

Agreement

Rail Access Undertaking (QRC Submission – August 2013)

Study Funding Agreement

Aurizon Network Pty Ltd

[insert name of Funding User]

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Drafting notes:

This Agreement includes two alternative options:

Funding of study works by Users (clause 10)– under this arrangement Aurizon Network submits claims for invoices on a monthly basis based on actual progress. This is the method which is now in operation at DBCT.

Underwriting (clause 9) – where Users only pay if the costs are not included in the RAB. This is the method which has generally been used for rail studies to date and which has previously been used at DBCT.

This Agreement is drafted on the basis that multiple users fund the study works. If there is only one funder or underwriter, the concept of a User Committee should be deleted as the one funder or underwriter will take on that role.

Study Funding Agreement

Date ►

Between the parties

Aurizon Network	Aurizon Network ACN 132 181 116 of [insert address] (Aurizon Network)
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Funding User	[insert name of Funding User] ACN [insert ACN] of [insert address] (Funding User)
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Recitals	<ol style="list-style-type: none">1 Aurizon Network owns, and is the accredited Railway Manager of, the Network.2 The Funding User has submitted an Access Application seeking Access to the Network.3 Access to the Network cannot be accommodated other than through the undertaking of an Extension.4 Aurizon Network has received expressions of interest from the Funding User and Other Funding Users in respect of the Extension.5 Aurizon Network agrees to perform the Services on the terms and conditions set out in this Agreement.
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The parties agree as follows:

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this Agreement are set out below.

Term	Meaning
Access	has the meaning given in the Access Undertaking.
Access Application	has the meaning given in the Access Undertaking.
Access Undertaking	Aurizon Network's Access Undertaking as approved by the QCA and in force from time to time.
Agreement	this agreement together with all schedules.
Approved Rules of the User Committee	the rules for the User Committee, being the initial "Approved Rules of the User Committee" for the purposes of clause 5.1(b), as such may be varied in accordance with those rules from time to time.
Approved Work Plan	in respect of a Stage, the Work Plan which is approved by the User Committee under clause 3.1(e), as varied in accordance with clause 3.2.
Authority Approval	a licence, consent, permit, approval or certificate required from a Government Agency.
Business Day	a day on which banks are open for business in Brisbane (other than a Saturday, Sunday or public holiday in Brisbane).
Capacity Increment	the incremental capacity increase of the relevant part of the Network as nominated in the relevant Approved Work Plan (and expressed in million tonnes per annum) .
Claim	any action, proceeding, claim, demand, damage, loss, cost, liability or expense, including the costs and expenses of defending or settling any action, proceeding, claim or demand.
Commencement	[Insert] .

Date

Concept Stage the stage relating to the preliminary assessment of the commercial and technical feasibility of the Extension, including preliminary assessment of potential alternatives for the construction and development of the Extension, as provided for in the relevant Approved Work Plan.

Confidential Information

any confidential information relating to:

- 1 the business, assets or affairs of a party or any of its Related Bodies Corporate (which is disclosed to the recipient in the course of the transactions contemplated by this Agreement); or
 - 2 the terms of this Agreement or any transactions contemplated by it.
-

Consequential Loss

- 1 any economic loss in respect of any claim in tort;
 - 2 any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of goodwill or wasted overheads whatsoever;
 - 3 any loss arising out of any Claim by a third party (other than a Claim in respect of loss or destruction of or damage to real or personal property or personal injury to or death of any person),
- but does not include any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims.
-

Construction Funding Agreement

the standard user funding agreement for construction attached to the Access Undertaking.

Controller

has the meaning given in the Corporations Act.

Corporations Act

Corporations Act 2001 (Cth).

Decision

A decision by the User Committee made in accordance with the Approved Rules of the User Committee in respect of any matter provided that:

- 1 if specified by this Agreement or by the Approved Rules of the User Committee as being a matter requiring a Super Majority Decision, the decision must be a Super Majority Decision; and
- 2 in respect of all other matters, the decision must be a Simple Majority Decision,

and **Decide** shall be construed accordingly.

Equivalent Agreement

an agreement (other than this Agreement) titled "Study Funding Agreement" (or substantially similar) between Aurizon Network and another person in relation to the Extension dealing with the same or similar subject matter as this Agreement.

Event of Default	<p>in respect of a party:</p> <ol style="list-style-type: none"> 1 an Insolvency Event occurs in relation to the party; or 2 the party commits a material breach of a term of this Agreement and that breach is incapable of remedy or, if capable of remedy, is not remedied within 20 Business Days after being notified in writing of the breach by the other party; 3 the party commits a material breach of a term of this Agreement which it has previously breached and remedied under paragraph 2 above.
Extension	<p>an 'extension' as contemplated under the Access Undertaking which is investigated in a Stage, including an Extension or Expansion as defined in the Access Undertaking.</p>
Feasibility Stage	<p>the stage which:</p> <ol style="list-style-type: none"> 1 progresses the matters covered in the Pre-Feasibility Stage; 2 includes the development of detailed planning for the Extension (including detailed budgeting, timeframes and procurement strategies), to an estimated accuracy of + or – [insert]; and 3 includes an advanced design.
Funding User's Capacity Request	<p>[insert] million tonnes per annum.</p>
Good Industry Practice	<p>in relation to the performance of any activity to which this standard is applied, the exercise of that degree of skill, diligence, prudence and foresight as would reasonably be expected from a properly qualified and competent person engaged in carrying out works or services of a similar size, nature, scope, type and complexity, complying with all relevant Laws and applicable Australian standards and published codes of practice.</p>
Government Agency	<p>any government, governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.</p>
GST	<p>goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply.</p>
GST Act	<p><i>A New Tax System (Goods and Services Tax) Act 1999 (Cth).</i></p>
GST Law	<p>has the meaning given in the GST Act.</p>
Immediately Available Funds	<p>cash or telegraphic, electronic or other means of transfer of cleared funds into a bank account nominated in advance by the payee.</p>

Insolvency Event	<p>in relation to a person:</p> <ol style="list-style-type: none"> 1 the person is (or states that it is) an insolvent, under administration or insolvent (each as defined in the Corporations Act); 2 the person has a Controller appointed over a material proportion of its property; 3 the person is in liquidation or provisional liquidation or is wound up; 4 the person is subject to any scheme of arrangement, compromise or composition with its creditors (in each case other than to carry out a reconstruction or amalgamation while solvent); 5 an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 Business Days), or resolution passed, in connection with the person which is preparatory to or could result in any of paragraphs (1), (2), (3) or (4) above; 6 the person is otherwise unable to pay its debts when they fall due; or 7 something having a substantially similar effect to paragraphs (1) to (6) above happens in connection with the person under the Law.
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Intellectual Property Rights	<p>all current and future industrial and intellectual property rights and interests, including:</p> <ol style="list-style-type: none"> 1 patents, utility models, trade marks, topographical rights, copyrights, eligible layout rights, designs and other like rights; 2 inventions, discovery, trade secret, know-how, computer software and confidential information; and 3 any business, scientific, technical and product information, including proprietary information relating to the development of new products, whether registered, registrable or unregistered, throughout the world and for the duration of the rights and interests.
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Law	<p>includes:</p> <ol style="list-style-type: none"> 1 any law, regulation, authorisation, ruling, judgment, order or decree of any Government Agency; and 2 any statute, regulation, proclamation, ordinance or by-law in: <ol style="list-style-type: none"> (a) Australia; or (b) any other jurisdiction.
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Loss	any loss, claim, action, damage, liability, cost, charge, expense, outgoing or payment.
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Network	that part of the network of rail transport infrastructure (as defined in the Transport Infrastructure Act) for which Aurizon Network is the accredited Railway Manager, as modified or upgraded from time to time.
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Other Funding User	at any time, a person who is a party (other than Aurizon Network) under an Equivalent Agreement in force at that time but excluding any such person who has ceased to be an "Other Funding User" as
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contemplated by clause 4.2.

Participating Funding Users	<ol style="list-style-type: none"> 1 the Funding User; and 2 each Other Funding User, <p>each a Participating Funding User but excluding any such person who has ceased to be a Participating Funding User as contemplated by clause 4.2.</p>
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Pre-Feasibility Stage	<p>the stage which:</p> <ol style="list-style-type: none"> 1 progresses the matters covered in the Concept Stage, including by selecting a preferred alternative for the construction and development of the Extension; 2 includes the development of preliminary planning for the Extension (including indicative budgeting and timeframes), to an estimated accuracy of + or – [insert]; and 3 includes preliminary designs.
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QCA	the Queensland Competition Authority.
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Railway Manager	has the meaning given to that term in the Transport Infrastructure Act.
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Regulatory Asset Base	has the meaning given to that term in the Access Undertaking.
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Related Body Corporate	has the meaning given in the Corporations Act.
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Report	the written report for a Stage as required by a relevant Approved Work Plan.
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Representative	a person appointed by a Participating Funding User, in accordance with the Approved Rules of the User Committee, as its representative on the User Committee and includes any alternate of that person.
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Services	in respect of a Stage, all engineering, design and investigative study services and project management services which are required to be performed (any long lead Authority Approvals required to be obtained) by Aurizon Network under this Agreement (including the development of Work Plans and the preparation of the Reports under clause 3) as set out in more detail in Schedule 1.
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Simple Majority Decision	a decision by the User Committee made by a simple majority vote as defined under, and made in accordance with, the Approved Rules of the User Committee.
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Stage	the Concept Stage, Pre-Feasibility Stage or the Feasibility Stage(as the context requires).
Subcontractor	any person to whom any part of the Services has been subcontracted.
Super Majority	not less than [insert] of the votes cast at a meeting of the User Committee.
Super Majority Decision	a decision by the User Committee made by a Super Majority of votes, as defined under, and made in accordance with, the Approved Rules of the User Committee.
Underwriting Proportion	the percentage applicable to the Funding User under clause 9.2, as calculated in accordance with the formula set out in clause 9.3.
Transport Infrastructure Act	<i>Transport Infrastructure Act 1994 (Qld).</i>
User Committee	the committee comprising Representatives of all Participating Funding Users which is to be established as contemplated by clause 5.
Work Plan	as the context requires: <ul style="list-style-type: none"> 1 the work plan for the Concept Stage; 2 the work plan for the Pre-Feasibility Stage; or 3 the work plan for the Feasibility Stage, in each case to be prepared by Aurizon Network in accordance with (and including the matters required under) clause 3.
Work Plan Submission Date	in respect of: <ul style="list-style-type: none"> 1 the Work Plan for the Concept Stage – the date which is [insert] days after the Commencement Date; 2 the Work Plan for the Pre-Feasibility Stage – the date which is [insert] days before the relevant date for completion of the Concept Stage; and 3 the Work Plan for the Feasibility Stage – the date which is [insert] days before the relevant date for completion of the Pre-Feasibility Stage.

1.2 Interpretation

In this Agreement, headings are for convenience only and do not affect the interpretation of this Agreement and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;

- (b) words importing a gender include any gender;
- (c) the word 'person' includes a firm, a body corporate, an unincorporated association, an authority or a Government Agency;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (e) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (f) a reference to anything (including, but not limited to, any right) includes a part of that thing but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) a reference to a clause, party, attachment, exhibit or schedule is a reference to a clause of, and a party, attachment, exhibit and schedule to, this Agreement and a reference to this Agreement includes any attachment, exhibit and schedule;
- (i) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (j) a reference to an agreement other than this Agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (k) a reference to \$ is to Australian currency unless denominated otherwise;
- (l) if an act prescribed under this Agreement to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (m) if an event must occur on a stipulated day that is not a Business Day then the stipulated day will be taken to be the next Business Day; and
- (n) a reference to time is a reference to Brisbane time.

1.3 Inclusive expressions

Specifying anything in this Agreement after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

2 Performance of Services

2.1 Obligation to perform

- (a) For each Stage, Aurizon Network will perform or procure the performance of the Services.
- (b) For each Stage, Aurizon Network will perform Services in accordance with Good Industry Practice, all relevant Laws, applicable Authority Approvals, the relevant Approved Work Plan, this Agreement and so as to achieve the Capacity Increment.
- (c) The Stages will be sequenced in the following order:
 - (1) First, the Concept Stage;

- (2) Secondly, the Pre-Feasibility Stage; and
- (3) Thirdly the Feasibility Stage.
- (d) Aurizon Network will not commence a Stage until the previous Stage has been completed in accordance with this Agreement.
- (e) Aurizon Network must as part of the Services performed under this Agreement, on request by the User Committee, obtain any long lead Authority Approvals required for the Extension works.

2.2 Commencement and completion

- (a) Aurizon Network will commence the performance of the Services for the:
 - (1) Concept Stage, on the Commencement Date; and
 - (2) Pre-Feasibility Stage and the Feasibility Stage, on the relevant dates nominated in the relevant Approved Work Plan.
- (b) Aurizon Network will complete the Services for a Stage on or before the relevant date for completion nominated in the relevant Approved Work Plan.
- (c) Aurizon Network will perform all of the Services expeditiously and without unreasonable or unnecessary delay and in accordance with the requirements of the Access Undertaking.

2.3 Notice of delay

Aurizon Network must give the User Committee notice of any event or circumstance which has occurred or may occur, and which has or is likely to have an adverse impact on Aurizon Network's ability to:

- (a) perform and complete the Services for a Stage in accordance with the relevant Approved Work Plan (including by the relevant date for completion nominated in the relevant Approved Work Plan); or
- (b) meet (assuming the Extension will proceed to execution phase) the target date for commissioning of the Extension.

3 Work Plans

3.1 Content and approval of Work Plans

- (a) Aurizon Network will develop, in consultation with the User Committee, a Work Plan for each Stage which sets out in reasonable detail:
 - (1) the Capacity Increment, and the scope of the Extension which is to be investigated to achieve the Capacity Increment;
 - (2) a schedule of the Services to be undertaken during the Stage (including the date for commencement of the Services for that Stage (if applicable) and the date by which the Services the subject of the Stage are to be completed);
 - (3) the standard, consistent with industry standards, to which each of the matters set out in Schedule 6 will be addressed during the Stage;
 - (4) a budget for the Services to be undertaken during the Stage;
 - (5) the matters to be included in the Report, including

- (A) details on the scope, standard and design of the Extension, including the performance standards and capacity analysis on which that design has been prepared (together with copies of an static and dynamic modelling results and any other technical or engineering studies, advices or reports on which the Report is based);
 - (B) an outline of the procurement methodology for the Extension works;
 - (C) a schedule for the construction and completion of the Extension;
 - (D) the scope of the Extension which is to be investigated during that Stage (which must be sufficient to achieve the Capacity Increment); and
 - (E) an estimate of the costs of constructing and completing the Extension to the level of definition specified in the relevant definition for the Stage;
- (6) any Supply Chain Operating Assumptions developed under the Access Undertaking;
- (7) any formatting and presentation requirements for the Report;
- (8) identifying any Authority Approvals which will be required to be obtained during the performance of the Services the subject of the Stage; and
- (9) such other matters as are required to be addressed by the User Committee,
- and which otherwise conforms with the relevant definition of each Stage.
- (b) Aurizon Network agrees that the matters to be included in the Report under clause 3.1(a)(5) for the Feasibility Stage must be of sufficient detail and in such form as to:
- (1) enable the 'scope of works', 'target cost', 'target schedule' and 'procurement methodology' in a Construction Funding Agreement to be populated; and
 - (2) ensure that the Report completed for the Feasibility Stage is based on industry standards sufficient to ensure that the Report is bankable.
- (c) Aurizon Network agrees that the Report for each Stage will reflect any Supply Chain Operating Assumptions developed under the Access Undertaking and will also, as a minimum, address each of the matters set out in Schedule 6 consistent with at least the applicable industry standard.
- (d) Aurizon Network must submit each Work Plan for approval by the User Committee by no later than the applicable Work Plan Submission Date.
- (e) The User Committee will convene a meeting for the purpose of considering to either approve or reject a Work Plan within 14 days of the applicable Work Plan Submission Date.
- (f) The User Committee may, by Decision made in accordance with clause 5, approve or reject a Work Plan. If the User Committee Decides to approve the Work Plan, then the Work Plan so submitted by Aurizon Network shall be the Approved Work Plan for the applicable Stage.
- (g) If the User Committee fails to make a Decision to either approve or reject a Work Plan at the meeting of the User Committee convened under clause 5, the User Committee shall be taken to have Decided to reject the Work Plan.

- (h) If the User Committee Decides, or is taken to have Decided, to reject the Work Plan, then the User Committee must promptly give reasons in writing for the rejection and suggest ways in which Aurizon Network might modify the Work Plan so as to address the User Committee's concerns. Aurizon Network (acting reasonably) must take due account of any matters raised by the User Committee. Aurizon Network must re-submit the Work Plan for approval by the User Committee within 14 days after receiving the reasons for the User Committee's rejection of the Work Plan. The parties must continue to comply with clauses 3.1(e) - 3.1(h) until the User Committee Decides to approve the Work Plan.

3.2 Variations of Approved Work Plans

- (a) Aurizon Network may not vary an Approved Work Plan other than with the approval of the User Committee given under clause 3.1(e).
- (b) If Aurizon Network wishes to vary an Approved Work Plan it must give notice to each Participating Funding User detailing:
- (1) its proposed variation to the Approved Work Plan;
 - (2) the reasons for the variation;
 - (3) confirmation of whether the variation will impact the schedule or budget for the Services the subject of the Stage if the variation were approved; and
 - (4) any other information reasonably requested by a Participating Funding User.
- (c) The User Committee must, within 14 days of receiving consider a variation requested by Aurizon Network and must, by Decision, given under clause 3.1(e), reject or approve the variation.
- (d) The User Committee may by notice to Aurizon Network:
- (1) require Aurizon Network to vary an Approved Work Plan, in which case Aurizon Network will promptly implement the variation; or
 - (2) advise Aurizon Network that it is considering directing a variation to an Approved Work Plan and requiring Aurizon Network to notify each Participating Funding User of any change to the budget or schedule for the Services to be performed for the relevant Stage,
- in each case provided that the implementation of that amended Approved Work Plan would not require Aurizon Network to breach a Law or, if the Extension the subject of the amended Approved Work Plan were undertaken, breach an Access Undertaking.
- (e) If the User Committee directs a variation under clause 3.1(e), Aurizon Network will be entitled to a variation to the budget for the relevant Stage to the extent necessary to reflect the impact of the variation, provided that Aurizon Network must promptly (and in any event within 14 days) after the variation direction is received notify the Funding User of any impact on the budget for the relevant Stage.
- (f) If implementing a variation would give rise to a matter described in clause 3.2(d), Aurizon Network must, within **insert** days after receiving the variation direction under clause 3.2(d), notify the User Committee of that fact, and the User Committee must consider, consult on and, as required, make a Decision on the matter in accordance with clause 5.

3.3 Reports and other deliverables

- (a) Aurizon Network will provide each Participating Funding User with a copy of all deliverables applicable to the Services (including a copy of the Report) within 7 days of completion of a Report or as specified in the relevant Approved Work Plan.
- (b) Without limiting clause 2, Aurizon Network must ensure that, on completion of the Services for a Stage, the relevant Report meets the requirements set out in the relevant Approved Work Program and this Agreement.
- (c) A Funding User may, if it considers that a Report provided under clause 3.1(a) does not meet the requirements of this Agreement (including any requirements of the relevant Approved Work Plan), by notice, require Aurizon Network to rectify any such deficiencies and Aurizon Network must promptly on receipt of such notice, rectify such deficiencies in accordance with the notice.

3.4 Aurizon Network may not incur costs in excess of the amount included in the Approved Work Plan

- (a) Aurizon Network acknowledges that each Approved Work Plan will include an approved budget for the performance of the Services the subject of that Stage.
- (b) Aurizon Network may not incur any cost or expense or seek reimbursement of any sum in excess of the approved budget.

3.5 Review and audit

Aurizon Network must, on request of the User Committee:

- (a) permit a peer review team to independently review and assess the capacity analysis undertaken by Aurizon Network and the technical, engineering and environmental studies, advices and reports obtained by Aurizon Network in the course of performing the Services for a Stage; and
- (b) make its records relating to the costs incurred by Aurizon Network in performing the Services for each Stage, available to the Funding User (or its nominee) for auditing purposes and shall provide copies of such information to the Funding User (or its nominee) upon request.

4 Progression to next Stage

4.1 Progression to next Stage

- (a) The Funding User may, at any time within the twenty-eight (28) days after the date on which the Services for the current Stage are completed, elect to proceed to the next Stage by giving a written notice to that effect to Aurizon Network.
- (b) If the Funding User issues a notice under clause 4.1(a), then Aurizon Network must promptly (but in any case not later than 3 days after the expiry of the period referred to in clause 4.1(a)) notify the Funding User whether or not each Other Funding User had issued a similar notice under the relevant Equivalent Agreement electing to proceed to the next Stage.

4.2 Non-progression to next Stage

- (a) If the Funding User does not issue a notice under clause 4.1(a), then on and from the date of completion of the Services the subject of the relevant Stage the Funding User shall cease to:
- (1) be a Participating Funding User for the purposes of any further Stage; and
 - (2) be a member of the User Committee and shall have no right to attend, vote or otherwise participate in the User Committee,
- and this Agreement shall automatically terminate and clause 16.2 shall apply.
- (b) The parties acknowledge and agree that equivalent provisions shall apply to each Other Funding User under the relevant Equivalent Agreement, such that any person comprising an Other Funding User during the relevant Stage who does not issue an equivalent notice to that contemplated under clause 4.1(a), shall on and from the date of completion of the Services the subject of the relevant Stage cease to:
- (1) be an Other Funding User or a Participating Funding User for the purposes of any further Stage, pursuant to this or any Equivalent Agreement; and
 - (2) be a member of the User Committee and shall have no right to attend, vote or otherwise participate in the User Committee.
- (c) If, as a result of the operation of this clause 4.2, there is no Participating Funding User other than the Funding User on and from the date of completion of the Services the subject of the relevant Stage, then for the purposes of applying this Agreement to each subsequent Stage (to the extent that the Funding User elects to proceed to that Stage), references in this Agreement to the User Committee shall be taken to be references to the Funding User only, as appropriate, and references to Decisions shall be taken to be references to approvals, agreement, rejection or other decisions notified by the Funding User to Aurizon Network, as appropriate.
- (d) Aurizon Network shall take all steps reasonably necessary to give effect to the matters contemplated under this clause 4.2.

5 User Committee

5.1 User Committee

- (a) The User Committee will be the forum for the Participating Funding Users to carry out consideration of, consultation on and, where required, decision making in respect of, the undertaking of the Services and addressing matters otherwise contemplated by this Agreement as being addressed by the User Committee.
- (b) Aurizon Network must, within 14 days after the date of this Agreement:
- (1) establish the User Committee as contemplated by this clause 5; and
 - (2) procure each Participating Funding User to approve the rules set out in Schedule 2;
 - (3) keep the Funding User informed of progress in respect of the matters in clauses 5.1(b)(1) and (2),
- and the rules so approved shall be the initial Approved Rules of the User Committee.

- (c) If requested by any Participating Funding User, Aurizon Network shall procure each Participating Funding User to enter into a covenant in favour of each other Participating Funding User to be bound by the Approved Rules of the User Committee and the approved functions of the User Committee.
- (d) The Funding User acknowledges and agrees that, by its execution of this Agreement, it approves the rules set out in Schedule 2 as those of the User Committee and, if requested by Aurizon Network, it shall execute a covenant as contemplated in clause 5.1(c) in such form as Aurizon Network reasonably requires.
- (e) Subject to clause 5.1(f) and the Approved Rules of the User Committee, the User Committee will comprise the Representative of each Participating Funding User from time to time.
- (f) The parties acknowledge and agree that the treatment of a Representative of a Participating Funding User for the purposes of determining a quorum and in respect to voting rights may be affected by certain matters, including payment default under this Agreement or an Equivalent Agreement or insolvency affecting a Participating Funding User, but only if and to the extent set out in the Approved Rules of the User Committee.
- (g) Aurizon Network must promptly notify each Participating Funding User as soon as it becomes aware of any event or circumstance which may impact on any Participating Funding User's right to be a member or otherwise participate and/or vote in respect of the User Committee.

5.2 Actions by the User Committee

- (a) Any approval, agreement, notice, determination or other act or decision contemplated as to be made or considered by the User Committee under this Agreement shall only be taken to have been made if supported by a Decision of the User Committee of the type relevant to that matter.
- (b) Notice of a Decision of the User Committee under this Agreement will be effective when Aurizon Network and each Participating Funding User is given written notice of the Decision by the chairperson of the User Committee.

5.3 Funding User's Representative

- (a) The Funding User's initial Representative is the person listed as such in Schedule 3.
- (b) The Funding User may replace its Representative from time to time in accordance with the Approved Rules of the User Committee.
- (c) The parties acknowledge and agree that a Representative may vote in the best interests of its appointing party.
- (d) A Representative cannot amend any of the terms or conditions of this Agreement.

5.4 No requirement to comply with Decisions in certain circumstances

- (a) Aurizon Network will not be obliged to comply with a Decision of the User Committee to the extent:
 - (1) it gives notice in accordance with clause 5.4(b); and
 - (2) implementing the Decision would:
 - (A) cause Aurizon Network to breach a Law;
 - (B) having regard to prudent practices be unsafe; or

- (C) cause Aurizon Network to breach an Access Undertaking.
- (b) If implementing a Decision would give rise to a matter described in clause 5.4(a)(2), Aurizon Network must within **[insert]** days after receiving written notice of the Decision notify the User Committee of that fact, and the User Committee must consider, consult on and, as required, make a Decision on the matter in accordance with clause 5.

5.5 Equivalent Agreements

The parties warrant that each Equivalent Agreement will be (and will remain) on the same terms as this Agreement.

6 Subcontractors

Aurizon Network may subcontract all or any part of its obligations under this Agreement, provided that:

- (a) each Subcontractor must be a person who has been approved by the User Committee or who has been appointed by Aurizon Network pursuant to the subcontractor selection process included in a plan approved by the User Committee;
- (b) each Subcontractor must be appointed or engaged on terms which are no more favourable to the Subcontractor than arm's length commercial terms, or on terms which are otherwise approved by the User Committee;
- (c) each Subcontractor which is a Related Body Corporate of Aurizon Network must be appointed on terms approved by the User Committee;
- (d) Aurizon Network must provide copies of the appointment terms for each Subcontractor to the User Committee;
- (e) unless otherwise agreed by the User Committee, the rights of Aurizon Network under each contract to which it is a party with one or more Subcontractors in connection with any of the matters contemplated by this Agreement must be capable of assignment to the Participating Funding Users (collectively) and their respective nominees in accordance with clause 16.3;
- (f) notwithstanding the appointment of any Subcontractor, Aurizon Network shall remain liable for the performance of its obligations under this Agreement and the acts and omission of the Subcontractors; and
- (g) unless otherwise agreed by the Funding User, Aurizon Network must not make or give any representation or undertaking to any Subcontractor which states or implies that the Funding User is in any way liable or responsible for meeting any of the costs, charges, fees, expenses, outgoings, disbursements or Losses of the Subcontractor in connection with the Services.

7 Insurance

- (a) Aurizon Network must, at its own expense, take out, and subsequently maintain current at all times during the term of this Agreement, insurance with a corporation licensed to conduct insurance business in Australia for the risks and on the terms specified in Schedule 4.
- (b) Aurizon Network must, on request by the Funding User or the User Committee, provide the Funding User or the User Committee (as the case may be) with a

copy of the policies of insurance effected or maintained pursuant to this clause 7.

- (c) Aurizon Network must, in respect of any Claims by it or by any other insured for which it is responsible, pay all excesses and/or deductibles provided for in any insurance policy effected or maintained pursuant to this clause 7.
- (d) Aurizon Network shall not do, or suffer to be done, anything whereby any policy of insurance required to be maintained by Aurizon Network shall be or become void or voidable.

8 Intellectual Property Rights

- (a) The parties agree that as between the Funding User and Aurizon Network, any Intellectual Property Rights which are developed by or on behalf of Aurizon Network in connection with the performance of the Services, this Contract or the Extension will be owned by Aurizon Network.
- (b) Aurizon Network grants to the Funding User an irrevocable licence to use any Intellectual Property Rights developed by or on behalf of Aurizon Network (including any Subcontractor) in connection with the performance of the Services (including in any Intellectual Property Rights in the Reports), this Contract or the Extension for any purpose connected with the Extension.

9 [Option 1 – Underwriting of Costs]

9.1 Inclusion of costs in Regulatory Asset Base

Aurizon Network must take all steps reasonably required to ensure that the costs incurred by Aurizon Network in performing the Services are accepted by the QCA for inclusion in the Regulatory Asset Base in accordance with the Access Undertaking. Without limiting the foregoing, Aurizon Network must:

- (a) include the Extension in the “Coal Rail Infrastructure Master Plan” (as defined in the Access Undertaking);
- (b) seek, in accordance with the Access Undertaking, acceptance from the applicable “Customer Group” (as defined in the Access Undertaking) of the scope of works to be undertaken for each Stage and, if the Customer Group does not accept the scope of such works, make appropriate submissions to the QCA seeking regulatory pre-approval of the scope of those works; and
- (c) where the User Committee so requires, seek, in accordance with the Access Undertaking, regulatory pre-approval from the QCA of the standard of works and procurement strategy applicable to each Stage.

9.2 Underwrite of Services costs

- (a) If, despite Aurizon Network complying with its obligations under clause 9.1, some or all of the costs incurred by Aurizon Network in undertaking the Services for each Stage are not accepted by the QCA for inclusion in the Regulatory Asset Base by **[Insert]**, the Funding User will reimburse Aurizon Network for its Underwriting Proportion of such costs which are not accepted by the QCA for inclusion in the Regulatory Asset Base, but only to the extent those costs:
 - (1) are provided for in Schedule 5;

- (2) were reasonably and properly incurred by Aurizon Network in undertaking the Services in accordance with an Approved Work Plan for a Stage during which time the Funding User was a Participating Funding User; and
 - (3) do not exceed the budget contained in an Approved Work Plan for the relevant Stage.
- (b) For the avoidance of doubt, costs are not “reasonably and properly incurred” to the extent they arise from:
- (1) a breach by Aurizon Network of any of its obligations under this Agreement;
 - (2) any breach of contract, act of negligence, fraud or wilful default on the part of Aurizon Network or any of its Related Bodies Corporate or any Subcontractor; or
 - (3) Services performed by Aurizon Network after termination of this Agreement.
- (c) Unless otherwise agreed in writing by the Funding User, the only costs incurred by Aurizon Network in performing its obligations under this Agreement or in undertaking the Services which the Funding User is responsible or liable to pay are those costs which the Funding User is required to pay under clause 9.2.

9.3 Underwriting Proportion

The Underwriting Proportion referred to in clause 9.2(a) for each Stage during which the Funding User is a Participating Funding User is determined in accordance with the following formula:

$$\text{Underwriting Proportion} = \left[\frac{A}{B} \right] \times \frac{100}{1}$$

Where in respect of each Stage:

- A is the Funding User’s Capacity Request; and
- B is the Capacity Increment.

9.4 Invoicing

If the Funding User is liable under clause 9.2 to pay costs incurred by Aurizon Network, Aurizon Network shall submit to the Funding User an invoice setting out:

- (a) the costs which are claimed and payable in accordance with clause 9.2, together with an itemisation of those costs, invoices and any other supporting documentation reasonably requested by the Funding User; and
- (b) the amount of GST (if any) which is payable by the Funding User on the above amounts,

(in aggregate, the **invoiced amount**).

9.5 Payment

- (a) Subject to clause 9.5(b), the Funding User must pay in full the invoiced amount in Immediately Available Funds within 30 days after receipt of a valid invoice without set-off, retention, counterclaim or any other deduction.
- (b) Where the Funding User disputes the amount claimed by Aurizon Network under any invoice and intends to withhold all or part of payment of that amount, the Funding User must give notice to Aurizon Network and each other

Participating Funding User not later than 21 days after receipt of the invoice. The notice shall state the grounds of dispute, the amount to be withheld and the basis on which that amount is calculated.

- (c) If the dispute was caused by any manifest error in the disputed invoice, Aurizon Network must revise the invoice amount within 7 days after receipt of the notice under clause 9.5(b) and re-submit the invoice to the Funding User and the revised invoice will replace the original invoice for the purpose of clause 9.5(a).
- (d) If the dispute is not resolved between the Funding User and Aurizon Network within 14 days after receipt of the notice under clause 9.5(b), then the dispute resolution process in clause 15 shall apply to resolve any issues which have not been agreed and the result so determined under that process shall be final and binding on the Funding User and Aurizon Network. The disputed invoice shall not be due and payable until the final determination of the dispute resolution process.
- (e) If any other Participating Funding User (past or present) does not fully pay an amount invoiced to it under an Equivalent Agreement within a period of 28 days after invoice (whether disputed or not), Aurizon Network must notify the Funding User in writing thereafter.

9.6 Funding User not responsible for any Other Funding User

Nothing in this Agreement or otherwise renders the Funding User or any other Participating Funding User (past or present) to:

- (a) pay any amount (whether disputed or not) unpaid or otherwise payable; or
- (b) rectify any default or breach of contract,

by any other Participating Funding User (past or present).

9.7 Effect of termination on payment obligations

This clause 9 shall survive termination and, without limitation, where termination of this Agreement occurs during a commenced but uncompleted Stage, the provisions of clause 16.1(d) shall apply.

10 [Option 2 – Funding by Funding Users]

10.1 Inclusion of costs in Regulatory Asset Base

Aurizon Network must take all steps reasonably required to ensure that the costs incurred by Aurizon Network in performing the Services are accepted by the QCA for inclusion in the Regulatory Asset Base in accordance with the Access Undertaking. Without limiting the foregoing, Aurizon Network must:

- (a) include the Extension in the “Coal Rail Infrastructure Master Plan” (as defined in the Access Undertaking);
- (b) seek, in accordance with the Access Undertaking, acceptance from the applicable “Customer Group” (as defined in the Access Undertaking) of the scope of works to be undertaken for each Stage and, if the Customer Group does not accept the scope of such works, make appropriate submissions to the QCA seeking regulatory pre-approval of the scope of those works; and
- (c) where the User Committee so requires, seek, in accordance with the Access Undertaking, regulatory pre-approval from the QCA of the standard of works and procurement strategy applicable to each Stage.

10.2 Invoicing

- (a) Within 5 days after the end of a month during the performance of a Stage, Aurizon Network will give the Funding User an invoice for the Funding User's Proportion of the costs incurred by Aurizon Network in the relevant month, provided that such costs:
- (1) are provided for in Schedule 5;
 - (2) were reasonably and properly incurred by Aurizon Network in undertaking the Services in accordance with an Approved Work Plan for a Stage during which time the Funding User was a Participating Funding User; and
 - (3) do not exceed the budget for the Stage included in an Approved Work Plan.
- (b) For the avoidance of doubt, costs are not "reasonably and properly incurred" to the extent they arise from:
- (1) a breach by Aurizon Network of any of its obligations under this Agreement;
 - (2) any breach of contract, act of negligence, fraud or wilful default on the part of Aurizon Network or any of its Related Bodies Corporate or any Subcontractor; or
 - (3) Services undertaken by Aurizon Network after termination of this Agreement.

10.3 Payment

- (a) Subject to clause 10.3(b), the Funding User must pay in full the invoiced amount in Immediately Available Funds within 30 days after receipt of a valid invoice without set-off, retention, counterclaim or any other deduction.
- (b) Where the Funding User disputes the amount claimed by Aurizon Network under any invoice and intends to withhold all or part of payment of that amount, the Funding User must give notice to Aurizon Network and each other Participating Funding User not later than 21 days after receipt of the invoice. The notice shall state the grounds of dispute, the amount to be withheld and the basis on which that amount is calculated.
- (c) If the dispute was caused by any manifest error in the disputed invoice, Aurizon Network must revise the invoice amount within 7 days after receipt of the notice under clause 10.3(b) and re-submit the invoice to the Funding User and the revised invoice will replace the original invoice for the purpose of clause 10.3(a).
- (d) If the dispute is not resolved between the Funding User and Aurizon Network within 14 days after receipt of the notice under clause 10.3(b), then the dispute resolution process in clause 15 shall apply to resolve any issues which have not been agreed and the result so determined under that process shall be final and binding on the Funding User and Aurizon Network. The disputed invoice shall not be due and payable until the final determination of the dispute resolution process.
- (e) If any other Participating Funding User (past or present) does not fully pay an amount invoiced to it under an Equivalent Agreement within a period of 28 days after invoice (whether disputed or not), Aurizon Network must notify the Funding User in writing thereafter.

10.4 Funding User not responsible for any Other Funding User

Nothing in this Agreement or otherwise renders the Funding User or any other Participating Funding User (past or present) to:

- (a) pay any amount (whether disputed or not) unpaid or otherwise payable; or
- (b) rectify any default or breach of contract,

by any other Participating Funding User (past or present).

10.5 Effect of termination on payment obligations

This clause 10 shall survive termination and, without limitation, where termination of this Agreement occurs during a commenced but uncompleted Stage, the provisions of clause 16.1(d) shall apply.

10.6 Refund of Funding User's contribution

Within 14 days after the costs of a Stage which have been partly or wholly funded by the Funding User have been accepted by the QCA into the Regulatory Asset Base, Aurizon Network will refund to the Funding User the Funding User's Underwriting Proportion of the costs included in the Regulatory Asset Base, plus interest on that amount calculated at **[Insert]**, unless and to the extent that the Participating Funding Users have agreed in writing that such costs be incorporated into the calculation of costs under the relevant Construction Funding Agreements.

11 Representations and warranties

- (a) Each party represents and warrants to each other party that:
 - (1) it is duly incorporated and validly existing under the laws of the place of its incorporation;
 - (2) it has full corporate power to execute, deliver and perform its obligations under this Agreement;
 - (3) the execution, delivery and performance of this Agreement have been properly authorised by it;
 - (4) this Agreement constitutes a legal, valid and binding obligation of it enforceable in accordance with its terms by appropriate legal remedy; and
 - (5) there are no actions, claims, proceedings or investigations pending or to the best of its knowledge threatened against it or by it that may have a material adverse effect on its ability to perform its obligations under this Agreement.
- (b) Each party shall be deemed to represent and warrant the matters specified in clause 11(a) throughout the duration of this Agreement.

12 Exclusion of Consequential Loss

No party shall in any circumstances be liable to another party for any Consequential Loss resulting from the failure of the first-mentioned party to comply with its obligations under this Agreement.

13 GST

13.1 Definitions

Words used in this clause 13 that have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context indicates otherwise.

13.2 GST

- (a) Unless expressly included, the consideration for any supply under or in connection with this Agreement does not include GST.
- (b) To the extent that any supply made under or in connection with this Agreement is a taxable supply (other than any supply made under another agreement that contains a specific provision dealing with GST), the recipient must pay, in addition to the consideration provided under this Agreement for that supply (unless it expressly includes GST), an amount (**additional amount**) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. The recipient must pay the additional amount at the same time as the consideration to which it is referable.
- (c) Whenever an adjustment event occurs in relation to any taxable supply to which clause 13.2(b) applies:
 - (1) the supplier must determine the amount of the GST component of the consideration payable; and
 - (2) if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.

13.3 Tax invoices

The supplier must issue a 'tax invoice' (as defined in the GST Law) to the recipient of a supply to which clause 13.2 applies no later than 7 days following payment of the GST inclusive consideration for that supply under that clause.

13.4 Reimbursements

If a party is entitled under this Agreement to be reimbursed or indemnified by another party for a cost or expense incurred in connection with this Agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that the cost or expense is the consideration for a creditable acquisition made by the party being reimbursed or indemnified, or by its representative member.

14 Confidentiality

14.1 Confidentiality

Subject to clause 14.2, each party (each a **recipient**) must not do any of the following:

- (a) disclose any Confidential Information;
- (b) use any Confidential Information in any manner which may cause or be calculated to cause Loss to another party; or

- (c) make any public announcement or issue any press release regarding this Agreement or the transactions contemplated by it.

14.2 Permitted disclosure of Confidential Information

A recipient may disclose Confidential Information or make a public announcement or issue a press release of the type referred to in clause 14.1(c):

- (a) with the prior written consent of each person to whom that Confidential Information relates;
- (b) if it is required to do so:
 - (1) by applicable Law to which it is subject;
 - (2) by any recognised stock exchange on which its securities, or the securities of a Related Body Corporate, are quoted; or
 - (3) by any Government Agency,

provided that the recipient must (to the extent practicable in the circumstances) consult with each person to whom that Confidential Information relates before making the disclosure or public announcement or issuing the press release and use reasonable endeavours to agree with those persons the form and content of the disclosure or public announcement or press release;
- (c) if the disclosure is required for use in legal proceedings regarding this Agreement;
- (d) to an expert or any other body appointed pursuant to clause 15, in each case on a confidential basis;
- (e) if the Confidential Information has come within the public domain, other than by a breach of this clause 14 by any person;
- (f) to the recipient's Related Bodies Corporate or any financiers, consultants and professional advisers of the recipient who have a legitimate need to know and on a confidential basis; or
- (g) to the QCA.

15 Dispute resolution

15.1 Application

- (a) The parties agree that all disputes arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, (**dispute**) must be exclusively and finally resolved in the manner set out in this clause 15.
- (b) If a dispute arises, the parties must negotiate in good faith and attempt to resolve the dispute by mutual agreement.
- (c) If the parties are unable to resolve the dispute within 20 Business Days of the dispute arising:
 - (1) the parties may by agreement refer the dispute to an expert for determination in accordance with clause 15.2; or
 - (2) otherwise commence court proceedings.

15.2 Expert determination

- (a) The parties may refer a dispute for determination by an expert pursuant to this clause by agreeing in writing and providing a copy of that written agreement to each Participating Funding User.
- (b) On issue of a notice under clause 15.2(a), the parties must promptly negotiate in good faith and attempt to agree the identity of the person to be appointed as the expert. If the parties have not agreed the identity of the person to be appointed as the expert within 10 Business Days after issue of the notice under clause 15.2(a), the expert shall be the person nominated by the President (for the time being) of Engineers Australia – Queensland Division.
- (c) The expert shall:
 - (1) have appropriate qualifications and practical experience having regard to the nature of the dispute;
 - (2) have no interest or duty which conflicts or may conflict with his or her function as expert, he or she being required to fully disclose any such interest or duty by written notice to the parties before his or her appointment;
 - (3) not be an employee of any party or of any Related Body Corporate of any party;
 - (4) have regard to the provisions of this Agreement and consider all submissions (including oral submissions by each party provided that such oral submissions are made in the presence of all the parties), supporting documentation, information and data with respect to the matter submitted by the parties;
 - (5) not make a determination in relation to a dispute that is inconsistent with this Agreement;
 - (6) provide the parties with a copy of his or her determination in relation to the dispute in the form of a report as soon as reasonably practicable, and by no later than 60 days after his or her appointment;
 - (7) be required to undertake to keep confidential all matters coming to his or her knowledge by reason of this appointment and performance of his or her duties; and
 - (8) be deemed to be and shall act as an expert and not an arbitrator.
- (d) The parties shall, upon request by the expert, provide or make available to the expert, as soon as reasonably practicable, all information in their possession or control and all assistance that the expert may reasonably require.
- (e) In the absence of manifest error, the decision of the expert shall be final and binding upon the parties.
- (f) Unless otherwise agreed by the parties:
 - (1) the parties shall be liable for the costs of the expert and any advisers to the expert in equal shares; and
 - (2) each party shall bear its own costs of participating in the expert determination.

15.3 Court proceedings

Where the parties have not agreed to resolve a dispute under clause 15.2, either party may commence court proceedings.

15.4 Disputes involving Other Funding Users

If:

- (a) any dispute concerns the User Committee or any matter which is part of the functions or responsibilities of the User Committee; or
- (b) Aurizon Network is of the opinion that:
 - (1) a dispute which arises under this Agreement, or the outcome or consequences of that dispute, may be relevant to one or more Other Funding Users; or
 - (2) a "dispute" (as defined under an Equivalent Agreement) which arises under the Equivalent Agreement, or the outcome or consequences of that dispute, may be relevant to the Funding User under this Agreement,

then:

- (c) Aurizon Network must, as applicable, join:
 - (1) the relevant Other Funding Users to the dispute resolution process under this Agreement; or
 - (2) the Funding User to the dispute resolution process under the relevant Equivalent Agreement; and
- (d) Aurizon Network, the Funding User and each relevant Other Funding User joined to the dispute resolution process under this Agreement or an Equivalent Agreement (as applicable) will be bound by the outcome of the resolution of the dispute, including the manner in which costs of the process are to be borne, irrespective of whether or not the Funding User and the relevant Other Funding Users (as applicable) choose to actively participate in the dispute resolution process.

15.5 Warranty and acknowledgement

Aurizon Network warrants, and the Funding User acknowledges, that each Equivalent Agreement will contain a clause on substantially the same terms as this clause 15.

16 Termination

16.1 Termination

- (a) This Agreement terminates on the earliest to occur of:
 - (1) the date agreed in writing between the parties;
 - (2) the date of termination pursuant to clause 4.2(a);
 - (3) the date of termination by the Funding User in accordance with clause 16.1(b) and
 - (4) the date of termination by Aurizon Network in accordance with clause 16.1(c).
- (b) The Funding User may in its absolute discretion terminate this Agreement at any time by serving on Aurizon Network a written notice to that effect.
- (c) Aurizon Network may terminate this Agreement upon the occurrence of an Event of Default in respect of the Funding User by serving on the Funding User a written notice to that effect.

- (d) If this Agreement is terminated pursuant to clause 16.1(a)(1), clause 16.1(b) or clause 16.1(c) during a Stage which has commenced but not been completed and in respect of which there is already an Approved Work Plan, the Funding User's obligations under clause 9.2 and 10.3, as applicable, will continue to apply to Services undertaken by Aurizon Network after termination but before the end of the relevant Stage to the extent that the Services are required to be undertaken under the Approved Work Plan (in its form at the date of termination), unless otherwise agreed in writing by the parties and each Other Funding User.

16.2 Effect of termination

Termination of this Agreement will not affect:

- (a) any accrued rights and obligations of the parties immediately prior to, or in connection with any breach of this Agreement immediately prior to, the termination; or
- (b) any provision of this Agreement which is expressed to, or which by its nature, comes into effect on or survive termination.

16.3 Step-in rights

- (a) This clause 16.3 applies if an Event of Default has occurred in respect of Aurizon Network and the User Committee provides notice in writing to Aurizon Network specifying that the Participating Funding Users wish to step-in and complete the Services and Reports for each Stage themselves.
- (b) Aurizon Network must, on receipt of such notice:
- (1) allow the Participating Funding Users to undertake and complete the Services for the subject of each Stage at the Participating Funding Users' cost;
 - (2) promptly take all reasonable steps within its power to assign to the Participating Funding Users (or to one or more of the Related Bodies Corporate nominated by the relevant Participating Funding User) all of Aurizon Network's rights under the contracts and agreements that it has with the Subcontractors in connection with the Services and to enable the Participating Funding Users, through the User Committee, to provide instructions to those Subcontractors in relation to the Services;
 - (3) promptly provide the User Committee with copies of all documents and other information obtained or maintained by Aurizon Network, or to which it has access, which are reasonably necessary for the Participating Funding Users to undertake and complete the Services the subject of each Stage (including all technical, feasibility and engineering studies, and all advices, reports, records, designs, invoices and receipts and applications for and correspondence relating to Authority Approvals);
 - (4) (on reasonable notice and during ordinary business hours) allow the Participating Funding Users to have access to all areas of the Network as reasonably required for the purpose of undertaking the Services the subject of each Stage (subject to complying with such reasonable safety and other restrictions as are stipulated by Aurizon Network); and
 - (5) continue to comply with such other obligations of this Agreement as the Funding User may specify.

17 General

17.1 Notices

- (a) Any notice or other communication (including any request, demand, consent or approval):
- (1) to or by a party to this Agreement must be in legible writing and in English addressed as shown in Schedule 3 (or as specified to the sender by any party by notice); and
 - (2) to or by the User Committee must be addressed and given as provided in the Approved Rules of the User Committee or as otherwise approved by Aurizon Network and all Participating Funding Users from time to time, with a copy also given to each Participating Funding User.
- (b) A notice or other communication given in accordance with clause 17.1(a) can be relied on by the addressee, and the addressee is not liable to any other person for any consequences of that reliance, if the addressee believes it to be genuine, correct and authorised by the sender.
- (c) Any notice or other communication to or by a party to this Agreement is regarded as being given by the sender and received by the addressee:
- (1) if by delivery in person, when delivered to the addressee;
 - (2) if by post, 3 Business Days from and including the date of postage; or
 - (3) if by facsimile transmission, when a facsimile confirmation receipt is received indicating successful delivery,
- but if the delivery or receipt is on a day that is not a Business Day or is after 5.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day.
- (d) A facsimile transmission is regarded as legible unless the addressee telephones the sender within 2 hours after the transmission is received or regarded as received under clause 17.1(c) and informs the sender that it is not legible.
- (e) In this clause 17.1, reference to an addressee includes a reference to an addressee's officers, agents or employees.

17.2 Governing law and jurisdiction

This Agreement is governed by the laws of Queensland. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.

17.3 Funding User representatives

In relation to each of provision of this Agreement under which the Funding User is conferred a right to attend or observe a meeting (other than a meeting of the User Committee), or to inspect or audit Services or other activities, property, books, records, accounts and other documents, Aurizon Network agrees that the Funding User may nominate one or more of its employees, officers and technical, commercial and professional advisers and consultants as its representatives to attend or observe such meeting or to carry out such inspection or audit (as the case may be).

17.4 Costs and expenses

Each party must pay its own costs (including legal costs) and expenses in connection with the negotiation, preparation, execution and delivery of this Agreement.

17.5 Entire agreement

This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

17.6 Assignment

The rights and obligations of each party under this Agreement cannot be assigned, encumbered or otherwise dealt with without the prior written consent of the other party.

17.7 Waivers

- (a) A provision of, or a right, discretion or authority created under, this Agreement may not be:
 - (1) waived except in writing signed by the party granting the waiver; and
 - (2) varied except in writing signed by the parties.
- (b) A failure or delay in exercise, or partial exercise, of a power, right, authority, discretion or remedy arising from a breach of, or default under, this Agreement does not result in a waiver of that right, power, authority, discretion or remedy.

17.8 Variation

A variation of any term of this Agreement must be in writing and signed by the parties.

17.9 Counterparts

This Agreement may be executed in any number of counterparts that together will constitute one instrument. A party may execute this Agreement by signing any counterpart.

17.10 Further assurances

Each party must do all things and execute all further documents necessary to give full effect to this Agreement and its obligations under it.

17.11 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this Agreement or any right, power, authority, discretion or remedy conferred by this Agreement that is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Agreement that is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

17.12 Severability

Any provision in this Agreement that is invalid or unenforceable in any jurisdiction is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

17.13 Relationship of parties

No party is the partner, agent, employee or representative of the other party and no party has the power to incur any obligations on behalf of, or pledge the credit of, the other party.

17.14 Remedies cumulative

Except as provided in this Agreement and permitted by applicable laws, the rights, powers and remedies provided in this Agreement are cumulative with, and not exclusive of, the rights, powers or remedies provided by applicable laws independently of this Agreement.

17.15 Specific performance

Aurizon Network acknowledges that monetary damages alone would not be adequate compensation to the Funding User for Aurizon Network's breach of its obligation to undertake the Services and that accordingly specific performance of that obligation is an appropriate remedy.

17.16 Attorneys

Each of the attorneys executing this agreement states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

17.17 Survival of clauses

Clauses 1, 5.5, 7, 8, 9, 10, 11, 12, 14, 15, 16.2 and 17 survive termination of this Agreement.

Schedules

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Schedule 1

Scope of Services

Schedule 2

Rules of User Committee

1 Definitions

- (a) Unless expressly stated otherwise in this Schedule, defined terms have the same meaning as defined in an Equivalent Agreement and clauses referred to in this Schedule are clauses in an Equivalent Agreement.
- (b) The meanings of the terms used in this Schedule are set out below.

Term	Meaning
Underwriting Proportion	in respect of a Participating Funding User the "Underwriting Proportion" as defined in the Participating Funding User's Equivalent Agreement.
Aurizon Network	Aurizon Network Pty Limited.

2 Membership of User Committee

- (a) Each Participating Funding User:
- (1) must appoint one representative to the User Committee;
 - (2) may remove its Representative and appoint another at any time and from time to time; and
 - (3) may appoint a person as an alternate Representative for its Representative and remove any person so appointed,
- by notice in writing to each other Participating Funding User and Aurizon Network.
- (b) Unless the Participating Funding Users otherwise unanimously agree in writing, the Participating Funding User with the largest individual underwriting proportion will appoint its Representative to be the chairperson of the User Committee and cause the chairperson to preside at all meetings of the User Committee.
- (c) Upon the termination of an Equivalent Agreement to which a person is a party, that person shall cease to be entitled to membership of the User Committee and must immediately remove all representatives or alternates from the User Committee.

3 Functions and responsibilities

The User Committee will be the forum for consideration of, consultation on and, where required, decision making in respect of, the undertaking of the Services and the addressing of matters otherwise contemplated by this Agreement as being addressed by User Committee.

The User Committee must:

- (a) consider and assess any matters requiring approval or any other decision by the User Committee as contemplated under an Equivalent Agreement; and
- (b) receive, consider and consult about information provided by Aurizon Network or matters which Aurizon Network is required to consult with the User Committee as contemplated under an Equivalent Agreement.

Subject to the Equivalent Agreements, the User Committee is to make decisions in relation to the conduct of Services, including without limitation to,

- (c) considering and, if appropriate, approval of the following:
 - (1) any Work Plan prepared in accordance with the Equivalent Agreements;
 - (2) any variation sought in accordance with the Equivalent Agreements and the revised Work Plan to accommodate the effect of any approved variation; and
 - (3) appointment of Subcontractors by Aurizon Network and the terms of appointment pursuant to Equivalent Agreements.

4 Meetings

- (a) The chairperson must convene a meeting of the User Committee at the request of any Participating Funding User and may convene a meeting on his or her own motion.
- (b) The chairperson must convene a meeting within 5 Business Days after the occurrence of any of the following events:
 - (1) a Work Plan, Report or any other document is submitted by Aurizon Network for approval in accordance with this Agreement;
 - (2) a decision needs to be made by the Participating Funding Users in accordance with this Agreement.
- (c) Meetings of the User Committee must, unless otherwise agreed by the Participating Funding Users, be held at such place in Brisbane as the User Committee may from time to time determine.

5 Notice

- (a) The chairperson must give at least 5 Business Days notice of the meeting to the Participating Funding Users.
- (b) At the same time as giving the notice of meeting, the chairperson will provide to the Participating Funding Users an agenda of the matters to be discussed at the meeting. Items may be added to the agenda by any Participating Funding User at least 3 Business Days prior to the scheduled meeting date. The chairperson

must provide a final agenda to the Participating Funding Users at least one Business Day before the meeting.

- (c) Such notice and agenda shall not be required where the Representatives present at a meeting at which quorum is present unanimously agree upon an agenda and agree to waive notice of the meeting.

6 Quorum

The quorum for a meeting of the User Committee shall be one Representative of each Participating Funding User whose Representative is entitled to vote. Provided however:

- (a) if a quorum is not present within one hour of the time appointed for the meeting, the meeting shall stand adjourned to the same hour on the same day in the next week at the same venue and the quorum at such adjourned meeting shall be one Representative of each Participating Funding User whose Representative is entitled to vote; and
- (b) if a quorum is not present within 30 minutes of the time appointed for that meeting, the meeting shall stand adjourned to the same hour on the same day in the next week at the same venue and the quorum at such adjourned meeting shall be any Representative or Representatives who is or are entitled to vote and represent a Participating Funding User or Participating Funding Users whose aggregate underwriting proportions constitute more than fifty percent (50%) of the aggregate underwriting proportions of all the Participating Funding Users. If the existing chairperson of the User Committee or his or her alternate is not present in such adjourned meeting, the Representatives present must elect one of themselves to be the chairperson of that meeting.

7 Others may be present

Where all Participating Funding Users agree, a Participating Funding User may arrange at its own expense for consultants and other technical personnel to be present at meetings of the User Committee to assist its Representative.

8 Authority of Representative

- (a) Each Representative has full power and authority to represent and bind the Participating Funding User appointing them in all matters within the powers of the User Committee and each Participating Funding User is bound by all votes cast by its Representative.
- (b) Any decision made by the User Committee in accordance with this Agreement is deemed to be a decision of all the Participating Funding Users, and each Participating Funding User is bound as if that decision was an agreement entered into by them.

9 Voting entitlement

- (a) The Representative of a Participating Funding User present and entitled to vote at any meeting of the User Committee shall have, and shall exercise as a block

vote, that number of votes which is equal to the underwriting proportion of the Participating Funding User appointing it.

- (b) By way of example only, the representative of a Participating Funding User whose underwriting proportion is twenty percent (20%) shall have 20 votes.

10 Super Majority decisions

The following matters must be decided by Super Majority votes of the votes cast at a meeting of the User Committee:

[Insert]

11 Simple majority

- (a) Subject to clauses 10 and 13 of these Rules, decisions of the User Committee shall be made by a simple majority of votes cast at a meeting of the User Committee.
- (b) Where there is an equal vote, the chairperson shall not have a casting vote.

12 Minutes

The chairperson of a meeting must keep or cause to be kept minutes of each meeting of the User Committee and must circulate or cause to be circulated the draft minutes to each Participating Funding User within 10 Business Days after the meeting is held. The minutes, as approved at the next meeting of the User Committee, are a correct record of the meeting to which they relate.

13 Resolutions in writing

- (a) A resolution of the User Committee which is signed by the Representative of each Participating Funding User whose Representative is entitled to vote shall be as valid and effectual as if it had been passed at a meeting of the User Committee duly convened and held.
- (b) Any such resolution may consist of one or several documents in identical terms, each signed by one or more Representatives, and shall be deemed to be adopted at the time the last Representative to sign the document signed the document.

14 Meetings by telephone or video conference

- (a) Meetings of the User Committee may be held wholly or partly by telephone or video conference.
- (b) A Representative who has given prior notice of his or her intention to participate in a meeting by telephone or video conference and participates in the meeting

by telephone or video conference is deemed to be present at a User Committee meeting.

15 Changes to Rules

These Rules may be varied by written approval of the Representatives of each Participating Funding User.

16 Loss of rights to participate and vote

Unless otherwise agreed by all non-Defaulting Participating Funding Users, a Defaulting Participating Funding User (through its Representative) is not entitled to attend or to vote at any meeting of the User Committee, nor will the presence of the Representative of any Defaulting Participating Funding Users be necessary to form a quorum at any meeting, until the event or circumstance giving rise to the Participating Funding User being a Defaulting Participating Funding User has been remedied. .

16.1 Default due to non-payment

- (a) A Participating Funding User is a Defaulting Participating Funding User if any invoice issued by Aurizon Network to the Participating Funding User, other than an invoice under bona fide dispute in accordance with the relevant Equivalent Agreement, is not fully paid by the Participating Funding User within 28 days after invoicing.
- (b) A Participating Funding User remains a Defaulting Participating Funding User until the outstanding money has been paid in full.

16.2 Default due to Insolvency Event

If an Insolvency Event occurs in relation to a Participating Funding User, that Participating Funding User is a Defaulting Participating Funding User.

Schedule 3

Notice details

Aurizon Network

Aurizon Network Pty Limited

Address [insert address]

Attention

Phone

Fax

Email

Funding User

[insert name of Funding User]

Address [insert address]

Attention

Phone

Fax

Email

Funding User's initial Representative for User Committee [Insert name of initial Representative]

Address [insert address]

Attention

Phone

Fax

Email

Other Funding User

[insert name of Other Funding User]

Address [insert address]

Attention

Phone

Fax

Email

Schedule 4

Insurance requirements

Schedule 5

Costs

Set out in this Schedule:

- (a) Fixed hourly rates for Aurizon Network employees; and
- (b) Identify with specificity the costs that are reimbursable.

Schedule 6

Potential deliverables for each Stage

Estimate class	Drafting Tasks
Expected contingency range	Overall site plan
% of total engineering at relevant Stage	Plot plans
	Ground contours
Engineering Tasks	Estimate class
General	Civil drawings
Project scope	Structural drawings
WBS	Mechanical drawings
Technology selection	Single line diagram
Operation and control plan	Electrical drawings
Design criteria	Signalling & telecommunications drawings
Volumetric capacities	Cost estimation
Location constraints	Contracting strategy
Interfacing Projects	Earthworks/Civil/Structural Bulk pricing
Project considerations	Mechanical pricing
Design considerations	Electrical pricing
Engineering effort	Capital costs
Civil	Project Management
Civil and Earthworks Specs	Contractor selection
Structural	Schedule
Structural specs	
Mechanical	
Mechanical Datasheets and Specs	
Electrical & Signalling	
Electrical Datasheets & Specs	
Health safety & environmental	
Identification of air, water, solid, noise, visual impacts	
Statutory requirements	
permitting	
Design	
HAZOP	

Signing page

Executed as an agreement

Aurizon Network

Signed by
Aurizon Network Pty Ltd
in accordance with s.127 of the Corporations Act

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____

Funding User

Signed by
[insert name of Funding User]
in accordance with s.127 of the Corporations Act

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____
