner must:
- (A) provide reasonable access to the Private Land for Aurizon Network and its employees, officers, agents and contractors to the extent that access to the Private Land is reasonably required to enable Aurizon Network to comply with its obligations under this Agreement or an interface agreement with the Rail Infrastructure Manager for the Private Infrastructure, provided that:
 - (1) the Private Land is owned by the Private Infrastructure Owner or its Related Body Corporate or the Private Infrastructure Owner has, through a lease, licence or other arrangement with the owners of the land or pursuant to the TIA, the authority to authorise access to that land; and
 - (2) the access is not inconsistent with the terms of any lease, license or other arrangement to which the Private Infrastructure Owner or its Related Body Corporate is a party in respect of the land.

- (ii) If the Private Infrastructure Owner does not have authority to authorise Aurizon Network to access land as provided by **clause 28(c)(i)**, then the Private Infrastructure Owner must provide the following in relation to access to that land within 10 Business Days of receiving a written request from Aurizon Network to access the Private Land:
 - (A) details of the relevant entity (including that entity's name, address and contact details) that Aurizon Network would need to obtain approval from to gain access to that land, where this information is reasonably available to the Private Infrastructure Owner;
 - (B) advice as to the nature and extent of the rights, if any, that the Private Infrastructure Owner holds in relation to the relevant land; and
 - (C) a notice to be provided to that entity identifying that the Private Infrastructure Owner has no objection to Aurizon Network negotiating for access to that land.
- (d) Where Aurizon Network accesses Private Land, Aurizon Network must, and must procure that its representatives and contractors who access the Private Land, comply with all site and safety rules applicable to the Private Land as notified by the Private Infrastructure Owner or the Railway Infrastructure Manager for the Private Infrastructure prior to such access, any reasonable direction given by any nominated Senior Site Executive for the Private Land and any other reasonable conditions specified by the Private Infrastructure Owner or its Related Body Corporate.
- (e) Subject to **clause 28(f)**,
 - (i) Aurizon Network may enter Private Land owned or controlled by the Private Infrastructure Owner or Railway Infrastructure Manager for the Private Infrastructure without the consent of the Private Infrastructure Owner or the Railway Infrastructure Manager; and
 - (ii) the Private Infrastructure Owner and the Rail Infrastructure Manager for the Private Infrastructure may enter land owned or controlled by Aurizon Network or an Aurizon Party without the consent of Aurizon Network,

if immediate entry is necessary to prevent, minimise or alleviate any threat or danger to any person or property that has resulted, or is expected to result, from an Incident.
- (f) If a Party enters land in accordance with **clause 28(e)** (the **Accessing Party**) it must:
 - (i) before entering the land, give the other Party (and in the case of Private Land, the Private Infrastructure Owner and Rail

Infrastructure Manager for the Private Infrastructure) as much notice as is practicable in the circumstances; and

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

29 Miscellaneous

- (a)
 - (i) The Private Infrastructure Owner will, as between the Parties, be liable for and duly pay all stamp duty (including any fine or penalty) on or relating to this Agreement and any document executed under it except to the extent that such fine or penalty arises from an act or omission of Aurizon Network or an Aurizon Party.
 - (ii) Each Party will bear its own legal and other costs and expenses relating directly or indirectly to the negotiation, preparation and execution of this Agreement.
- (b)
 - (i) A single or partial exercise or waiver of a right relating to this Agreement, or a failure or delay in exercising a right, will not prevent any other exercise of that right or the exercise of any other right.
 - (ii) No waiver of any provision of this Agreement will be effective unless the same will be in writing and then such waiver will be effective only in the specific instance and for the purpose for which it is given.
- (c) Each Party must promptly execute all documents and do all things that any other Party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by it.
- (d) This Agreement is governed by and is to be construed in accordance with the laws in force in Queensland. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (e) This Agreement embodies the entire understanding and agreement between the Parties as to the subject matter of this Agreement and, to the extent that this Agreement is inconsistent with any prior agreement between the Parties, this Agreement will prevail over, and will replace, the inconsistent terms of the prior agreement.
- (f) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the

subject matter of this Agreement are merged in and superseded by this Agreement and will be of no force or effect whatever and no Party will be liable to any other Party in respect of those matters.

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

Schedule 1 – Reference Schedule

- Item 1** Name of Private Infrastructure Owner:
Address of Private Infrastructure Owner:
ABN:
Facsimile No. of Private Infrastructure Owner:
Telephone No. of Private Infrastructure Owner:
Email of Private Infrastructure Owner:
Attention:
- Item 2** Expiry Date
The date which is the earlier of:
(a) [*Private Infrastructure Owner to nominate anticipated expiry date*]; or
(b) the date on which Aurizon Network's leasehold interest in respect of the land on which the Connecting Infrastructure is, or is to be, located, expires or otherwise ceases.
- Item 3** Security Amount
[\$[the estimated reasonable and prudent costs of decommissioning and removing the Connecting Infrastructure (including a reasonable and prudent contribution for Aurizon Network's internal costs related to such decommissioning and removal) upon the expiry of this Agreement so as to remove the connection between the Network and the Private Infrastructure and restore the affected section of the Network to a condition consistent with the adjacent sections of the Network]
- Item 4** Commitment Date
[The date which is the scheduled date for availability of the connection] [To be used where Aurizon Network is constructing Connecting Infrastructure]
[The later of [the date which is scheduled for availability of the connection] and [#] days after the Private Infrastructure Owner gives notice to Aurizon Network that construction of the Connecting Infrastructure is complete.] [To be used where the Private Infrastructure Owner is constructing Connecting Infrastructure]
- Item 5** Party responsible for the planning, design and construction of the Connecting Infrastructure (**clause 6(a)** and **clause 7(a)**)
[Insert either Aurizon Network or Private Infrastructure Owner]

Item 6 Cap on liability (**clause 23(c)**)

\$ [#] per Train Service contracted to enter and/or exit the Network via the Connecting Infrastructure

Item 7 Aurizon Network Train Control contact (**clause 15(a)**)

Name:

Address:

Facsimile:

Telephone:

Email:

Schedule 2 – Plan showing Connecting Infrastructure, Private Infrastructure and the Network

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

Schedule 3 – Insurance

1 Required Private Infrastructure Owner Insurances

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

Public liability insurance

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

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

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

Workers' compensation insurance as required by law.

Motor vehicle insurance to cover against:

- (a) legal liability of the insured arising out of or in connection with the use of all vehicles by the insured or the insured's staff; and
- (b) legal liability arising from third party property damage arising out of or in connection with the use of all vehicles in the performance of the Agreement by the insured or the insured's staff,

for an amount not less than \$20,000,000, and

- (c) the statutory liability in respect of any personal injury arising out of or in connection with the use by the insured or the insured's staff of all vehicles in the performance of the Agreement in accordance with the relevant statutory requirements.

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

2 Required Aurizon Network Insurances

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

Public liability insurance

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

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

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

Workers' compensation insurance as required by law.

Motor vehicle insurance to cover against:

- (a) legal liability of the insured arising out of or in connection with the use of all vehicles in the performance of the Agreement by Aurizon Network or Aurizon Network's staff; and
- (b) legal liability arising from third party property damage arising out of or in connection with the use of all vehicles in the performance of the Agreement by Aurizon Network or Aurizon Network's staff,

for an amount not less than \$20,000,000, and

- (c) the statutory liability in respect of any personal injury arising out of or in connection with the use by Aurizon Network or Aurizon Network's staff of

all vehicles in the performance of the Agreement in accordance with the relevant statutory requirements.

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

The calculation and timing of indexation of any amounts to be indexed by MCI will occur in accordance with **clause 1(b)(v)**.

Schedule 4 – Emergency Response Plan and Interface Risk Management Plan

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

Schedule 5 – Pro forma bank guarantee

[On bank letterhead]

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

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

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

The undertaking is to continue until:

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

whichever occurs first.

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

This undertaking is governed by the laws of Queensland.

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

[Bank Details]

Schedule 6 – Confidentiality Deed

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

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

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

RECITALS

- A Pursuant to **clause 12** of the Rail Connection Agreement, the Parties may each require the other to provide information which the other Party wishes to remain secret and confidential.
- B The Parties have agreed to supply the information to each other on condition of entry into this Deed to protect the secret and confidential nature of the information to be disclosed.

IT IS AGREED

1 Interpretation

- (a) Unless the context otherwise requires, and subject to **clause 1(b)** terms defined in the Rail Connection Agreement will have the same meanings when used in this Deed.
- (b) In this Deed, the following words and expressions will have the respective meanings:

Confidential Information means any information, data or other matter (**information**) disclosed by the Discloser to the Recipient pursuant to **clause 12(e)** of the Rail Connection Agreement, provided that such information:

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

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

- (v) the information is now in the public domain through means other than a breach of the confidentiality provisions in this Deed; or

- (vi) the information has been received by Aurizon Network or the RIM (as applicable) independently from a third party free to disclose the information.

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

Permitted Purpose means one or more of the following purposes:

- (i) managing the interface arrangements in respect of the Private Infrastructure and the Network;
- (ii) in the case of Aurizon Network, managing the Network or the Connecting Infrastructure; and
- (iii) in the case of the RIM, managing the Private Infrastructure.

Rail Connection Agreement means the Rail Connection Agreement between Aurizon Network and the Private Infrastructure Owner dated [*].

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

2 Disclosure and Use of Confidential Information

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

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

3 General Obligations

Each Recipient acknowledges and agrees that:

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

4 General

- (a) Unless otherwise terminated by mutual consent of all parties in writing, this Deed will continue in force notwithstanding the return of all copies of Confidential Information held by a Recipient to the Discloser.
- (b) This Deed:
 - (i) may be terminated by mutual consent of all parties in writing;
 - (ii) will terminate if the Rail Connection Agreement terminates;

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

EXECUTED as a DEED

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

Director Signature

Director/Secretary Signature

Print Name

Print Name

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

Director Signature

Director/Secretary Signature

Print Name

Print Name

Execution

Executed as an agreement.

Executed by Aurizon Network Pty Ltd)
)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

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

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)