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QRC mark-up

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Aurizon Network Pty Ltd

[Insert name of End User]

Access Holder Access Agreement – Coal

QRC Industry Note

The 'Access Holder Access Agreement – Coal' should be amended to incorporate the direction to pay mechanism present in the Standard User Funding Agreements.

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Date

Parties

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

The person specified in item 1 of ~~schedule 1~~ (**End User**)

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Background

- A Aurizon Network is responsible for the provision of access to the Nominated Network in accordance with the Access Undertaking.
- B Aurizon Network has agreed to grant non-exclusive Access Rights to the End User for the operation of Train Services by the Operator over the Nominated Network and to provide Train Control for those Train Services on the terms and conditions of this Agreement.
- C The Parties may enter into separate agreements for the provision of services by Aurizon Network to the End User other than the grant of the Access Rights.

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

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

Access Agreement means an access agreement made under the Access Undertaking, other than this Agreement.

Access Application has the meaning given in the Access Undertaking.

Access Charges means:

- (a) where the term is used in respect of a Billing Period, the Access Charges for that Billing Period as calculated in accordance with item 3.1 of ~~schedule 4~~; and
- (b) otherwise, the charges calculated in accordance with ~~schedule 4~~ and any interest payable in relation to such charges under this Agreement.

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Access Charge Rates has the meaning given in item 1.1 of ~~schedule 4~~.

Access Holder means any person (including the End User) that has been granted access rights to operate Network Train Services on all or part of the Infrastructure.

Access Rights means:

- (a) the rights of access to the Nominated Network granted pursuant to this Agreement; and
- (b) for a Train Service Type, the "Access Rights" (as defined in paragraph (a) of this definition) for the operation of Train Services for that Train Service Type.

Access Seeker has the meaning given in the Access Undertaking.

Access Undertaking means the access undertaking submitted by Aurizon Network to the QCA and approved by the QCA under the *Queensland Competition Authority Act 1997* (Qld) from time to time.

Accreditation means accreditation in accordance with Part 5 of the Rail Safety Act, and **Accredited** means to have Accreditation.

Activities means any activity, including “railway operations” as defined under the Rail Safety Act.

Ad Hoc Train Service for a Train Service Type means:

- (a) a Network Train Service which is additional to the Nominated Monthly Train Services for that Train Services Type but which is otherwise in accordance with the Train Service Description for that Train Service Type; and
- (b) a Network Train Service which is not a Train Service for a Train Service Type but which Aurizon Network permits the End User to cause the Operator to operate under this Agreement as if it was a Train Service for the Train Service Type (subject to any derogations to the Train Service Description for the Train Service Type permitted by Aurizon Network, which includes a change in the Origin and Destination for that Train Service Type provided that the changed Origin and Destination forms part of the Nominated Network).

[Note: It is unclear whether an Ad Hoc train path could be identified as such before completion of a Month.]

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Adjoining Network means a rail network which is not part of the Infrastructure but which connects to the Infrastructure.

Adjustment Charge means an Adjustment Charge (as defined in the Access Undertaking) approved by the QCA from time to time.

Advanced Access Seeker means an Access Seeker that has:

- (a) commenced negotiation of an access agreement with Aurizon Network in respect of the access rights sought by the Access Seeker; and
- (b) demonstrated to Aurizon Network’s **reasonable** satisfaction that the Access Seeker will be able to fully utilise those access rights, including demonstrating to Aurizon Network’s satisfaction that the Access Seeker:
 - (i) will hold, will have the benefit of, **or is reasonably likely to obtain** Supply Chain Rights (as if the Access Seeker was the End User for the purposes of that definition) for the operation of Network Train Services utilising those access rights; and
 - (ii) will continue to hold, or have the benefit of, those Supply Chain Rights for the whole of the term of those access rights (or the whole of the term of those access rights if the Access Seeker or the holder of those Supply Chain Rights exercises an option granted in its favour to renew such Supply Chain Rights or extend the term of such Supply Chain Rights).

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

Allowable Threshold for a Billing Period means 10 percent of the total number of Train Services scheduled in the Daily Train Plan for that Billing Period.

Amendment Notice has the meaning given in **clause 21.1(a)**.

Ancillary Access Rights has the meaning given in the Access Undertaking.

Ancillary Services means those services set out in **schedule 11**, (if any) which Aurizon Network has agreed to provide to the End User in addition to the grant of the Access Rights.

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Ancillary Services Charges means the ancillary services charges (if any) determined in accordance with schedule 11, and any interest payable in relation to such charges under this Agreement.

Anticipated Suspension Event means an anticipated breach referred to in the

Suspension Event specified in item 1 of part B of schedule 9.

Applicable Safety Standards means:

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

Applicable Safeworking Procedures means:

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

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

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

Assessment Date has the meaning given in **clause 10.1**.

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 Cause means where Aurizon Network is unable to make the Infrastructure available for the operation of Network Train Services in accordance with the End User's Access Rights under this Agreement or any other Access Holder's access rights under any other Access Agreement for the operation of Network Train Services on the Infrastructure, as a result of:

- (a) Planned Possessions, Emergency Possessions or Urgent Possessions;
- (b) a Force Majeure Event affecting Aurizon Network; or
- (c) any other action or inaction by Aurizon Network which directly resulted in the Infrastructure not being so available,

where such inability by Aurizon Network is not reasonably attributable;

- (d) to an Access Holder (including the End User), a Railway Operator (including the Operator) or a Railway Operator's customer;
- (e) to the unavailability of a Loading Facility or an Unloading Facility;
- (f) to the failure to load a Train at the Loading Facility for a Train Service Type within the Maximum Time at Loading Facility, or unload a Train at the Unloading Facility for a Train Service Type within the Maximum Time at Unloading Facility, as specified in the Train Service Description for that Train Service Type; or
- (g) in respect of each Train Service for a Through-Running Train Service Type, to the unavailability of, or cancellation of train services on, an Adjoining Network.

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

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to Aurizon Network complying
with its Passenger Priority
Obligations;

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

Aurizon Network Performance Level means performance levels specified as such in [schedule 6](#).

Aurizon Network Representative means the Aurizon Network officer for the time being appointed pursuant to **item 2.2(b)** of [schedule 10](#).

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

Authorisation Request Notice has the meaning given in **clause 20.2(a)**.

Authorised Rollingstock means Rollingstock which is taken to be authorised Rollingstock under **clause 20.7** or **20.9(b)** from time to time.

Authorised Rollingstock Configurations for a Train Service Type means Rollingstock Configurations for a Train Service Type which are taken to be authorised Rollingstock Configurations for that Train Service Type under **clause 20.7** or **20.9(b)** from time to time.

Authority means the Crown (in right of the State or the Commonwealth), a minister of the Crown, a federal, state or local government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority, a court, a tribunal and any officer or agent of the foregoing acting as such.

Authority to Travel means an authorisation issued by Aurizon Network which authorises the End User to cause the Operator to operate Train Services for a Train Service Type on the Nominated Network, for a specified period, using specified Authorised Rollingstock Configurations for that Train Service Type.

Available Capacity has the meaning given in the Access Undertaking.

Average Annual Payload for a Train Service Type means, at a point in time, the average of the Payloads (expressed in tonnes) for each Train Service for that Train Service Type operated from the Origin to the Destination (as recorded by a Weighbridge or Overload Detector) during the 12 month period ending at that point in time.

Average Below Rail Transit Time Factor for a Train Service Type for a Year means the proportion (expressed as a percentage) which is the sum of the actual Below Rail Transit Times for all Train Services for that Train Service Type operated during that Year divided by the sum of the Maximum Sectional Running Times for all relevant Sections for all of those Train Services during that Year.

Average Below Rail Transit Time Threshold for a Train Service Type means the maximum Average Below Rail Transit Time Factor for that Train Service Type as specified as such in [schedule 6](#).

Below Rail Transit Time for a Train Service for Train Service Type which has been operated means the time calculated in accordance with formula in the appendix to [schedule 6](#).

Billing Period means the period of a Month, except that:

- (a) the first Billing Period starts on the Commitment Date and ends on the last day of the Month in which the Commitment Date occurs; and
- (b) the last Billing Period commences on the first day of the Month during which this Agreement terminates or expires and ends on the date of termination or expiry.

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

Capacity has the meaning given in the Access Undertaking.

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Capacity Assessment has the meaning given in **clause 9.3(a)**.

Capacity Assessment Notice has the meaning given in **clause 9.5**.

Capacity Change has the meaning given in **clause 9.3(a)**.

Capacity Shortfall has the meaning given in the Access Undertaking.

Central Queensland Coal Region has the meaning given in the Access Undertaking.

Certificate of Compliance means a certification issued by a Certifier under **clause 20.5(f)**.

Certifier means a person that is reasonably satisfied is suitably qualified, experienced and competent to assess whether or not Rollingstock and Rollingstock Configurations comply with the Rollingstock Interface Standards subject to any Approved Derogations.

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Change in Control in relation to any entity (the first mentioned entity) means:

- (a) a change in the entity that Controls the first mentioned entity (other than if the Ultimate Holding Company of the first mentioned entity remains the same following the change);
- (b) an entity that Controls the first mentioned entity ceases to Control that entity (other than if the Ultimate Holding Company of the first mentioned entity remains the same following the change); or
- (c) if the first mentioned entity is not Controlled, another entity acquires Control of the first mentioned entity.

Change in Law means:

- (a) any amendment, repeal or enactment of any Law;
- (b) any **legally binding** change in the interpretation or application (including by the exercise of delegated authority) of any Law resulting from a decision of a court or other Authority;
- (c) the making of any new directive, or any change in an existing directive, of any Authority **that is legally binding**;
- (d) the imposition of a **legally binding** requirement for authorisations not required as at the Commencement Date;
- (e) after the date of grant of any authorisation, a **material** change in the terms and conditions attaching to that authorisation or the attachment of any new **material** terms or conditions **that is legally binding on the Parties**; or
- (f) any such authorisation as has been granted ceasing to remain in full force and effect or, if granted for a limited period, not being renewed on a timely basis on application being duly made, or being renewed on conditions which are materially less favourable than those attached to the original authorisation **and legally binding**.

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Change in Relevant Taxes means:

- (a) the imposition of a new Relevant Tax;
- (b) an increase in the rate of a Relevant Tax; or
- (c) a change in the basis of calculation of a Relevant Tax.

Change in Access Undertaking means:

- (a) any amendment to or replacement of an Access Undertaking; and
- (b) any change in the interpretation or application, including by the exercise of delegated authority, of an Access Undertaking resulting from a decision of a court or other Authority.

Chargee has the meaning given in **clause 39.3**.

Chargor has the meaning given in **clause 39.3**.

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

Coal System has the meaning given in the Access Undertaking.

Collateral has the meaning given in the PPS Act.

Commencement Date means the date of this Agreement.

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

Committed Capacity has the meaning given in the Access Undertaking.

Common Corridor means that part of the Infrastructure that was utilised by the End User for the Operator to operate Train Services utilising the Nominated Access Rights and will also be utilised by the Transferee's Network Train Services.

Common Costs means those costs associated with the provision of Infrastructure that are not Incremental Costs for any particular Network Train Service using that Infrastructure.

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

Compliance Statement has the meaning given in **clause 20.3(b)**.

Conditional Access Rights has the meaning given in **clause 9.2**.

Confidential Information means the terms of this Agreement and any information, data or other matter disclosed to a Recipient by or on behalf of the Discloser in relation to this Agreement where:

- (a) the disclosure of the information, data or other matter by the Recipient might reasonably be expected to affect the commercial affairs of the Discloser; or
- (b) the information, data or matter is marked confidential by the Discloser when disclosed,

but excluding any such information, data or other matter which:

- (c) is already in the public domain or becomes available to the public through means other than a breach of the confidentiality undertaking by the Parties under this Agreement;
- (d) was in the Recipient's lawful possession before the disclosure by the Discloser;
- (e) is received by the Recipient independently from a Third Party who is free to disclose such information, data or other matter to the Recipient; or
- (f) has ceased to retain its confidential nature, for example, where the disclosure of the information, data or other matter by the Recipient would no longer reasonably be expected to affect the commercial affairs of the Discloser.

Connecting Infrastructure has the meaning given in the Access Undertaking.

Consequential Loss means:

- (a) any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of reputation or loss of goodwill, any wasted overheads, any demurrage or any damage to credit rating whatsoever; and
- (b) any loss or damage arising out of any Claim by a Third Party (other than a Claim by the Operator against Aurizon Network), but does not include loss or damage (including loss or damage arising out of a Claim by a Third Party) in respect of:

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any special, indirect or consequential loss;¶
any economic loss in respect of any claim in tort;

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- (i) the cost of repairing, replacing or reinstating any real or personal property of any person (including a Party) that has been lost, damaged or destroyed;
- (ii) personal injury to or death of any person; or
- (c) any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims.

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Contaminating Materials means any material, substance, gas, liquid, chemical, biological substance, mineral or other physical matter which is toxic, flammable, harmful to the Environment (including any life form) or may cause pollution, contamination, harm to the Environment or otherwise cause damage.

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

Corresponding Suspension Event in respect of a Termination Event means the Suspension Event specified in the same row as that Termination Event in **schedule 9**.

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Customer Specific Branch Lines has the meaning given in the Access Undertaking.

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Cyclic Traffic means traffic such as coal traffic in respect of which the entitlement to operate train services is defined in terms of a number of train services within a particular period of time (for example, a year, month or week).

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Daily Train Plan means that document detailing the scheduled times for all Network Train Services operating on the Infrastructure and any Planned Possessions, Urgent Possessions and Emergency Possessions on a particular day on a specified part of the Infrastructure.

Dangerous Goods means any substance or article prescribed as "Dangerous Goods" under the Dangerous Goods Code.

Dangerous Goods Code means the following codes (as amended or replaced from time to time) or any other codes developed to replace or supplement them (from time to time):

- (a) the *Australian Code for the Transport of Dangerous Goods by Road and Rail* (7th Edition);
- (b) the *Australian Code for the Transport of Explosives by Road and Rail* (3rd Edition); and
- (c) the *Code of Practice for the Safe Transport of Radioactive Material* (2008 Edition).

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

- (a) 2%; and
- (b) the Commonwealth Bank of Australia's "Corporate Overdraft Reference Rate" (monthly charging cycle) quoted by the Commonwealth Bank of Australia on its public website for the last trading day of the previous Month (or in the event that such a rate is not so quoted at or in respect of any relevant date, such other similar rate as is quoted by a major commercial bank as agreed by the Parties or, failing agreement, as determined by an Expert under **clause 35**).

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

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

Disclosed Information means any notices, documents or other information which may be given by Aurizon Network to the End User in accordance with or otherwise in connection with this Agreement.

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

Discount Rate has the meaning given in the Access Undertaking.

Dispute has the meaning given in **clause 35.1**.

Dispute Notice has the meaning given in **clause 35.1**.

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Disputed Aspect has the meaning given in **clause 28.4(a)**.

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Discretionary System Amendment has the meaning given in **clause 21.1(a)(iii)**.

Effective Date has the meaning given in **clause 11.2(b)(ii)**.

Efficient Cost means the cost, for each Year during the Evaluation Period, that reflects the cost that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices in the provision of the Infrastructure to the required service standard, having regard to any matters particular to the environment in which Aurizon Network operates, and including any transitional arrangements agreed between Aurizon Network and the QCA to reflect the transition from Aurizon Network's actual cost to that efficient cost.

Emergency Possession means a Possession required to rectify a serious fault with the Infrastructure that Aurizon Network, acting reasonably, considers dangerous to any person, or where severe speed restrictions have been imposed affecting the scheduled Network Train Services of Railway Operators.

Emergency Response Plan has the meaning given in **clause 25.1(a)**.

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

End User Agreement means each of the following types of agreements between Aurizon Network and the End User:

- (a) a licence in respect of a train loadout facility;
- (b) an agreement allowing the connection of Private Facilities to the Infrastructure; or
- (c) an agreement in relation to the funding and/or construction of connecting infrastructure.

End User's Representative means the person for the time being appointed pursuant to **item 2.2(a)** of **schedule 10**.

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End User's Staff means employees, contractors, volunteers and agents of the End User and the Operator and any other person under the control or supervision of the End User or the Operator who is involved in any Activity associated with the Train Services.

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Environment has the meaning given in the Environmental Protection Act.

Environmental Authorities means:

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

Environmental Harm means Serious Environmental Harm, Material Environmental Harm or Environmental Nuisance.

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Environmental Incident means any:

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

Environmental Law means a Law relating to the Environment, including:

- (a) a Law relating to planning, health, toxic or contaminating materials, dangerous goods, waste disposal or pollution; and
- (b) environmental protection policies, guidelines, regulations and relevant approved codes of practice, and the conditions of all licences, notices, directions, approvals, consents, permissions or permits, issued under any such Law.

Environmental Management Plan has the meaning given in **clause 28.12**.

Environmental Nuisance means “environmental nuisance” as defined in the Environmental Protection Act.

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

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

Environmental Risks means all risks to the Environment arising or potentially arising from the End User's or the Operator's Activities in connection with this Agreement (including risks associated with the matters identified in **item 3 of [schedule 7](#)**).

Evaluation Period means, in respect of:

- (a) an individual Network Train Service, the period which is equal to the length of the expected duration of the existing or proposed access right under the Access Agreement in respect of the relevant Network Train Service;
- (b) a combination of Network Train Services for the purpose of determining a Reference Tariff to apply to some or all of those Network Train Services, the period for which that Reference Tariff will apply; or
- (c) a combination of Network Train Services other than referred to in paragraph (b) of this definition, the period which is equal to the length of the expected duration of the longest existing or proposed access right under the Access Agreement in respect of any of the Network Train Services comprising the combination of Network Train Services, provided that such period does not exceed 10 years.

Existing Capacity has the meaning given in the Access Undertaking.

Expansion has the meaning given in the Access Undertaking.

Expansion Infrastructure for an Expansion means the section or sections (as applicable) of the Infrastructure (excluding Customer Specific Branch Lines and Connecting Infrastructure) on which:

- (a) the End User may cause the Operator to operate Train Services exercising the Conditional Access Rights; and
- (b) any Other Conditional Access Holders may operate, or cause the operation of, Network Train Services exercising their Other Conditional Access Rights for the Expansion.

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

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

[Financial Obligation means any obligation of the End User to:

- (a) pay, or cause to be paid, an amount of money, including damages for a breach of this Agreement; and
- (b) provide Security or an additional or replacement Security.] **[Drafting note: Optional definition to be included if the End User is a Joint Venture.]**

FM Access Rights means the Access Rights for each Train Service Type which cannot be made available by Aurizon Network to the End User for the Operator to operate Train Services due to damage to, or the destruction of, a part of the Nominated Network referred to in **clause 36.5** (assuming that part of the Nominated Network will not be repaired or replaced).

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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 includes (to the extent the definition above is satisfied):

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

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

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

Incident means any Network Incident involving the Activities of the End User or the Operator.

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

Incremental Costs means those costs of providing access rights, including capital (renewal and expansion) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Network Train Service or combination of Network Train Services (as appropriate) did not operate, where those costs are assessed as the Efficient Costs and based on the assets reasonably required for the provision of the access rights.

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

Information Request Notice has the meaning given in **clause 8.2(a)**.

Infrastructure means all rail transport infrastructure as defined in the Transport Infrastructure Act for which Aurizon Network is the owner or lessee, the use of which is declared pursuant to section 250(1)(a) of the *Queensland Competition Authority Act 1997* (Qld) for the purposes of Part 5 of that Act.

Infrastructure Enhancement means the improvement, upgrading or other variation of the whole or any part of the Infrastructure which affects the capabilities of the Infrastructure and any major replacement programme for elements of the Infrastructure (and for the avoidance of doubt, includes an Expansion).

Infrastructure Service Providers means persons who provide maintenance, construction and other related services in respect of the Infrastructure.

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

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) a meeting is convened to pass a resolution to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within 10 Business Days or the resolution fails to pass;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within 10 Business Days after it is made;
- (d) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets if that appointment is not revoked within 10 Business Days after it is made;
- (e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement; or
- (f) any similar event occurs in respect of the Party under the laws of any jurisdiction other than Australia.

Inspecting Party has the meaning given in **clause 29.4(a)**.

Interface Coordination Arrangements means the plan set out in **schedule 10** as updated from time to time which identifies the procedures to be followed and the responsible officers from each Party (or the Operator, as applicable), in respect of all regular operational interfaces between the Parties (and between Aurizon Network and the Operator) that arise in the exercise by the Parties of their respective rights and the performance of their respective obligations under this Agreement other than those specified in the Network Management Principles.

Interface Representative has the meaning given in **clause 28.8(a)**.

Interface Risk Assessment means an assessment to:

- (a) identify all reasonably foreseeable Interface Risks and Environmental Risks;
- (b) assess:
 - (i) the likelihood of those Interface Risks and Environmental Risks occurring;
 - (ii) the consequences (including commercial consequences) of those Interface Risks and Environmental Risks occurring; and
 - (iii) any factors relevant to the effective management of those Interface Risks and Environmental Risks;

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- (c) identify appropriate measures to effectively manage those Interface Risks and Environmental Risks within a risk management framework, including:
 - (i) an audit, inspection and review regime;
 - (ii) applicable Safeworking Procedures and Safety Standards having regard to existing Aurizon Network and industry practices;
 - (iii) consequential changes to this Agreement; and
- (d) identify the Party responsible for implementing, complying with and/or ensuring compliance with the measures referred to in **paragraph (c)** of this definition and ensuring the ongoing effectiveness of such measures,

and, in the case of an Interface Risk Assessment required to be conducted under **clause 28.2**, includes a Rollingstock Interface Standards Risk Assessment.

Interface Risk Management Plan or **IRMP** means a plan which sets out each of the matters required to be identified and assessed during an Interface Risk Assessment, as agreed or determined in accordance with **clause 28**, as amended from time to time in accordance with **clause 28**.

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

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

Intermediate Train Plan has the meaning given in the Access Undertaking,

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

Investigation Procedures means the procedures in relation to investigations specified in Aurizon Network's document entitled Investigation Procedures published on Aurizon Network's website, (as amended and replaced from time to time) which are applicable to all Access Agreements.

Joint Venture means the unincorporated joint venture (if any) between the JV Participants specified in item 6 of **schedule 1**. **[Drafting note: Optional definition to be included if the End User is a Joint Venture.]**

JV Participants means the entities (if any) specified in item 7 of **schedule 1**. **[Drafting note: Optional definition to be included if the End User is a Joint Venture.]**

Land means any:

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

Landowner has the meaning given in **clause 44.16**.

Law includes:

- (a) any statute, rule, regulation, code, proclamation, ordinance or by-law, present or future, whether State, Commonwealth or otherwise; and
- (b) any requirement, condition, notice, consent, accreditation, order or direction or similar thing of any Authority (including the State in any of its regulatory capacities), present or future, given or imposed pursuant to anything specified in **paragraph (a)** of this definition.

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Like Train Service has the meaning given in **clause 45.1(a)**.

Loading Facility for a Train Service Type means the loading facility located at the Origin for that Train Service Type as specified in the Train Service Description for that Train Service Type.

Maintenance Work means any work involving maintenance or repairs to, or renewal, replacement and associated alterations or removal of, the whole or any part of the Infrastructure (other than Infrastructure Enhancements) and includes any inspections or investigations of the Infrastructure.

Major Periodic Maintenance means activities that renovate the Infrastructure to retain it in a functional condition completed on Track sections at intervals of more than one year and includes activities such as re-railing, rail grinding, resurfacing, re-signalling, communications upgrades, renovating structures, ballast cleaning and re-sleepering.

Master Train Plan means that document detailing the scheduled times as advised by Aurizon Network from time to time for all Network Train Services and any Planned Possessions on a specified part of the Infrastructure.

Material Change means a:

- (a) Change in Relevant Taxes;
- (b) Change in Law;
- (c) Change in the Access Undertaking; or
- (d) ~~matter deemed to be a Material Change under clause 44.16(d)~~.

Material Environmental Harm means "material environmental harm" as defined in the Environmental Protection Act.

Maximum Allowable Gross Tonnage means the maximum allowable gross tonnage for a Wagon, other Rollingstock or Train as specified in schedule 5.

Maximum Desirable Gross Tonnage means the maximum desirable gross tonnage for a Wagon, other Rollingstock or Train as specified in schedule 5.

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

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

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

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

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

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

Month means calendar month.

Net Financial Effect on a Party of an event or circumstance means the net effect in financial terms of the occurrence of the event or circumstance on the Party in relation to performing its obligations and exercising its rights under this Agreement including any

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increases in costs (whether capital or operating, fixed or variable) and other detriments incurred, or to be incurred, by the Party but deducting the amount of any savings or other benefits or advantages received, or to be received, by the Party, and on the basis that the Party uses reasonable endeavours to mitigate the net effect of the event or circumstance.

Network Incident means any Rollingstock derailment, Rollingstock disablement or breakdown, accident, collision or any other unplanned occurrence on the Infrastructure which causes or contributes to, or could cause or contribute to, injury to, or death of, any person, damage to any property or Environmental Harm or a disruption to, or cancellation of, any Train Movement.

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

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

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

Noise Code means:

- (a) unless and until a code of practice, guideline or other standard in relation to the management of railway noise (however described and whether or not a Law) is published by an Authority, the *QR Code of Practice: Railway Noise Management*; or
- (b) if a code of practice, guideline or other standard referred to in **paragraph (a)** of this definition is published by an Authority, that document.

Noise Levels means the levels for railway noise specified in the Noise Code.

Nominal Payload for a Train Service Type means the nominal Payload for that Train Service Type as specified as such in the Train Service Description for that Train Service Type.

Nominated Access Rights:

- (a) in **clause 12**, has the meaning given in **clause 12.1(c)(i)**; and
- (b) in **clause 13**, has the meaning given in **clause 13.1(c)(i)(A)**.

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Nominated Monthly Train Services for a Train Service Type means the number of Train Services for that Train Service Type that the End User is entitled to cause the Operator to operate during any Month:

- (a) in the case of a Month that is 30 days, as specified in the Train Service Description for that Train Service Type; and
- (b) in the case of a Month that is longer or shorter than 30 days, a pro rata portion of the number of Train Services referred to in **paragraph (a)** of this definition (rounded to the nearest even number of whole Train Services provided that where the pro rata portion of the number of Train Services is a whole odd number, the number of Train Services will be rounded up to the nearest even number) to reflect the longer or shorter period,

as varied in accordance with this Agreement.

Nominated Network means that part of the Infrastructure described in **item 1** of **schedule 3**.

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Nominated Unloading Facility means an unloading facility specified in the Access Undertaking for a nominated Reference Train Service. Non-Charging Party has the meaning given in **clause 39.3**.

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Notice has the meaning given in **clause 43.1**.

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Notice of Intention to Increase Nominal Payload has the meaning given in **clause 11.2(a)**.

Notice of Intention to Relinquish has the meaning given in **clause 12.1(b)**.

Notice of Intention to Transfer has the meaning given in **clause 13.1(b)**.

NPV Amount:

- (a) in **clause 12**, has the meaning given in **clause 12.3(a)**; and
- (b) in **clause 13**, has the meaning given in **clause 13.4(a)**.

Obstruction means any circumstance relating to the whole or any part of the Infrastructure, including Rollingstock, debris or other objects on the Infrastructure, which has the potential to cause a disruption to or cancellation of Train Services or Train Movements, and includes any Network Incident but does not include an Operational Constraint imposed by Aurizon Network.

Operating Parameters has the meaning given in the Access Undertaking.

Operating Plan has the meaning given in **clause 18.1(a)**.

Operational Constraint means any restriction on the use of any part of the Infrastructure which impacts adversely on Train Services, including speed restrictions, load restrictions, Possessions or signalling or overhead restrictions.

Operator for a Train Service Type means an Accredited Railway Operator that is specified as such in the Train Service Description for that Train Service Type.

Operator Performance Level means the performance levels specified as such [schedule 6](#).

Operator's Controller means the person for the time being nominated in that position pursuant to **item 1.2(h)** of [schedule 10](#).

Operator's Incident Response Coordinator means the person appointed pursuant to **item 3.1** of [schedule 10](#).

Operator's Recovery Team Leader means the person appointed pursuant to **item 3.2** of [schedule 10](#).

Operator's Safety Management System has the meaning given in **clause 28.10**.

Origin for a Train Service Type means the origin specified as such in the Train Service Description for that Train Service Type.

Original Scheduled Time has the meaning given in **clause 19.2(b)(i)**.

Other Conditional Access Holder for:

- (a) an Expansion means an Access Holder (other than the End User) that has been granted access rights under an Access Agreement which are conditional upon the Expansion being completed and commissioned; and
- (b) a Segment of an Expansion means an "Other Conditional Access Holder" for the Expansion (as defined in **paragraph (a)** of this definition) that may operate Network Train Services on that Segment exercising their Other Conditional Access Rights for the Expansion.

Other Conditional Access Rights for an Other Conditional Access Holder for an Expansion means the access rights granted under an Access Agreement to the Other Conditional Access Holder which are conditional upon the Expansion being completed and commissioned.

Other Dwell Times means, for any other permitted activity, the time period commencing when a Train Service arrives at the specified point for that activity and ending when it is ready to depart from that point and has advised the relevant Train Controller accordingly.

Other Party has the meaning given in **clause 29.4(a)**.

Overload Charges means the charges determined in accordance with **item 1.1** of [schedule 4](#).

Overload Detector means a weighing mechanism other than a Weighbridge and specified in **item 6.2** of [schedule 3](#).

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Party means a party to this Agreement, and **Parties** means the parties to this Agreement. For the avoidance of doubt, the Operator is not a party to this Agreement.

Passenger Priority Obligations means the obligations of a Railway Manager pursuant to sections 265 and 266 of the Transport Infrastructure Act.

Payload of a Train Service means the weight of product loaded onto any Train used by the Operator in operating that Train Service.

Performance Levels means the Aurizon Network Performance Level and the Operator Performance Level.

Planned Capacity has the meaning given in the Access Undertaking.

Planned Dwell Times means any of Time at Loading Facility, Time at Unloading Facility, Time at Depot and Other Dwell Times specified in the Train Schedule.

Planned Possession means a Possession that is entered into the Master Train Plan and may adversely impact upon the operation of Network Train Services.

Possession means the temporary closure and/or occupation by Aurizon Network of part of the Infrastructure (including closure of Track or isolation of any electrical overhead traction system) for the purpose of carrying out Maintenance Work, Infrastructure Enhancements or, other work on, or in the proximity of, the Infrastructure which may affect the safety of any person or property.

Possession Protocols means the protocols developed and advised by Aurizon Network from time to time (as varied in accordance with this Agreement) for managing and scheduling Possessions.

PPS Act means the *Personal Property Securities Act 2009* (Cth).

Private Facilities means sidings, loading and unloading facilities and any other facilities of any kind which are required to be accessed or used by the Operator to operate any Train Services in the manner contemplated by this Agreement and which do not form part of the Nominated Network.

Proposed Resumption Notice has the meaning given in **clause 8.3**.

Proposed Resumption Response Period has the meaning given in **clause 8.4**.

Quarter means each period of three consecutive Months commencing each 1 January, 1 April, 1 July or 1 October in each year.

Queensland Competition Authority or **QCA** means the authority established under the *Queensland Competition Authority Act 1997* (Qld).

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

Rail Safety Regulator means the chief executive of the department administering the Rail Safety Act.

Railway Manager has the meaning given in the Transport Infrastructure Act.

Railway Operator means any person (including the Operator) that is an Accredited rail transport operator for the Central Queensland Coal Region.

Recipient means a Party that receives Confidential Information from the Discloser.

Recovery means action to be taken in respect of any derailed, malfunctioning or immobilised Rollingstock for which the End User and/or the Operator is responsible to enable prompt recommencement of Train Movements, but does not include the Retrieval of such Rollingstock.

Reduced Access Rights has the meaning given in **clause 7.3(c)(iv)(A)**.

Reduced Conditional Access Rights for a Segment of an Expansion means the Reduced Conditional Access Rights for that Segment of the Expansion calculated in accordance with the formula in **clause 9.4**.

Reduction Factor means the reduction factor determined in accordance with **clause 13.6**.

Reduction Notice has the meaning given in **clause 10.1**.

Reference Tariff has the meaning given in the Access Undertaking.

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Reference Tariff Provisions means:

- (a) the schedule of the Access Undertaking which includes the Reference Tariffs and the details of the application of the Reference Tariffs for a particular Reference Train Service (which, as at the Commencement Date, is schedule F of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the application or calculation of Reference Tariffs or access charges (including TOP Charges).

Reference Train Service has the meaning given in the Access Undertaking.

Related Body Corporate has the meaning given in the Corporations Act.

Relevant Collateral means Collateral which is the subject of a Security Interest granted under this Agreement.

Relevant Rollingstock means any Rollingstock of the End User (or the Operator) with a minimum value of \$1 million and which has been specified as Relevant Rollingstock in **item 2 of schedule 5**.

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Relevant Rollingstock Configuration for a Train Service Type means an Authorised Rollingstock Configuration for that Train Service Type which has a maximum Payload which exceeds the Maximum Payload for that Train Service Type.

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Relevant Tax means any tax, charge, levy, duty, impost, rate, royalty, or imposition which is imposed on Aurizon Network by, or payable by Aurizon Network to, any Authority directly arising in the performance of this Agreement by Aurizon Network but does not include any income tax, fringe benefits tax, capital gains tax or any tax that replaces any of those taxes.

Relinquishment Date has the meaning given in **clause 12.1(c)(ii)**.

Relinquishment Fee means the relinquishment fee determined in accordance with **clause 12.3**.

Renewal has the meaning given in **clause 2.2(a)**.

Requested Ancillary Access Rights has the meaning given in **clause 13.1(c)(ii)**.

Restoration means the removal of any Obstruction on the Infrastructure, the rectification of any Incident and the prompt recommencement of Train Movements including all requisite repairs to the Infrastructure, but does not include Recovery or Retrieval.

Resumable Access Rights for a Train Service Type has the meaning given in **clause 8.5(a)**.

Resumed Access Rights for a Train Service Type has the meaning given in **clause 8.5(b)**.

Resumption Date has the meaning given in **clause 8.5(c)(ii)**.

Resumption Notice has the meaning given in **clause 8.5(b)**.

Resumption Trigger Event for a Train Service Type means:

- (a) the Operator does not, for any reason other than the failure of Aurizon Network to make the Access Rights for the Train Service Type available, operate at least 85% of the Train Services for the Train Service Type which the End User was entitled to cause the Operator to operate during **four** consecutive Quarters; or

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- (b) the occurrence of an Underutilisation Event for that Train Service Type (whether or not the End User has given Aurizon Network a notice in respect of the Underutilisation Event for that Train Service Type under **clause 8.1**).

Retrieval means the subsequent removal of Rollingstock, from the Infrastructure and Land, following the Recovery of such Rollingstock.

Revised Nominal Payload for a Train Service Type:

- (a) in **clause 10**, means the amount determined for that Train Service Type in accordance with **clause 10.2**; and
- (b) in **clause 11**, has the meaning given in **clause 11.2(b)(i)(A)**.

Revised Maximum Payload for a Train Service Type means:

- (a) in **clause 10**, the amount calculated for that Train Service Type in accordance with **clause 10.3**; and
- (b) in **clause 11**, the amount calculated for that Train Service Type in accordance with **clause 11.3**.

Revised Nominated Monthly Train Services for a Train Service Type means:

- (a) in **clause 10**, the amount calculated for that Train Service Type in accordance with **clause 10.4**; and
- (b) in **clause 11**, the amount calculated for that Train Service Type in accordance with **clause 11.4**.

Rollingstock means locomotives, carriages, Wagons, rail cars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicles which operate on or use a Track, and where used in respect of the End User's or the Operator's Rollingstock includes Rollingstock which is owned, hired or leased by the End User or the Operator, supplied by a contractor of the End User or the Operator or is otherwise in the possession or control of the End User or the Operator.

Rollingstock Configuration means the description of the combinations of Rollingstock comprising a Train including identification number and gross mass of individual items of Rollingstock and the order in which those Rollingstock items are placed in the Train.

Rollingstock Interface Standards means the minimum standards relating to Rollingstock and Rollingstock Configurations specified in Aurizon Network's document entitled *Interface Standards* published on Aurizon Network's website (as amended and replaced from time to time).

Rollingstock Interface Standards Risk Assessment means, in respect of any Rollingstock or Rollingstock Configurations for a Train Service Type used, or proposed to be used, by the End User or the Operator in the operation of Train Services on the Nominated Network, means an assessment to:

- (a) for each non-compliance with the Rollingstock Interface Standards specified in a Compliance Statement for the Rollingstock or Rollingstock Configurations, identify all reasonably foreseeable Interface Risks and Environmental Risks arising from each non-compliance;
- (b) assess:
 - (i) the likelihood of those Interface Risks and Environmental Risks occurring;
 - (ii) the consequences (including commercial consequences) of those Interface Risks and Environmental Risks occurring; and
 - (iii) whether those Interface Risks and Environmental Risks can be effectively managed and, if so, any factors relevant to the effective management of those Interface Risks and Environmental Risks; and

- (c) if those Interface Risks and Environmental Risks can be effectively managed by complying with appropriate measures, identify the measures to be complied with in respect of such Rollingstock or Rollingstock Configurations to effectively manage those Interface Risks and Environmental Risks within a risk management framework.

Safety Law means a Law relating to the safety of persons or property, including the *Rail Safety Act and the Work Health and Safety Act 2011* (Qld).

Safety Regulator means, in respect of a Safety Law, the Authority administering that Safety Law.

Safety Related Work means:

- (a) "rail safety work" as defined under the Rail Safety Act; and
(b) any other work notified by Aurizon Network to the End User or the Operator as safety related work.

Safety Standards means the:

- (a) standards relating to safety, including work health and safety, established in published guidelines, industry practice or Aurizon Network policies specified in Aurizon Network's document entitled *Safety Standards* notified by Aurizon Network to the End User (as amended and replaced from time to time); and
(b) standards relating to safety, including work health and safety, prescribed by any Law.

Safeworking Procedures means the procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of worksites on the Infrastructure specified in Aurizon Network's document entitled *Safeworking Procedures* notified by Aurizon Network to the End User (as amended and replaced from time to time).

Scheduled Time means the time of arrival or departure for a Train Movement at specified locations on the Nominated Network as set out in the Train Schedule or as amended by Aurizon Network from time to time on the day of operation pursuant to the Network Management Principles.

Section means a section of Track between two locations on the Nominated Network as shown in the diagram(s) in [schedule 3](#).

Sectional Running Times means the time period measured from the time a Train Service passes the signal controlling entry into a Section until the time the Train Service arrives at the signal controlling entry into the next adjoining Section, and does not include an allowance for Planned Dwell Times.

Security means:

- (a) an unconditional and irrevocable bank guarantee in favour of Aurizon Network which:
- (i) is issued by a trading bank holding a current Australian banking licence and having a credit rating equivalent to or better than a Standard & Poor's BBB- rating;
 - (ii) requires the issuing bank to pay on demand by Aurizon Network, without recourse to the End User or any other person, an amount or amounts up to the amount specified in the bank guarantee;
 - (iii) has no expiry date (or, if it is not possible for the End User to obtain a bank guarantee with no expiry date, has an expiry date no earlier than 12 months after the date of issue of the bank guarantee);
 - (iv) states that it is assignable by Aurizon Network to an assignee from Aurizon Network under this Agreement (subject to the relevant bank and the End User being given notice of the identity of the assignee); and

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- (v) is otherwise in a form and upon terms reasonably acceptable to Aurizon Network; or
- (b) any other form of security reasonably acceptable to Aurizon Network, in a form and upon terms reasonably acceptable to Aurizon Network, as security for the due and proper performance by the End User of its obligations under this Agreement.

Security Amount at a time means the amount determined in accordance with **item 4 of schedule 1** at that time.

Security Interest has the meaning given in **clause 44.19(a)**.

Segment of an Expansion means each segment of the Expansion specified as such in the Train Service Description for the Conditional Access Rights which are conditional upon the completion and commissioning of the Expansion.

Serious Environmental Harm means “serious environmental harm” as defined in the Environmental Protection Act.

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

State means the State of Queensland.

Stowage means storage of Trains (excluding individual items of Rollingstock) on the Nominated Network at locations specified by Aurizon Network under the following circumstances:

- (a) during a Possession; or
- (b) during the operation of a Train Service.

Supplier has the meaning given in **clause 40.3**.

Supply Chain Rights for a Train Service Type means:

- (a) if any Private Facilities are required to be accessed or used by the Operator to operate Train Services for that Train Service Type, rights which are sufficient to allow the Operator to access or use those Private Facilities to operate those Train Services within the timeframes and in the manner contemplated in this Agreement;
- (b) if that Train Service Type is a Through-Running Train Service Type, rights which are sufficient to allow Train Services for that Train Service Type to enter or exit (as applicable) the Nominated Network from or to (as applicable) each applicable Adjoining Network within the timeframes and in the manner contemplated in this Agreement; and
- (c) if the Train Services for that Train Service Type are to be operated to **exit the network through** Unloading Facility, rights which are sufficient to allow:
 - (i) the Operator to access the relevant Unloading Facility with a loaded Train which complies with the Train Service Description for that Train Service Type; and
 - (ii) the unloading of **coal** from the Train at the relevant Unloading Facility,

within the timeframes and in the manner contemplated in this Agreement, assuming **reasonable** utilisation of the Access Rights for that Train Service Type in accordance with the Train Service Description for that Train Service Type.

Suspension Event means any event or circumstance specified as such in **schedule 9**.

Suspension Notice has the meaning given under **clause 37.1, 37.2 or 37.3**.

System Discount means the amount specified as such for the relevant

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Reference Train Service in the Access Undertaking.

System Premium means the amount specified as such for the relevant Reference Train Service in the Access Undertaking.

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

Tare Weight means the tare weight for a Wagon, other Rollingstock or Train as specified in [schedule 5](#).

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

Termination Event means any event or circumstance specified as such in [schedule 9](#).

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

Third Party Land has the meaning given in **clause 44.16(a)**.

Through-Running Train Service Type means a Train Service Type that has a Destination and/or Origin that is a Network Interface Point that is specified as such in the Train Service Description for that Train Service Type.

Time at Depot means the time period commencing when a Train Service arrives at the entry signal for a Depot and ending when it is ready to depart the Depot and has advised the relevant Train Controller accordingly.

Time at Loading Facility means the time period commencing when a Train Service arrives at the entry signal for a Loading Facility and ending when it presents at the exit signal for the Loading Facility, is ready to depart the Loading Facility and advises the relevant Train Controller accordingly.

Time at Unloading Facility means the time period commencing when a Train Service arrives at the entry signal for an Unloading Facility and ending when it presents at the exit signal for the Unloading Facility, is ready to depart the Unloading Facility and advises the relevant Train Controller accordingly.

TOP Charges:

- (a) in respect of this Agreement, has the meaning given in **item 1.1** of [schedule 4](#); and
- (b) in respect of another Access Agreement, means the charge for contracted Network Train Services where the contracted Network Train Services are not operated by, or by a Railway Operator for, the relevant Access Holder under the relevant Access Agreement.

TOP Charges (ATPY) for a year means:

- (a) in respect of this Agreement, the TOP Charges for a Train Service Type for that year that would be payable for the relevant Train Service Type for that year if the formula in **item 4.4** of [schedule 4](#) was " $ATP = ATPY$ "; and
- (b) in respect of another Access Agreement, the TOP Charges for that year that would be payable for contracted Network Train Services if the contracted Network Train Services are not operated by, or by a Railway Operator for, the relevant Access Holder under the relevant Access Agreement and the TOP Charges under that Access Agreement were calculated in a manner equivalent to the calculation of " $ATPY$ " in **item 4.4** of [schedule 4](#).

Track means the part of the Infrastructure comprising the rail, ballast, sleepers and associated fittings.

Train means any configuration of Rollingstock operating as a unit on Track.

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Train Control means the management and monitoring of all Train Movements and of all other operation of Rollingstock on the Infrastructure and of any activities affecting or potentially affecting such Train Movements or Rollingstock operation including:

- (a) recording Train running times on Train diagrams and in Aurizon Network's information systems;
- (b) reporting of Incidents occurring on the Infrastructure;
- (c) managing Incidents occurring on the Infrastructure from within a Train Control centre;
- (d) field Incident management;
- (e) yard control services; and
- (f) exchanging information with Railway Operators.

Train Control Direction means any instruction or direction (whether given orally or in writing or by means of signal or other similar device) issued by or on behalf of Aurizon Network (acting reasonably and in good faith) relating to Train Movements.

Train Controller means the person nominated by Aurizon Network from time to time as the supervisor of Train Movements on the relevant part of the Nominated Network, and whose details are initially specified in **item 1.1** of schedule 10.

Train List means the information required to be supplied by the End User (or the Operator) in accordance with **item 1.2** of schedule 10 in respect of each individual Train Service to be operated on the Nominated Network.

Train Movement means the operation of a Train on the Infrastructure by Aurizon Network, the Operator or any other Railway Operator.

Train Route Acceptance means an authorisation issued by Aurizon Network which authorises the End User to cause the Operator to operate Train Services for a Train Service Type on the Nominated Network using specified Authorised Rollingstock Configurations for that Train Service Type.

Train Schedule means the train diagrams, yard schedules, terminal schedules and any other form of train timetable prepared by Aurizon Network before the day of operation in accordance with the Network Management Principles showing the programmed times of arrival or departure for Train Movements at specified locations on the Infrastructure.

Train Service for a Train Service Type means the running, by the Operator, of a Train in one direction from the Origin to the Destination, or from the Destination to the Origin, for that Train Service Type (including any Stowage) in accordance with the Train Service Description for that Train Service Type.

Train Service Commitment Date for a Train Service Type means the date specified as such in the Train Service Description for that Train Service Type.

Train Service Compliance Date for a Train Service Type means the date specified as such in the Train Service Description for that Train Service Type.

Train Service Description for a Train Service Type means the description of, specifications for, and constraints on, the Access Rights for that Train Service Type specified in schedule 2.

Train Service Expiry Date for a Train Service Type means the date specified as such in the Train Service Description for that Train Service Type.

Train Service Type means each type of train service specified as such in schedule 2.

Transfer means the relinquishment of all or part of the Access Rights in order to create Available Capacity that can be used to grant access rights to the End User or a Third Party.

Transfer Cancellation Notice has the meaning given in **clause 13.3(e)**.

Transfer Date has the meaning given in **clause 13.1(c)(i)(B)**.

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Transfer Fee means the transfer fee determined in accordance with **clause 13.4**.

Transfer Period has the meaning given in **clause 13.1(c)(i)(B)**.

Transferee has the meaning given in **clause 13.1(b)**.

Transferee Access Agreement has the meaning given in **clause 13.2(c)**.

Transferred Access Rights has the meaning given in **clause 13.1(c)(i)(D)**.

Transport Infrastructure Act means the *Transport Infrastructure Act 1994* (Qld).

Underutilisation Event for a Train Service Type means any cause, event or circumstance, or combination of causes, events or circumstances, other than the failure by Aurizon Network to make the Access Rights for the Train Service Type available, which will, or will likely, have a sustained or permanent, **and material adverse** impact on the End User's or the Operator's ability to utilise, or need to utilise, the Access Rights for that Train Service Type (**which may include**, the End User or the Operator (as applicable) ceasing to hold, or have the benefit of, any Supply Chain Rights **where there is no reasonable likelihood of the End User or the Operator securing, or securing the benefit of, alternative Supply Chain Rights**).

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Underutilised Access Rights for a Train Service Type means:

- (a) in respect of a Resumption Trigger Event for that Train Service Type specified in paragraph (a) of the definition of Resumption Trigger Event, the portion of future Access Rights for the Train Service Type (rounded to the nearest even number of whole Train Services for the Train Service Type) which is equal to the average of the portions of the Access Rights for the Train Service Type which the End User did not cause the Operator to utilise in the applicable **four** consecutive Quarters referred to in the paragraph (a) of the definition of Resumption Trigger Event; and
- (b) in respect of a Resumption Trigger Event for that Train Service Type specified in paragraph (b) of the definition of Resumption Trigger Event, the Access Rights for the Train Service Type which Aurizon Network considers, acting reasonably **and in good faith**, the End User or the Operator will be unable to utilise, or will not need to utilise, for the operation of Train Services for the Train Service Type as a consequence (whether direct or indirect) of the Underutilisation Event for the Train Service Type.

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Unloading Facility for a Train Service Type means an unloading facility located at the Destination for that Train Service as specified in the Train Service Description for that Train Service Type.

Unreasonable in respect of an IRMP, or any aspect of or amendment to an IRMP, determined by Aurizon Network under **clause 28.3** or **28.4(d)(ii)** (as applicable) means **not consistent with Good Engineering Practices**.

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Urgent Possession means a Possession required to correct problems that Aurizon Network, acting reasonably, considers potentially dangerous to person or property, other than an Emergency Possession.

Wagon means any Rollingstock (including a wagon bogie) designed to carry any load other than passengers.

Weighbridge means a weighbridge or weightometer verified under the *National Measurement Act 1960* (Cth), as specified in **item 6.1** of **schedule 3**.

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Year means each year commencing on 1 July and ending on 30 June during the Term and, if applicable, includes:

- (a) the shorter period commencing on the first day of the Month in which the Commitment Date occurs and ending on the next 30 June; and
- (b) the shorter period commencing on the 1 July occurring prior to the date of expiration or termination of this Agreement and ending on the date of expiration or termination of this Agreement.

1.2 Interpretation

In this Agreement, unless expressed to the contrary:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all other genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it; and
- (e) a reference to:
 - (i) a person includes a firm, unincorporated association, corporation or other entity, government or statutory body;
 - (ii) a person includes its legal personal representative, successors and assigns;
 - (iii) conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
 - (iv) conduct includes a benefit, remedy, discretion, authority or power;
 - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vi) the words "include", "includes" or "including" must be read as if they are followed by the words "without limitation";
 - (vii) writing includes:
 - (A) any mode of representing or reproducing words in tangible and permanently visible form, including fax transmission; and
 - (B) words created or stored in any electronic medium and retrievable in perceivable form;
 - (viii) time is to local time in Brisbane, Queensland;
 - (ix) "A\$", "\$" or "dollars" is a reference to the lawful currency of Australia;
 - (x) this or any other document or agreement (including an Access Undertaking) includes the document or agreement as novated, amended or replaced from time to time and despite any changes in the identity of the parties;
 - (xi) anything (including any amount) is a reference to the whole or part or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
 - (xii) under a clause includes in accordance with that clause;
 - (xiii) a clause or schedule is a reference to a clause or schedule (as applicable) in this Agreement;
 - (xiv) any legislation or any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
 - (xv) any code, guideline, recommendation or policy, or any provision of any code, guideline, recommendation or policy, includes any modification of it, or the substitution of it or any of its provisions for others, unless otherwise specified or directed by Aurizon Network;

- (xvi) any Authority, association or body whether statutory or otherwise (**first body**) is, if the first body ceases to exist or is re-constituted, re-named or replaced or the powers or functions of the first body is transferred to any other Authority, association or body (**replacement body**), deemed to refer to the replacement body established or constituted in lieu of the first body or as nearly as may be succeeding to the powers or functions of the first body;
- (xvii) access or access rights does not include rights granted by Aurizon Network to a Railway Operator under a train operations agreement;
- (xviii) the End User, if the End User is comprised of more than one entity (for example, if the End User is comprised of the participants in an unincorporated joint venture), is a reference to each entity comprising the End User; and
- (xix) where a party is to use its reasonable endeavours, in doing so it must not have regard to its own commercial interests.

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1.3 Words and expressions defined in Access Undertaking

If a word or expression is defined under this Agreement to have the meaning given in the Access Undertaking and:

- (a) the word or expression ceases to be defined in the Access Undertaking, the word or expression will have the meaning given in the Access Undertaking immediately prior to it ceasing to be defined in the Access Undertaking; or
- (b) there ceases to be an Access Undertaking in force, the word or expression will have the meaning given in the Access Undertaking immediately prior to it ceasing to be in force.

1.4 References to descriptors of Train Service Types

In this Agreement, references to any descriptor of a Train Service or a Train Service Type (for example, 'Destination', 'Loading Facility', 'Nominated Monthly Train Services', 'Origin' and 'Unloading Facility') is to that descriptor as applicable to that particular Train Service or Train Service Type.

1.5 References to Operator

Unless the context requires otherwise, in this Agreement a reference to the Operator:

- (a) in respect of a Train Service, will be construed as a reference to the Operator that has operated, or will operate, that Train Service;
- (b) in respect of a Train Service Type, will be construed as a reference to each Operator for that Train Service Type; and
- (c) otherwise, will be construed as a reference to each Operator for any Train Service Type.

1.6 Headings

Headings do not affect the interpretation of this Agreement.

1.7 Inconsistency

- (a) If there is any inconsistency between the substantive terms of this Agreement (comprising **clauses 1 to 45**) and the schedules of this Agreement, the substantive terms of this Agreement prevail to the extent of the inconsistency.
- (b) Subject to **clause 9.1(b)**, if there is any inconsistency between matters contained in the Access Undertaking and this Agreement, the provisions of this Agreement prevail to the extent of the inconsistency.

- (c) If there is any inconsistency between the matters contained in the Operating Plan and this Agreement, the provisions of this Agreement prevail to the extent of the inconsistency.

2 Term

2.1 Term

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

2.2 Right to negotiate Renewal

- (a) Not more than 36 months (or such earlier date as agreed between the Parties), and not less than 12 months, before the Train Service Expiry Date for a Train Service Type, the End User may notify Aurizon Network that it wishes to hold Access Rights ~~(being a maximum of the Access Rights held immediately before the Train Service Expiry Date)~~ for that Train Service Type for a further term commencing immediately after the Train Service Expiry Date for that Train Service Type (**Renewal**).
- ~~(b) If the End User has not indicated its intention to renew within 24 months before the Train Service Expiry Date Aurizon Network must promptly notify the End User and provide the End User with an opportunity to indicate its intention to renew.~~
- (c) If the End User gives Aurizon Network a notice under **clause 2.2(a)**, then Aurizon Network must negotiate with the End User in good faith to endeavour to agree a Renewal provided that:
- (i) the End User has submitted an Access Application for the Renewal in accordance with the terms of the Access Undertaking and otherwise complies, and continues to comply, with relevant terms of the Access Undertaking that relate to Access Seekers;
 - (ii) the End User will have priority over any other Access Seeker in respect of the Access Rights sought for the Renewal but only to the extent expressly provided under the Access Undertaking;
 - (iii) Aurizon Network is not obliged to do anything that would give rise to it failing to comply with Passenger Priority Obligations, "Preserved Train Path Obligations" (as defined in the Access Undertaking), the Access Undertaking or any applicable Laws;
 - (iv) the term of the Renewal must be the lesser of 10 years and the anticipated remaining life of the End User's relevant mine (as evidenced to Aurizon Network's reasonable satisfaction by the End User); and
 - (v) any Renewal, if agreed, will be on the terms of Aurizon Network's then applicable standard access agreement (under the Access Undertaking at that time) or any other terms negotiated between the Parties in accordance with the Access Undertaking.
- (d) Where any of the matters under **clause 2.2(b)** are not satisfied, that will not, of itself:
- (i) prevent the End User from submitting an Access Application under the Access Undertaking; and
 - (ii) void, cease or withdraw any Access Application submitted by the End User (even if originally submitted for a purported Renewal) other than in accordance with the Access Undertaking,
- but any such Access Application will not be treated as an Access

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- (e) Application for a Renewal under the Access Undertaking. Nothing in this **clause 2.2** obliges Aurizon Network:
 - (i) to execute an Access Agreement for a Renewal; or
 - (ii) to enter into an Access Agreement for a Renewal on the same terms as this Agreement.

3 Access Rights

3.1 Grant of Access Rights

On and from the Train Service Commitment Date for each Train Service Type until the Train Service Expiry Date for that Train Service Type, Aurizon Network grants, and will provide, to the End User the Access Rights for that Train Service Type in accordance with the Train Service Description for that Train Service Type for the operation of Train Services by the Operator for that Train Service Type on the terms and conditions of this Agreement.

3.2 Nature and scope of Access Rights

- (a) The Access Rights granted under **clause 3.1** are non-exclusive contractual rights and do not give the End User any right, title or interest of any proprietary nature in the Nominated Network.
- (b) The End User must not:
 - (i) operate on, or use, or permit the Operator to operate on or use, any part of, the Infrastructure that is not specifically included in the Nominated Network; or
 - (ii) use, or permit the Operator to use, the Nominated Network for:
 - (A) carrying out any provisioning, inspection, testing or maintenance of Rollingstock;
 - (B) any marshalling, shunting or other relocation of Rollingstock;
 - (C) storage of Rollingstock; or
 - (D) any purpose other than the operation of Train Services, unless otherwise expressly:
 - (iii) permitted or required to do so under this Agreement;
 - (iv) directed to do so by Aurizon Network in accordance with this Agreement; or
 - (v) expressly permitted under another agreement with Aurizon Network.

(c) The Parties acknowledge and agree that Aurizon Network is required to provide the End User with certain benefits, rights and services [in accordance with the definition of "Access" in Aurizon Network's Access Undertaking] and to the extent these requirements are relevant to the End User's Access Rights it is intended that they will be provided on the terms of this Agreement.

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3.3 Operation of Ad Hoc Train Service

- (a) If:
 - (i) the Operator notifies Aurizon Network that it wishes to operate an Ad Hoc Train Service for a Train Service Type; and
 - (ii) Aurizon Network schedules the Ad Hoc Train Service for the Train Service Type in the Daily Train Plan,

then, on and from the time that the Ad Hoc Train Service is scheduled in the Daily Train Plan, subject to **clause 3.3(b)**, the terms and conditions of this Agreement will apply to the Ad Hoc Train Service as if the Ad Hoc Train Service

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is a Train Service for the Train Service Type which the End User is entitled to cause the Operator to operate under this Agreement utilising the Access Rights for the Train Service Type.

- (b) If Aurizon Network schedules an Ad Hoc Train Service for a Train Service Type in the Daily Train Plan then, despite any other provision of this Agreement:
 - (i) if the Ad Hoc Train Service is an Ad Hoc Train Service referred to in paragraph (b) of the definition of Ad Hoc Train Service, the End User must cause the Operator, in operating the Ad Hoc Train Service, to comply with the Train Service Description for the Train Service Type subject to any derogations permitted by Aurizon Network;
 - (ii) if the End User or the Operator gives Aurizon Network a notice under **clause 19.2(a)**, or Aurizon Network gives the Operator a notice under **clause 19.3(a)**, Aurizon Network will have no obligation to reschedule, or to use reasonable endeavours to reschedule, the Ad Hoc Train Service but without limitation to the operation of **clause 3.3(a)** should the Operator give any further notice as contemplated by **clause 3.3(a)(i)**.
- (c) If reasonably practicable after receipt of notification under **clause 3.3(a)(i)**, Aurizon Network will endeavour to give to the Operator a non-binding indication of the likelihood of Aurizon Network scheduling the Ad Hoc Train Service for the Train Service Type in the Daily Train Plan.
- (d) For the avoidance of doubt, nothing in **clauses 3.3(a)** or (c) requires Aurizon Network to schedule, or to endeavour to schedule, an Ad Hoc Train Service for a Train Service Type if the Operator notifies Aurizon Network pursuant to **clause 3.3(a)(i)**.

4 Ancillary Services

Aurizon Network must provide the End User with the Ancillary Services (if any) in accordance with **schedule 11**.

5 Billing and payments

5.1 Charges

The End User must pay to Aurizon Network the Access Charges and the Ancillary Services Charges (if any) as calculated in accordance with this Agreement.

5.2 Invoicing

- (a) As soon as reasonably practicable after the end of each Billing Period, Aurizon Network must give to the End User an invoice for:
 - (i) the Access Charges for that Billing Period;
 - (ii) the Ancillary Services Charges (if any) for that Billing Period; and
 - (iii) any amount payable but unpaid by the End User to Aurizon Network under this Agreement, and which have not previously been invoiced, as at the end of the Billing Period.
- (b) At the same time as providing an invoice under **clause 5.2(a)**, Aurizon Network will provide a reconciliation of Access Charges paid against total likely Access Charges for the Year.
- (c) Aurizon Network is not required to give the End User an invoice under **clause 5.2(a)** after the end of a Billing Period if no amount is required to be invoiced under **clause 5.2(a)** for that Billing Period.

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- (d) If this Agreement terminates or expires on a date other than 30 June then, as soon as reasonably practicable after the first 30 June to occur after the termination or expiry of this Agreement, Aurizon Network must give to the End User an invoice for the TOP Charges (if any) for the Year (as defined in **item 1.1** of ~~schedule 4~~) during which this Agreement terminated or expired.
- (e) Each invoice given under this **clause 5.2** which includes an amount for TOP Charges must be accompanied by reasonable details of Aurizon Network's calculation of the amount of the TOP Charges.

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5.3 Payment

Subject to **clause 5.4**, the End User must:

- (a) pay to Aurizon Network the amount claimed in an invoice given under **clause 5.2** within 10 Business Days after the invoice is given to the End User; and
- (b) pay all amounts payable to Aurizon Network under this Agreement:
 - (i) ~~in~~ Australian currency; and
 - (ii) by direct deposit into an account nominated by Aurizon Network for this purpose or such other method as Aurizon Network may reasonably require from time to time.

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5.4 Disputes

- (a) If the End User genuinely and in good faith Disputes an amount claimed in an invoice given by Aurizon Network under **clause 5.2**:
 - (i) the End User may, within 10 Business Days after Aurizon Network gives the End User the invoice, give Aurizon Network a Dispute Notice under **clause 35.1**; and
 - (ii) if the Dispute is not resolved in accordance with **clause 35.2**, then either Party may refer the Dispute to an Expert in accordance with **clause 35.3**.
- (b) Despite **clause 5.4(a)**, if an amount claimed in an invoice given by Aurizon Network under **clause 5.2** is Disputed, the End User must pay to Aurizon Network:
 - (i) the portion of the amount claimed in the invoice that is not in Dispute; and
 - (ii) 50% of the portion of the amount claimed in the invoice that is in Dispute, within the time specified in **clause 5.3(a)**.
- (c) Upon resolution of any Dispute about an amount claimed in an invoice given by Aurizon Network under **clause 5.2**, if the total amount which Aurizon Network was entitled to claim in the invoice (as resolved) is:
 - (i) more than the amount paid by the End User, then the amount of the difference, together with interest on that amount calculated in accordance with **clause 5.5** (from the date when the amount in Dispute would have been due and payable under **clause 5.3(a)** but for **clause 5.4(b)**, until the date on which the difference, together with any interest, has been paid in full), must be paid by the End User to Aurizon Network within ~~ten~~ Business Days after the resolution of the Dispute; or
 - (ii) less than the amount paid by the End User, then the amount of the difference, together with interest on that amount calculated in accordance with **clause 5.5** (as if Aurizon Network was the End User, and the End User was Aurizon Network, for the purposes of **clause 5.5**) (from the date when the amount in Dispute was paid by the End User until the date on which the credit is applied or the amount is paid (as applicable) under this **clause 5.4(c)(ii)**), must be:

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- (A) applied by Aurizon Network as credit in favour of the End User against the amount claimed in the next invoice to be issued by Aurizon Network to the End User under **clause 5.2** after the resolution of the Dispute; or
- (B) if there will be no further invoices issued by Aurizon Network to the End User under **clause 5.2** after the resolution of the Dispute, ~~paid by Aurizon Network to the End User within ten Business Days after the resolution of the Dispute.~~

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5.5 Interest on overdue payments and Disputed amounts

- (a) Without prejudice to the rights, powers and remedies of Aurizon Network under this Agreement or otherwise at Law, if for any reason the End User does not pay an amount payable under or in connection with this Agreement on or before the due date for payment, then the End User must pay interest to Aurizon Network on the outstanding amount calculated in accordance with this **clause 5.5**.
- (b) Interest accrues on outstanding amounts from the due date for payment until that amount, together with the interest on that amount, has been paid in full.
- (c) Interest under **clauses 5.4(c)(i), 5.4(c)(ii) and 5.5(b)** is calculated at the Default Rate. Any interest accrued but unpaid at the end of each Month is capitalised and, once capitalised, will itself bear interest.

6 Security

6.1 Requirement to provide Security after Commencement Date

- (a) This **clause 6.1** only applies if **item 3 of schedule 1** states that it applies.
- (b) Prior to the Commitment Date, the End User must deliver Security to Aurizon Network which satisfies the requirements of this **clause 6** for an amount of not less than the Security Amount.

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 Aurizon Network may deduct from any amounts which are due and payable by Aurizon Network to the End User under this Agreement any amounts which are due and payable by the End User to Aurizon Network under this Agreement.¶

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6.2 Requirement to provide Security on certain events occurring

If at any time during the Term when the End User is not required to provide Security to Aurizon Network under this **clause 6**:

- (a) ~~the End User does not pay any amount payable under this Agreement by the due date for payment and does not pay that amount (together with any interest) within a further period of five Business Days after Aurizon Network gives notice to the End User requiring payment; or~~
- (b) Aurizon Network considers, acting reasonably, that the End User may:
 - (i) no longer be financially sound;
 - (ii) no longer be able to meet its debts as and when they fall due; or
 - (iii) not otherwise be capable of performing its obligations under this Agreement,

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then the End User must, within 10 Business Days after being required to do so by Aurizon Network, deliver Security to Aurizon Network which satisfies the requirements of this **clause 6** for an amount of not less than the Security Amount.

- (c) The Parties acknowledge and agree that, for the purposes of **clause 6.2(b) and without limitation, it is reasonable for Aurizon Network to take into consideration if an End User, having held an Acceptable Credit Rating at the Commencement Date or during the Term, thereafter ceases to hold an Acceptable Credit Rating provided that such matter shall not negate the requirement of this **clause 6.2(c)** on Aurizon Network to act reasonably in all the circumstances in order to form the relevant consideration under **clause 6.2(b).****

6.3 Requirement to provide Security for the Security Amount

- (a) If the End User is required to provide Security under this **clause 6**, the Security must be provided and maintained for an amount of not less than the Security Amount.
- (b) If at any time during the Term:
 - (i) the End User is required to provide Security under this **clause 6**; and
 - (ii) the Security provided by the End User to Aurizon Network under this **clause 6** is for an amount which is less than the Security Amount (including due to Aurizon Network having recourse to the Security under **clause 6.6**),

then the End User must promptly (and in any event within 10 Business Days after being required to do so by Aurizon Network) deliver to Aurizon Network:

- (iii) additional Security; or
- (iv) replacement Security,

which satisfies the requirements of this **clause 6** so that Security is provided and maintained for an aggregate amount of not less than the Security Amount.

6.4 Requirement to provide Security for additional Train Service Type

Without limiting **clause 6.3**, if:

- (a) at any time during the Term:
 - (i) ~~schedule 2~~ is varied to include an additional Train Service Type; or
 - (ii) the Train Service Description for an existing Train Service Type is varied;
- (b) at the time of the variation referred to in **clause 6.4(a)** the End User is required to provide Security under this **clause 6**; and
- (c) at the time of the variation referred to in **clause 6.4(a)** the Security provided by the End User to Aurizon Network under this **clause 6** is for an amount which is less than the amount which will be the Security Amount on and from, as applicable:
 - (i) the Train Service Commitment Date for that additional Train Service Type; or
 - (ii) the date the variation to the Train Service Description for that existing Train Service Type takes effect,

having regard to the additional Access Charges payable, in the future, for that Train Service Type, then the End User must promptly (and in any event within 10 Business Days before the applicable date specified in **clause 6.4(c)(i)** or **6.4(c)(ii)**) deliver to Aurizon Network:

- (d) additional Security; or
- (e) replacement Security,

which satisfies the requirements of this **clause 6** so that Security is provided and maintained for an aggregate amount of not less than the amount which will be the Security Amount on and from the applicable date specified in **clause 6.4(c)(i)** or **6.4(c)(ii)** (having regard to the additional Access Charges payable, in the future, for that Train Service Type).

6.5 Replacement of Security

The End User may, with Aurizon Network's consent, replace any Security provided by the End User under this **clause 6** with replacement Security which satisfies the requirements of this **clause 6**.

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6.6 Recourse to Security

Aurizon Network may have recourse to the Security where the End User fails to pay any amount payable by the End User to Aurizon Network under, or in connection with, this Agreement:

- (a) if the amount is payable by a specified due date, by the due date for payment; or
- (b) if the amount is not payable by a specified due date, within a reasonable period after Aurizon Network has requested payment of the relevant amount.

6.7 Review of requirement to provide Security

If at any time during the Term, the End User:

- (a) is required to provide Security under this **clause 6**; and
- (b) considers that its financial circumstances have changed such that it should no longer be required to provide Security,

then the End User may request (provided that the End User must not request more than once in any Year) that Aurizon Network review the creditworthiness of the End User and Aurizon Network will undertake such a review when requested.

6.8 Return of Security

Aurizon Network must return to the End User (and, where appropriate, give the End User any necessary releases in relation to) any Security provided by the End User under this **clause 6**:

- (a) subject to Aurizon Network's rights of recourse to the Security under **clause 6.6**, promptly after the date of termination or expiry of this Agreement;
- (b) on the End User delivering to Aurizon Network any replacement Security under **clause 6.3(b)(iv)**, **6.4(e)** or **6.5** which satisfies the requirements of this **clause 6**; or
- (c) if, after a review pursuant to **clause 6.7**, Aurizon Network considers, acting reasonably, that it is no longer necessary for the End User to provide Aurizon Network with Security under this **clause 6**.

7 Operation of Train Services

7.1 Operation of Train Services

- (a) Unless acting under a Train Control Direction, the End User must ensure that the Operator does not operate Train Services which do not comply with the applicable Train Service Description and this Agreement without the prior written approval of Aurizon Network (which approval may specify terms in addition to or varying the terms of this Agreement in respect of the Train Services to which the approval relates, including the Access Charges payable in respect of those Train Services).
- (b) For the avoidance of doubt, the End User acknowledges and agrees that it is only entitled to exercise its Access Rights under this Agreement through the Operator, and that it is the Operator, and not the End User, that will operate the End User's Train Services under this Agreement.

7.2 Commencement of Train Services

- (a) Without limiting any other provision of this Agreement, the End User must ensure that the Operator does not operate any Train Service unless and until:
 - (i) if required under **clause 6.1**, the End User has provided Security to Aurizon Network in accordance with **clause 6**;

- (ii) the End User has demonstrated, to the reasonable satisfaction of Aurizon Network, the matter which the End User is required to demonstrate under **clause 7.4(b)** in respect of each Train Service Type;
 - (iii) an Operating Plan has been approved by Aurizon Network under **clause 18.1(a)**;
 - (iv) the End User or the Operator has provided a Certificate of Compliance to Aurizon Network for all of the Rollingstock which the Operator proposes to use in the operation of Train Services, and such Rollingstock is Authorised Rollingstock;
 - (v) the End User or the Operator has provided a Certificate of Compliance to Aurizon Network for all of the Rollingstock Configurations which the Operator proposes to use in the operation of Train Services for each Train Service Type, and such Rollingstock Configurations are Authorised Rollingstock Configurations for each Train Service Type;
 - (vi) Aurizon Network has given the End User or the Operator an Authority to Travel or a Train Route Acceptance authorising the End User to cause the Operator to operate Train Services for each Train Service Type using the Authorised Rollingstock Configurations for each Train Service Type;
 - (vii) the End User has caused the Operator to submit an Emergency Response Plan to Aurizon Network which complies with, or is taken to comply with, the requirements of **clause 25.1(a)**;
 - (viii) the End User has provided evidence to Aurizon Network of the Operator's Accreditation as required by **clause 26(a)**;
 - (ix) an IRMP has been agreed or determined under **clause 28**;
 - (x) the End User has caused the Operator to develop the Operator's Safety Management System under **clause 28.10**;
 - (xi) the End User has caused the Operator to develop the Environmental Management Plan under **clause 28.12**;
 - (xii) the End User has taken out and/or caused the Operator to take out (as appropriate) the insurances, and provided evidence of those insurances to Aurizon Network, as required under **clause 30.3**; and
 - (xiii) the End User has complied with, or implemented, and/or or caused the Operator to comply with or implement, any aspects of, the Operating Plan, Emergency Response Plan, the Operator's Accreditation, the IRMP, the Operator's Safety Management System and the Environmental Management Plan that are required to be complied with or implemented before the commencement of Train Services.
- (b) Aurizon Network will use reasonable endeavours to cooperate with the End User and/or the Operator (as applicable) to facilitate the End User's compliance with **clause 7.2(a)**.
- (c) If the End User has not complied with (or caused the Operator to comply with) each of the requirements of **clause 7.2(a)** by:
- (i) the Compliance Date and Aurizon Network has a reasonable expectation that the Operator cannot commence the operation of Train Services by the Commitment Date; or
 - (ii) the Commitment Date,
- then provided the End User's failure to comply with **clause 7.2(a)** was not due to Aurizon Network's breach of **clause 7.2(b)**:

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- (iii) Aurizon Network may give a notice to the End User requiring the End User to comply with **clause 7.2(a)** within 20 Business Days after the date the notice is given to the End User and noting that it is a notice given under this clause; and
- (iv) If Aurizon Network gives a notice to the End User under and in accordance with clause 7.2(c)(iii) and the End User fails to comply with **clause 7.2(a)** within 20 Business Days after the date that the notice is given to the End User, Aurizon Network may terminate this Agreement by written notice to the End User (with such termination to take effect on the date specified in the notice or, if no date is specified, on the date that the notice is given to the End User).

7.3 Commencement of Train Services for Train Service Type

- (a) Without limiting any other provision of this Agreement, if:
 - (i) schedule 2 is varied to include an additional Train Service Type; or
 - (ii) the Train Service Description for an existing Train Service Type is varied,
 then the End User must ensure that the Operator does not operate any such additional or varied Train Services for that Train Service Type unless and until:
 - (iii) if required under **clause 6.4**, the End User has provided additional or replacement Security to Aurizon Network in accordance with **clause 6.4**;
 - (iv) the End User has demonstrated, to the reasonable satisfaction of Aurizon Network, the matter which the End User is required to demonstrate under clause 7.4(b) in respect of that Train Service Type;
 - (v) amendments to the Operating Plan to address the operation of those Train Services have been approved by Aurizon Network, or the End User has notified Aurizon Network of the End User's determination that no such amendments are required, under **clause 18.2**;
 - (vi) if required under **clause 20.5**, the End User or the Operator has provided a Certificate of Compliance to Aurizon Network for all of the Rollingstock which the Operator proposes to use in the operation of Train Services for that Train Service Type, and such Rollingstock is Authorised Rollingstock;
 - (vii) the End User or the Operator has provided a Certificate of Compliance to Aurizon Network for all of the Rollingstock Configurations which the Operator proposes to use in the operation of Train Services for that Train Service Type, and such Rollingstock Configurations are Authorised Rollingstock Configurations for that Train Service Type;
 - (viii) Aurizon Network has given the End User or the Operator an Authority to Travel or a Train Route Acceptance authorising the End User to cause the Operator to operate Train Services for that Train Service Type using the Authorised Rollingstock Configurations for that Train Service Type;
 - (ix) the End User has caused the Operator to amend the Emergency Response Plan to address the operation of those Train Services, or notify Aurizon Network of the Operator's determination that no such amendments are required, under **clause 25.2(b)**;
 - (x) the End User has caused the Operator to provide evidence to Aurizon Network of the Operator's Accreditation as varied to address the operation of those Train Services, or to notify Aurizon Network of the

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Operator's determination that no such variations are required, under **clause 26(f)**;

- (xi) the End User, the Operator and Aurizon Network have jointly conducted a further Interface Risk Assessment, and amendments to the IRMP, to the extent required, have been agreed or determined, under **clause 28**;
 - (xii) if required under **clause 28.10**, the End User has caused the Operator to amend the Operator's Safety Management System to address any amendments to the IRMP and the operation of those Train Services;
 - (xiii) if required under **clause 28.12**, the End User has caused the Operator to amend the Environmental Management Plan to address any amendments to the IRMP and the operation of those Train Services; and
 - (xiv) the End User has complied with or implemented, and/or caused the Operator to comply with or implement, any aspects of the Operating Plan, Emergency Response Plan, the Operator's Accreditation, the IRMP, the Operator's Safety Management System and the Environmental Management Plan that are required to be complied with or implemented before the commencement of those Train Services.
- (b) Aurizon Network will use reasonable endeavours to cooperate with the End User and/or the Operator (as applicable) to facilitate the End User's compliance with **clause 7.3(a)**.
- (c) If **clause 7.3(a)(i)** applies and the End User has not complied with (or caused the Operator to comply with) **clause 7.3(a)** in respect of the Train Services for a Train Service Type by:
- (i) the Train Service Compliance Date for that Train Service Type and Aurizon Network has a reasonable expectation that the Operator cannot commence the operation of those additional or varied Train Services by the Train Service Commitment Date for that Train Service Type; or
 - (ii) the Train Service Commitment Date for that Train Service Type, then, provided that the End User's failure to comply with **clause 7.3(a)** was not due to Aurizon Network's breach of **clause 7.3(b)**:
 - (iii) Aurizon Network may give a notice to the End User requiring the End User to comply with **clause 7.3(a)** within 20 Business Days after the date the notice is given to the End User; and
 - (iv) if Aurizon Network gives a notice to the End User under **clause 7.3(c)(iii)** and the End User fails to comply with **clause 7.3(a)** within 20 Business Days after the date that the notice is given to the End User, then:
 - (A) Aurizon Network may, by notice to the End User, reduce the Access Rights by the Train Services for that Train Service Type (or in the case of a variation to the Train Service Description for an existing Train Service Type, by removing the variation) (**Reduced Access Rights**); and
 - (B) the Reduced Access Rights will cease to form part of the Access Rights on and from the date that the notice referred to in **clause 7.3(c)(iv)(A)** is given to the End User.

7.4 Supply Chain Rights

- (a) The End User must, for each Train Service Type:

- (i) ensure that the Operator does not operate Train Services for that Train Service Type at any time during which the End User does not hold, or have the benefit of, Supply Chain Rights for those Train Services; and
 - (ii) ensure that the Operator does not commence the operation of Train Services for a Train Service Type until the End User has demonstrated, to the reasonable satisfaction of Aurizon Network, the matter which the End User is required to demonstrate under **clause 7.4(b)**.
- (b) The End User must demonstrate to the reasonable satisfaction of Aurizon Network:
- (i) on or before the Train Service Commitment Date for a Train Service Type;

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that the End User holds, or has the benefit of, or is reasonably likely to obtain Supply Chain Rights for the commencement of the operation of Train Services for that Train Service Type;

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(c) The End User must, for each Train Service Type, use all reasonable endeavours to continue to hold, or have the benefit of, those Supply Chain Rights until at least the Train Service Expiry Date for that Train Service Type (or at least the Train Service Expiry Date for that Train Service Type if the End User or the holder of those Supply Chain Rights exercises an option granted in its favour to renew such Supply Chain Rights or extend the term of such Supply Chain Rights) provided that if the term of any Supply Chain Rights expires or terminates prior to the Train Service Expiry Date for that Train Service the End User must use reasonable endeavours to secure equivalent replacement Supply Chain Rights for the period until the Train Service Expiry Date for that Train Service.

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(d) Not later than 10 Business Days after receipt of a request from Aurizon Network, the End User must provide reasonable details to Aurizon Network of:

- (i) the Supply Chain Rights for the Train Services for a Train Service Type that the End User holds, or has the benefit of, at that time; and
- (ii) if applicable, the steps which the End User has taken, or intends to take, to secure any additional, renewed, extended or replacement Supply Chain Rights for the Train Services for the Train Service Type and the status thereof.

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7.5 Nomination of Operator for Train Service Type

- (a) If the End User wishes to nominate an Accredited Railway Operator to be an Operator (or an additional Operator) for a Train Service Type:
 - (i) the End User must give Aurizon Network a notice to that effect specifying:
 - (A) the name and contact details of the Accredited Railway Operator;
 - (B) the applicable Train Service Type; and
 - (C) any other information in relation to the Accredited Railway Operator reasonably required by Aurizon Network; and
 - (ii) subject to **clause 7.5(e)**, with effect on the date that all information that is required to be given by the End User to Aurizon Network under **clause 7.5(a)(i)** is given to Aurizon Network (to Aurizon Network's reasonable satisfaction), the Train Service Description for the Train Service Type will be taken to be varied to specify the Accredited Railway Operator as an Operator for the Train Service Type.

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- (b) For the avoidance of doubt, the End User may, under **clause 7.5(a)**, nominate more than one Accredited Railway Operator to be an Operator for a Train Service Type at any time.
- (c) If the End User wishes an Operator for a Train Service Type to cease to be an Operator for that Train Service Type, then:
- (i) the End User must give Aurizon Network a notice to that effect specifying the name and contact details of the Operator and the applicable Train Service Type; and
 - (ii) subject to **clause 7.5(e)**, with effect on the date that such notice is given to Aurizon Network, the Train Service Description for the Train Service Type will be taken to be varied to remove that Operator as an Operator for the Train Service Type.
- (d) If:
- (i) the End User:
 - (A) nominates an Accredited Railway Operator as an Operator for a Train Service Type under **clause 7.5(a)** in addition to an existing Operator, or existing Operators, for the Train Service Type; or
 - (B) notifies Aurizon Network under **clause 7.5(c)** that it wishes an Operator for a Train Service Type to cease to be an Operator for the Train Service Type (and there is not already an existing Operator appointed for that Train Service Type); and
 - (ii) Aurizon Network notifies the End User that it considers that this Agreement (including the schedules) should be amended to address matters arising from the relevant nomination or removal,
- then Aurizon Network and the End User must negotiate in good faith to endeavour to agree any amendments to this Agreement (including the schedules) to address any matters arising from the relevant nomination or removal.
- (e) if **clause 7.5(d)** applies, then despite any other provision of this Agreement, the Train Service Description for a Train Service Type will not be taken to be varied to:
- (i) specify the Accredited Railway Operator referred to in a notice given under **clause 7.5(a)(i)** as an Operator for the Train Service Type; or
 - (ii) remove the Operator specified in a notice given under **clause 7.5(c)(i)** as an Operator for the Train Service Type,
- unless and until Aurizon Network and the End User have agreed to amendments to this Agreement (including the schedules) referred to in **clause 7.5(d)**.
- (f) The End User must ensure that only an Operator for a Train Service Type operates Train Services for that Train Services Type.

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7.6 Relationship with Operator

- (a) The End User must ensure that the Operator does not operate any Train Services using the Access Rights under this Agreement unless and until the Operator provides to Aurizon Network a written undertaking in favour of Aurizon Network (in the form of a deed poll) which has been duly executed by the Operator, and which is legally binding upon the Operator, under which the Operator agrees that the limitations and exclusions of liability contained in clause 32 are deemed to apply to the Operator as if the Operator were a party to this Agreement.

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- (b) Without limiting clause 7.6(a), nothing in this Agreement creates or constitutes any contract between Aurizon Network and the Operator.
- (c) The End User is responsible for the Operator's conduct in the performance of this Agreement and acts or omissions of the Operator in the performance of this Agreement will be deemed to be an act or omission by the End User for the purposes of this Agreement.

8 Resumption of Access Rights

8.1 Notification of Underutilisation Event

If the End User becomes aware of, or is informed by the Operator of, any Underutilisation Event for a Train Service Type occurring, the End User may (but is not obliged to), give Aurizon Network a notice specifying:

- (a) reasonable details of the Underutilisation Event, including without limitation if the Underutilisation Event is, or is the result of, a Force Majeure Event; and
- (b) the extent of the Access Rights for the Train Service Type which the End User considers, acting reasonably, the End User or the Operator will be unable to utilise, or will not need to utilise, for the operation of Train Services for the Train Service Type as a consequence of the Underutilisation Event.

8.2 Information Request Notice

- (a) If Aurizon Network considers that a Resumption Trigger Event for a Train Service Type has occurred, Aurizon Network may give the End User a notice to that effect (Information Request Notice) affording the End User an opportunity to provide information in relation to the suspected Resumption Trigger Event as Aurizon Network may reasonably require.
- (b) If Aurizon Network gives the End User an Information Request Notice, the End User may, but is not required to:
 - (i) within 20 Business Days after Aurizon Network gives the Information Request Notice to the End User, provide to Aurizon Network information regarding the matters raised by the Information Request Notice; and
 - (ii) if requested by Aurizon Network, meet with Aurizon Network to discuss the suspected Resumption Trigger Event for the applicable Train Service Type.

8.3 Proposed Resumption Notice

If Aurizon Network considers that a Resumption Trigger Event for the Train Service Type has occurred, then Aurizon Network may, regardless of whether or not Aurizon Network has given the End User an Information Request Notice in respect of that Resumption Trigger Event or whether or not the End User has responded to such an Information Request Notice, give the End User a notice (Proposed Resumption Notice) specifying:

- (a) reasonable details of the Resumption Trigger Event;
- (b) the Access Rights for the Train Service Type which Aurizon Network considers to be Underutilised Access Rights for the Train Service Type in respect of the Resumption Trigger Event; and
- (c) that Aurizon Network is considering resuming the whole or part of the Underutilised Access Rights for the Train Service Type,

provided that Aurizon Network must not give a Proposed Resumption Notice in relation to a Resumption Trigger Event for a Train Service Type specified in paragraph (a) of the definition of "Resumption Trigger Event" more than 20 Business Days after the end of the relevant four consecutive Quarters.

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 <#>the standard of, or any failure of or defect in, the Infrastructure;¶
 <#>negligence;¶
 <#>breach of warranty or representation; or¶
 <#>any other act, omission or circumstance whatsoever; and¶
 <#>the liability of Aurizon Network, its directors and Aurizon Network's Staff to the Operator will be limited as provided in clause 7.6(d); and¶
 <#>Aurizon Network, its directors and Aurizon Network's Staff will not be liable to the Operator, and the Operator releases (and will not bring a Claim against) Aurizon Network, its directors and Aurizon Network's Staff, in respect of a matter if the End User is required under this Agreement to ensure that the Operator does not bring a Claim against Aurizon Network, its directors and/or Aurizon Network's Staff in respect of that matter.¶

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8.4 Response to Proposed Resumption Notice

Within 15 Business Days after Aurizon Network gives the End User a Proposed Resumption Notice (**Proposed Resumption Response Period**), the End User may give Aurizon Network a notice which seeks to demonstrate the extent, and likelihood, of the End User and the Operator being able to, and having the requirement to, utilise the whole or part of the Underutilised Access Rights for the Train Service Type specified in the Proposed Resumption Notice for the operation of Train Services for the Train Service Type.

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8.5 Resumption Notice

(a) If:

(i) the End User does not give a notice under **clause 8.4** within the Proposed Resumption Response Period, the whole of the Underutilised Access Rights for the Train Service Type specified in the Proposed Resumption Notice will comprise **Resumable Access Rights** for the Train Service Type;

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(ii) the Proposed Resumption Notice is in relation to a Resumption Trigger Event for a Train Service Type specified in paragraph (a) of the definition of "Resumption Trigger Event" and the End User does give a notice under **clause 8.4** within the Proposed Resumption Response Period but does not demonstrate both of the following to Aurizon Network's reasonable satisfaction, in relation to a part (**relevant part**) of the Underutilised Access Rights for the Train Service Type specified in the Proposed Resumption Notice:

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(A) there is a reasonable likelihood of both of the End User and the Operator having the ability; and

(B) the End User requires the relevant part of those Underutilised Access Rights,

to utilise the relevant part of those Underutilised Access Rights, then the relevant part of the Underutilised Access Rights for the Train Service Type specified in the Proposed Resumption Notice will comprise **Resumable Access Rights** for the Train Service Type;

(iii) the Proposed Resumption Notice is in relation to a Resumption Trigger Event for a Train Service Type specified in paragraph (b) of the definition of "Resumption Trigger Event" and the End User does give a notice under **clause 8.4** within the Proposed Resumption Response Period any part (**relevant part**) of the Underutilised Access Rights for the Train Service Type specified in the Proposed Resumption Notice will only become **Resumable Access Rights** for the Train Services if one of the following applies:

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(A) Aurizon Network, acting reasonably, considers both that there is no reasonable likelihood of both of the End User and the Operator having the ability, and the End User has not demonstrated a requirement, to utilise the relevant part of those Underutilised Access Rights; or

(B) the End User has agreed in writing to the relevant part of those Underutilised Access Rights being **Resumable Access Rights**.

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(b) **If** Aurizon Network has a reasonable expectation of:

(i) a sustained alternative demand for the whole or part (as applicable) of the Resumable Access Rights for the Train Service Type; or

(ii) receiving a commercial benefit which Aurizon Network considers is sufficiently material to justify the resumption of the whole or part (as

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applicable) of the Resumable Access Rights for the Train Service Type,

then, Aurizon Network may, by notice to the End User given not later than 20 Business Days after the end of the Proposed Resumption Response Period (Resumption Notice), resume that part of the Resumable Access Rights for the Train Service Type in respect of which Aurizon Network has a reasonable expectation of a sustained alternative demand or receiving a commercial benefit (as applicable) **(Resumed Access Rights)**.

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(c) A Resumption Notice must specify:

- (i) full details of the Resumed Access Rights for the Train Service Type; and
- (ii) (ii) the date on which the resumption will take effect (which must be at least 10 Business Days after the Resumption Notice is given to the End User) **(Resumption Date)**.

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(d) If a Resumption Notice being given under this clause 8.5, the Resumed Access Rights for the Train Service Type will, subject to **clause 8.6** and **clause 8.7**, cease to form part of the Access Rights for the Train Service Type on and from the Resumption Date (including for the purposes of calculation of Access Charges).

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8.6 Dispute

(a) If Aurizon Network gives the End User a Resumption Notice, the End User may, by notice to Aurizon Network given within 20 Business Days after the Resumption Notice is given to the End User, dispute:

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- (i) the existence or extent of the Resumable Access Rights for the Train Service Type; or
- (ii) the reasonableness of the expectation of sustained alternative demand or Aurizon Network receiving a commercial benefit (as applicable) referred to in **clause 8.5(b)**,

in accordance with **clause 35** and, if the Parties fail to resolve the Dispute by agreement, the Dispute must be referred to an Expert for resolution in accordance with **clause 35.3**.

(b) If the End User Disputes a proposed resumption as contemplated in this **clause 8.6**, then the resumption of the Resumed Access Rights for the Train Service Type set out in the relevant Resumption Notice:

- (i) will not take effect until the later of the Resumption Date and 10 Business Days after the resolution of the Dispute; and
- (ii) will then only take effect to the extent that the resumption is consistent with the resolution of the Dispute.

8.7 Withdrawal of Resumption Notice

(a) Aurizon Network may, in its absolute discretion, withdraw a Resumption Notice at any time before the later of:

- (i) the Resumption Date; and
- (ii) if the End User Disputes the Resumption Notice under **clause 8.6**, the date of the resolution of that Dispute.

(b) If Aurizon Network withdraws a Resumption Notice under **clause 8.7(a)**, the resumption of the Access Rights for the Train Service Type set out in that Resumption Notice will not take effect.

9 Reduction of Conditional Access Rights due to Capacity Shortfall

9.1 Application

- (a) This **clause 9** only applies in respect of a Train Service Type if the Train Service Description for that Train Service Type specifies that this **clause 9** applies in respect of that Train Service Type.
- (b) If this **clause 9** applies in respect of a Train Service Type, this **clause 9** only applies to the extent that it:
 - (i) is not inconsistent with the Access Undertaking; and
 - (ii) does not oblige Aurizon Network to do or not do anything that would cause Aurizon Network to breach the Access Undertaking.

9.2 Conditional Access Rights

If this **clause 9** applies in respect of a Train Service Type:

- (a) the Access Rights for that Train Service Type under this Agreement (**Conditional Access Rights**) are conditional upon the completion and commissioning of the Expansion specified in the Train Service Description for that Train Service Type; and
- (b) despite the Train Service Commitment Date specified in the Train Service Description for the Conditional Access Rights, the Train Service Commitment Date for the Conditional Access Rights will be taken to be the later of:
 - (i) the Train Service Commitment Date for the Conditional Access Rights specified in the Train Service Description for the Conditional Access Rights; and
 - (ii) the date upon which all Segments of the Expansion are completed and commissioned.

9.3 Capacity Assessment

- (a) Subject to **clause 9.3(c)**, Aurizon Network must, within six months after the completion and commissioning of an Expansion referred to in **clause 9.2**, undertake an assessment (**Capacity Assessment**) in respect of that Expansion to determine, in accordance with **clause 9.3(b)**, the change in Existing Capacity (**Capacity Change**) for each Segment of the Expansion.
- (b) For the purposes of **clause 9.3(a)**, the Capacity Change for each Segment of an Expansion is the amount which is:
 - (i) the Existing Capacity of the Segment of the Expansion as a result of the Expansion being undertaken; less
 - (ii) the Existing Capacity of the Segment of the Expansion if the Expansion had not been undertaken, using consistent Operating Parameters.
- (c) Aurizon Network may defer a Capacity Assessment in respect of an Expansion until such time as Aurizon Network reasonably considers that the Expansion Infrastructure is fully operational and the demand conditions are such that a reasonable Capacity Assessment can be undertaken.

9.4 Determination of Reduced Conditional Access Rights for Segments

Within a reasonable time (and in any event no later than 6 months) after the completion of a Capacity Assessment in respect of an Expansion, Aurizon Network must:

- (a) determine whether or not there is a Capacity Shortfall for any Segment of the Expansion; -----

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(b) determine the reasons for the Capacity Shortfall, it being acknowledged that where the Capacity Shortfall is caused by an act or omission of Aurizon Network, Aurizon Network is deemed to be in breach of this Agreement, and

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(c) in respect of any Segment of the Expansion for which there is a Capacity Shortfall, calculate the Reduced Conditional Access Rights for that Segment in accordance with the following formula:

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$$RCAR = EAR \times \frac{CAR_{(Original)}}{\sum CAR_{(Original)}}$$

where:

RCAR = the Reduced Conditional Access Rights for the relevant Segment of the Expansion (expressed as a number of Train Services and rounded down to the nearest even number of whole Train Services)

EAR = the lesser of:

(a) the sum of CC and IAC; and

(b) $\sum CAR_{(Original)}$,

(expressed as a number of Network Train Services)

CC = the Capacity Change for the relevant Segment of the Expansion (expressed as a number of Network Train Services)

IAC = the amount (expressed as a number of Network Train Services) specified as the "Initial Available Capacity" for the Segment in the Train Service Description for the Conditional Access Rights

$CAR_{(Original)}$ = the Conditional Access Rights (expressed as a number of Train Services)

$\sum CAR_{(Original)}$ = the sum of:

(a) the Conditional Access Rights (expressed as a number of Network Train Services); and

(b) for each Other Conditional Access Holder for the Segment of the Expansion, the Other Conditional Access Holder's Other Conditional Access Rights for the Expansion (expressed as a number of Network Train Services).

9.5 Consequences of Capacity Shortfall

Within a reasonable time after the completion of a Capacity Assessment in respect of an Expansion, Aurizon Network must give the End User a notice (**Capacity Assessment Notice**) which specifies:

(a) the Conditional Access Rights which are conditional upon the completion and commissioning of the Expansion;

(b) the amount of the Capacity Change for each Segment of the Expansion (as determined by Aurizon Network under **clause 9.3(a)**);

(c) whether or not there is a Capacity Shortfall in respect of any Segment of the Expansion and if so the reasons for the Capacity Shortfall, it being acknowledged that where the Capacity Shortfall is caused by an act or omission of Aurizon Network, Aurizon Network is deemed to be in breach of this Agreement;

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(d) if there is a Capacity Shortfall in respect of any Segment of the Expansion, the Reduced Conditional Access Rights for each such Segment of the Expansion (calculated in accordance with the formula in **clause 9.4**), including reasonable details of the calculation of the Reduced Conditional Access Rights for each such Segment; and

- (e) that, with effect on the date that the Capacity Assessment Notice is given to the End User, the Conditional Access Rights will be taken to be varied to be the lowest of the Reduced Conditional Access Rights for a Segment of the Expansion referred to in **clause 9.5(d)**.

9.6 Disputes

- (a) If Aurizon Network gives the End User a Capacity Assessment Notice in respect of Conditional Access Rights, the End User may, within 20 Business Days after Aurizon Network gives the Capacity Assessment Notice to the End User, give Aurizon Network a Dispute Notice which Disputes the Capacity Assessment Notice (including, for clarification, the reasons for a Capacity Shortfall) in accordance with **clause 35**.
- (b) If a Dispute referred to in **clause 9.6(a)** is not resolved in accordance with **clause 35.2**, then the Parties must refer the Dispute to an Expert to determine (unless otherwise agreed between the Parties):
- (i) the amount of the Capacity Change for each Segment of the Expansion;
 - (ii) whether or not there is a Capacity Shortfall in respect of any Segment of the Expansion;
 - ~~(iii) the reasons for a Capacity Shortfall, it being acknowledged that where the Capacity Shortfall is caused by an act or omission of Aurizon Network, Aurizon Network is deemed to be in breach of this Agreement; and~~
 - (iv) if there is a Capacity Shortfall in respect of any Segment of the Expansion, the Reduced Conditional Access Rights for each such Segment of the Expansion (calculated in accordance with the formula in **clause 9.4**), including reasonable details of the calculation of the Reduced Conditional Access Rights for each such Segment.
- (c) If the End User does not give Aurizon Network a Dispute Notice referred to in **clause 9.6(a)** within the time referred to in **clause 9.6(a)**, then:
- (i) the End User must not give Aurizon Network a Dispute Notice Disputing the relevant Capacity Assessment Notice or the variation of the Conditional Access Rights under this **clause 9**;
 - (ii) any such Dispute Notice which is given by the End User will be taken to be of no effect; and
 - (iii) the End User will not have, and must not make, any Claim against Aurizon Network in respect of that Dispute.
- (d) If Aurizon Network is of the opinion that:
- (i) a Dispute referred to in **clause 9.6(a)**, or the outcome or consequences of that Dispute, may be relevant to Other Conditional Access Holders for an Expansion; or
 - (ii) a dispute referred to in a provision of an Access Agreement with an Other Conditional Access Holder for an Expansion which is equivalent **clause 9.6(a)**, or the outcome or consequences of that dispute, may be relevant to the End User under this Agreement,
- then:
- (iii) Aurizon Network will invite all of the Other Conditional Access Holders for the Expansion to participate in the dispute resolution process under this Agreement, or will invite the End User and each Other Conditional Access Holder for the Expansion to participate in the dispute resolution process under the relevant Other Conditional Access Holder's Access Agreement (as applicable); and

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- (iv) Aurizon Network, the End User and the Other Conditional Access Holders will be bound by the outcome of the dispute irrespective of whether or not the End User and the Other Conditional Access Holders (as applicable) choose to actively participate in the dispute.
- (e) If the End User is, in accordance with this **clause 9.6**, a party to, or is invited to participate in, a dispute that has been referred to an Expert under this **clause 9.6** or a provision equivalent to this **clause 9.6** under any other Access Agreement, then the Expert must, amongst any other matters determined by the Expert, determine the matters specified in **clause 9.6(b)** (unless otherwise agreed between the parties to the dispute).

9.7 Variation to Conditional Access Rights

If Aurizon Network gives the End User a Capacity Assessment Notice in respect of Conditional Access Rights, then the Conditional Access Rights will be taken to be varied to be the lowest of the Reduced Conditional Access Rights for a Segment of the Expansion

as:

- (a) specified in the Capacity Assessment Notice; or
- (b) if the End User is, in accordance with **clause 9.6**, a party to, or is invited to participate in, a dispute that has been referred to an Expert under this **clause 9.6** or a provision equivalent to this **clause 9.6** under any other Access Agreement, as agreed or determined through the dispute resolution process,

with effect on the later of:

- (c) the date the Capacity Assessment Notice is given to the End User; and
- (d) if the End User gives the Aurizon Network a Dispute Notice referred to in **clause 10.5(a)**, the date the Parties agree a resolution to, or the date the Expert notifies the Parties of its determination of, the dispute.

9.8 Future capacity developments

If any Conditional Access Rights are varied under this **clause 9**, the End User acknowledges and agrees that Aurizon Network will only be obliged to develop additional Capacity, and to grant the End User access rights in respect of any such additional Capacity, if, and to the extent that, it is obliged to do so under the Access Undertaking.

10 Reduction of Nominated Monthly Train Services if Maximum Payload exceeded

10.1 Notification of reduction of Nominated Monthly Train Services

If, at a point in time (**Assessment Date**), the Average Annual Payload for a Train Service Type exceeds the Maximum Payload for that Train Service Type, then Aurizon Network may, within 20 Business Days after the Assessment Date, give the End User a notice (**Reduction Notice**):

- (a) specifying:
 - (i) the Average Annual Payload for the Train Service Type as at the Assessment Date;
 - (ii) the Revised Nominal Payload for that Train Service Type;
 - (iii) the Revised Maximum Payload for that Train Service Type; and
 - (iv) the Revised Nominated Monthly Train Services for that Train Service Type, including reasonable details of the calculation of those amounts; and

- (b) notifying the End User that, with effect on the date specified in the Reduction Notice (which date must not be less than three months after the date the Reduction Notice is given to the End User):
- (i) the Nominal Payload for the Train Service Type will be taken to be varied to be the Revised Nominal Payload for that Train Service Type (as specified in the Reduction Notice);
 - (ii) the Maximum Payload for the Train Services Type will be taken to be varied to be the Revised Maximum Payload for that Train Service Type (as specified in the Reduction Notice); and
 - (iii) the Nominated Monthly Train Services for that Train Service Type will be taken to be varied to be the Revised Nominated Monthly Train Services for that Train Service Type (as specified in the Reduction Notice).

10.2 Calculation of Revised Nominal Payload

The Revised Nominal Payload for a Train Service Type is the amount which is 98% of the maximum Payload of the Relevant Rollingstock Configuration for the Train Service Type (rounded to the nearest whole tonne) which was the Relevant Rollingstock Configuration for the Train Service Type which was most used in the operation of Train Services for the Train Service Type during the 12 month period ending on the Assessment Date.

10.3 Calculation of Revised Maximum Payload

The Revised Maximum Payload for a Train Service Type is the amount (expressed as tonnes) calculated in accordance with the following formula:

$$\text{RMP} = \text{RNP} \times \text{CF}$$

where:

RMP = the Revised Maximum Payload for the Train Service Type (rounded to the nearest whole tonne)

RNP = the Revised Nominal Payload for the Train Service Type

CF = 1.02 (or such other conversion factor agreed between the Parties)

10.4 Calculation of Revised Nominated Monthly Train Services

The Revised Nominated Monthly Train Services for a Train Service Type is the number of Train Services calculated in accordance with the following formula:

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

where:

RNMTS = the Revised Nominated Monthly Train Services for the Train Service Type

Loaded Train Services =

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

IT = the Indicative Tonnage for the Train Service Type

RNP = the Revised Nominal Payload for the Train Service Type

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10.5 Dispute

- (a) If Aurizon Network gives the End User a Reduction Notice in respect of a Train Service Type, the End User may, within 20 Business Days after Aurizon Network gives the Reduction Notice to the End User, give Aurizon Network a Dispute Notice which Disputes the Reduction Notice in accordance with **clause 35**.
- (b) If a Dispute referred to in **clause 10.5(a)** is not resolved in accordance with **clause 35.2**, then the Parties must refer the Dispute to an Expert to determine:
 - (i) the Average Annual Payload for the Train Service Type as at the relevant Assessment Date; and
 - (ii) if the Expert determines that the Average Annual Payload for the Train Service Type as at the relevant Assessment Date exceeds the Maximum Payload for the Train Service Type:
 - (A) the Revised Nominal Payload for the Train Service Type;
 - (B) the Revised Maximum Payload for the Train Service Type; and
 - (C) the Revised Nominated Monthly Train Services for the Train Service Type.
- (c) If the End User does not give Aurizon Network a Dispute Notice referred to in **clause 10.5(a)** within the time referred to in **clause 10.5(a)**, then:
 - (i) the End User must not give Aurizon Network a Dispute Notice Disputing the relevant Reduction Notice or the variation of the Nominal Payload, Maximum Payload or the Nominated Monthly Train Services for the relevant Train Service Type under this **clause 10**;
 - (ii) any such Dispute Notice which is given by the End User will be taken to be of no effect; and
 - (iii) the End User will not have, and must not make, any Claim against Aurizon Network in respect of that Dispute.

10.6 Variation to Train Service Description

If Aurizon Network gives the End User a Reduction Notice in respect of a Train Service Type, then:

- (a) the Nominal Payload for the Train Service Type will be taken to be varied to be the Revised Nominal Payload for the Train Service Type;
- (b) the Maximum Payload for the Train Service Type will be taken to be varied to be the Revised Maximum Payload for the Train Service Type; and
- (c) the Nominated Monthly Train Services for the Train Service Type will be taken to be varied to be the Revised Nominated Monthly Train Services for the Train Service Type, as:
 - (d) specified in the relevant Reduction Notice; or
 - (e) if **clause 10.6(e)** applies, agreed or determined through the Dispute resolution process under **clause 35**,

with effect on the later of:

- (f) the date specified in the relevant Reduction Notice; and
- (g) if the End User gives Aurizon Network a Dispute Notice referred to in **clause 10.5(a)**, the date agreed through the Dispute resolution process, or the date the Expert notifies the Parties of his or her determination, under **clause 35**.

10.7 No prejudice to other rights

This **clause 10** does not prejudice Aurizon Network's other rights and remedies in respect of any non-compliance by the End User or the Operator with the Train Service Description for a Train Service Type. [Note: Please refer to note in QRC's submissions on this clause 10. The purpose of this clause in light of suspension and other rights is unclear.]

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11 Reduction of Nominated Monthly Train Services if Nominal Payload increased

11.1 Request for increased Nominal Payload

- (a) At any time during the Term, the End User may give Aurizon Network a notice requesting Aurizon Network to consider an increase to the Nominal Payload for a Train Service Type (Notice of Enquiry).
- (b) A Notice of Enquiry must:
- (i) specify the proposed increased Nominal Payload for the Train Service Type (in relation to which the End User's enquiry relates);
 - (ii) specify the date or dates on which the End User is considering for the proposed increased Nominal Payload to take effect; and
 - (iii) request Aurizon Network to respond to the request.
- (c) As soon as practicable, but in any case within 20 Business Days, after receipt of a Notice of Enquiry Aurizon Network must give the End User a notice (Response Notice) advising whether or not the increased Nominal Payload for the Train Service Type the subject of the Notice of Enquiry can be accommodated as enquired and if so:
- (i) the resulting Revised Maximum Payload for the Train Service Type and the Revised Nominated Monthly Train Services for the Train Service Type; and
 - (ii) the date or dates on which any such variations could take effect, including reasonable details of calculations of such amounts.
- (d) No variations or revisions to the Nominal Payload, Maximum Payload or Nominated Monthly Train services for any Train Service the subject of any Notice of Enquiry, Response Notice or correspondence or discussions between the Parties in relation or subsequent thereto will be of any force or effect unless and until the Parties have agreed to such in writing.

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11.2 Notice of Intention to Increase Nominal Payload

- (a) Subject to clause 11.1(c), at any time during the Term, Aurizon Network may give the End User a notice of Aurizon Network's intention to increase the Nominal Payload for a Train Service Type (Notice of Intention to Increase Nominal Payload). [Note: The reasons for Aurizon Network seeking such a change must be constrained in some way. For example, where such a change is required for the efficient operation of the network.]
- (b) A Notice of Intention to Increase Nominal Payload must:
- (i) specify:
 - (A) the increased Nominal Payload (**Revised Nominal Payload**) for the Train Service Type (as determined by Aurizon Network in its discretion); and
 - (B) the Revised Maximum Payload for the Train Service Type; and

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(C) the Revised Nominated Monthly Train Services for the Train Service Type,

including reasonable details of the calculation of those amounts;

(ii) specify the date (**Effective Date**) on which the variations specified in the Notice of Intention to Increase Nominal Payload will take effect (provided that such Effective Date must not be less than 14 months after the date on which Aurizon Network gives the Notice of Intention to Increase Nominal Payload to the End User); and

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(iii) notifying the End User that, subject to **clause 11.7**, with effect on the Effective Date:

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(A) the Nominal Payload for the Train Service Type will be taken to be varied to be the Revised Nominal Payload for the Train Service Type (as specified in the Notice of Intention to Increase Nominal Payload);

(B) the Maximum Payload for the Train Services Type will be taken to be varied to be the Revised Maximum Payload for that Train Service Type (as specified in the Notice of Intention to Increase Nominal Payload); and

(C) the Nominated Monthly Train Services for that Train Service Type will be taken to be varied to be the Revised Nominated Monthly Train Services for that Train Service Type (as specified in the Notice of Intention to Increase Nominal Payload).

(c) Aurizon Network must not give more than one Notice of Intention to Increase Nominal Payload for the same Train Service Type (including any which is withdrawn under clause 11.7) in any 12 month period.

11.3 Calculation of Revised Maximum Payload

The Revised Maximum Payload for a Train Service Type is the amount (expressed as tonnes) calculated in accordance with the following formula:

$$\text{RMP} = \text{RNP} \times \text{CF}$$

where:

RMP = the Revised Maximum Payload for the Train Service Type (rounded to the nearest whole tonne)

RNP = the Revised Nominal Payload for the Train Service Type as specified in the relevant Notice of Intention to Increase Nominal Tonnage or Notice of Enquiry (as applicable)

CF = 1.02 (or such other conversion factor agreed between the Parties)

11.4 Calculation of Revised Nominated Monthly Train Services

The Revised Nominated Monthly Train Services for a Train Service Type is the number of Train Services calculated in accordance with the following formula:

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

where:

RNMTS = the Revised Nominated Monthly Train Services for the Train Service Type

Loaded Train Services =

IT/RNP (rounded to the nearest whole Train Service on the basis that where the first decimal place is greater than three, the number of Train Services is to be rounded up to the nearest number of whole Train

Services and, where the first decimal place is three or less, the number of Train Services is to be rounded down to the nearest number of whole Train Services)

- IT = the Indicative Tonnage for the Train Service Type
- RNP = the Revised Nominal Payload for the Train Service Type as specified in the relevant Notice of Intention to Increase Nominal Payload or Notice of Enquiry (as applicable)

11.5 Dispute in relation to variations to Train Service Description

- (a) If Aurizon Network gives the End User a Notice of Intention to Increase Nominal Payload in respect of a Train Service Type or Response Notice, the End User may, within 20 Business Days after Aurizon Network gives the Notice of Intention to Increase Nominal Payload or Response Notice (as applicable) to the End User, give Aurizon Network a Dispute Notice which Disputes:
- (i) the Revised Maximum Payload for the Train Service Type; and/or
 - (ii) the Revised Nominated Monthly Train Services for the Train Service Type,
- specified in the Notice of Intention to Increase Nominal Payload or Response Notice (as applicable) in accordance with **clause 35**.
- (b) The End User must not Dispute the Revised Nominal Payload specified in a Notice of Intention to Increase Nominal Payload and any Dispute Notice which is given by the End User in respect of such a Dispute will be taken to be of no effect.
- (c) If a Dispute referred to in **clause 11.5(a)** is not resolved in accordance with **clause 35.2**, then the Parties must refer the Dispute to an Expert to determine:
- (i) the Revised Maximum Payload for the Train Service Type; and
 - (ii) the Revised Nominated Monthly Train Services for the Train Service Type,
- in each case, based on the Revised Nominal Payload specified in the Notice of Intention to Increase Nominal Payload or Response Notice (as applicable).
- (d) If the End User does not give Aurizon Network a Dispute Notice referred to in **clause 11.5(a)** within the time referred to in **clause 11.5(a)**, then:
- (i) the End User must not give Aurizon Network a Dispute Notice Disputing the
 - (A) the Revised Maximum Payload for the Train Service Type; and/or
 - (B) the Revised Nominated Monthly Train Services for the Train Service Type,specified in the Notice of Intention to Increase Nominal Payload or Response Notice (as applicable);
 - (ii) any such Dispute Notice which is given by the End User will be taken to be of no effect; and
 - (iii) the End User will not have, and must not make, any Claim against Aurizon Network in respect of that Dispute.

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11.6 Estimate of Net Financial Effect

- (a) Within 20 Business Days after Aurizon Network gives the End User a Notice of Intention to Increase Nominal Payload or if the End User gives a Dispute Notice under clause 11.5(a) about the Notice of Intention to Increase Nominal Payload within 20 Business Days after resolution of the Dispute, the End User must cause the Operator to give Aurizon Network a notice specifying the Operator's

reasonable estimate of the Net Financial Effect (if any) on the Operator of the intended variations to the Nominal Payload, Maximum Payload and Nominated Monthly Train Services for the relevant Train Service Type under this **clause 11** (including reasonable details of all matters taken into account in determining such estimate).

- (b) The End User must cause the Operator to warrant in favour of Aurizon Network that any estimate given by the Operator in a notice under **clause 11.6(a)** is accurate on the basis of the information reasonably available to the Operator
- (c) Within 10 Business Days after the Operator gives Aurizon Network a notice under **clause 11.6(a)**, Aurizon Network may give the End User a notice requesting the End User to cause the Operator to provide to Aurizon Network any further information and documentation Aurizon Network reasonably requires for the purposes of assessing an estimate given by the Operator in a notice under **clause 11.6(a)**.
- (d) Within 10 Business Days after Aurizon Network gives the End User a notice under **clause 11.6(c)**, the End User must:
 - (i) cause the Operator to provide to Aurizon Network the information and documentation requested in the notice; and
 - (ii) if required by Aurizon Network, meet with Aurizon Network to discuss the estimate given by the Operator in a notice under **clause 11.6(a)**.

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11.7 Withdrawal of Notice of Intention to Increase Nominal Payload

- (a) Aurizon Network may, in its absolute discretion, withdraw a Notice of Intention to Increase Nominal Payload at any time before the date which is 10 months before the Effective Date.
- (b) If Aurizon Network withdraws a Notice of Intention to Increase Nominal Payload under **clause 11.7(a)**, the variations to the Nominal Payload, Maximum Payload and Monthly Nominal Train Services for the Train Service Type set out in the Notice of Intention to Increase Nominal Payload will not take effect.

11.8 Variation to Train Service Description

If Aurizon Network gives the End User a Notice of Intention to Increase Nominal Payload in respect of a Train Service Type, then, unless the Notice of Intention to Increase Nominal Payload is withdrawn under **clause 11.7**, with effect on the Effective Date:

- (a) the Nominal Payload for the Train Service Type will be taken to be varied to be the Revised Nominal Payload for the Train Service Type;
- (b) the Maximum Payload for the Train Service Type will be taken to be varied to be the Revised Maximum Payload for the Train Service Type; and
- (c) the Nominated Monthly Train Services for the Train Service Type will be taken to be varied to be the Revised Nominated Monthly Train Services for the Train Service Type, as:
 - (d) specified in the relevant Notice of Intention to Increase Nominal Payload; or
 - (e) if **clause 11.5(c)** applies, agreed or determined through the Dispute resolution process under **clause 35**.

11.9 Further estimate of Net Financial Effect

- (a) No less than six months, but not more than seven months, after the Effective Date, the End User must cause the Operator to give Aurizon Network a notice specifying reasonable details of the Operator's reasonable estimate of the Net Financial Effect on the Operator of the variations to the Nominal Payload, Maximum Payload and Nominated Monthly Train Services for the relevant Train Service Type under this **clause 11**, including:
 - (i) reasonable details of:

- (A) any increased costs and other detriments actually incurred by the Operator; and
- (B) any savings and other benefits and advantages actually received by the Operator; and
- (ii) reasonable details of the Operator's reasonable estimate of:
 - (A) any increased costs and other detriments to be incurred by the Operator; and
 - (B) any savings and other benefits and advantages to be received by the Operator.

provided that the Operator must not include any increased costs and other detriments actually, or estimated to be, incurred to the extent that the Operator ought reasonably to have anticipated at the relevant time and included, but did not, in the estimate of the Net Financial Effect specified in the notice under **clause 11.6(a)** (including without limitation the extent to which the Operator ought reasonably have been aware, at that time, that any included costs and detriments would likely be greater than the amounts included in the notice under **clause 11.6(a)**).

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- (b) The End User must cause the Operator to warrant in favour of Aurizon Network that any estimate given by the Operator in a notice under **clause 11.9(a)** is accurate on the basis of the information reasonably available to it and sufficiently detailed to enable Aurizon Network to reasonably assess the estimate.
- (c) Within 10 Business Days after the Operator gives Aurizon Network a notice under **clause 11.9(a)**, Aurizon Network may give the End User a notice requesting the End User to cause the Operator to provide to Aurizon Network any further information and documentation Aurizon Network reasonably requires for the purposes of assessing an estimate given by the Operator in a notice under **clause 11.9(a)**.
- (d) Within 10 Business Days after Aurizon Network gives the End User a notice under **clause 11.9(c)**, the End User must:
 - (i) cause the Operator to provide to Aurizon Network the information and documentation requested in the notice; and
 - (ii) if required by Aurizon Network, meet with Aurizon Network to discuss the estimate given by the Operator in a notice under **clause 11.9(a)**.

11.10 Dispute

- (a) Within 10 Business Days after the later of the date that:
 - (i) the Operator gives Aurizon Network a notice under **clause 11.9(a)**;
 - (ii) if Aurizon Network requests the End User to cause the Operator to provide any information and documentation under **clause 11.9(c)**, the Operator provides to Aurizon Network the requested information and documentation; and
 - (iii) if Aurizon Network requires the End User to meet with it under **clause 11.9(d)(ii)**, the End User meets Aurizon Network,

Aurizon Network must, if Aurizon Network Disputes the amount of the estimate of the Net Financial Effect on the Operator specified in the notice given under **clause 11.9(a)**, give the End User a Dispute Notice which disputes that estimate in accordance with **clause 35**.

- (b) If a Dispute referred to in **clause 11.10(a)** is not resolved in accordance with **clause 35.2**, then the Parties must refer the Dispute to an Expert to determine the Net Financial Effect on the Operator of the variations to the Nominal

Payload, Maximum Payload and Nominated Monthly Train Services for the relevant Train Service Type under this **clause 11**.

11.11 Payment of compensation

- (a) Within 20 Business Days after the later of:
- (i) the dates referred to in **clause 11.10(a)(i)**, 11.10(a)(ii) and 11.10(a)(iii); and
 - (ii) if Aurizon Network gives the End User a Dispute Notice referred to in **clause 11.10(a)**, the date that the Dispute is resolved under **clause 35**, Aurizon Network must pay to the Operator:
 - (iii) if **clause 11.11(a)(ii)** applies, the amount which is agreed or determined under the Dispute resolution process to be the Net Financial Effect on the Operator of the variations to the Nominal Payload, Maximum Payload and Nominated Monthly Train Services for the relevant Train Service Type under this **clause 11**; or
 - (iv) otherwise, the amount which is the Operator's estimate of the Net Financial Effect on the Operator of the variations to the Nominal Payload, Maximum Payload and Nominated Monthly Train Services for the relevant Train Service Type under this **clause 11** specified in the notice given by the Operator under **clause 11.9(a)**.
- (b) The Parties agree that the amount payable by Aurizon Network to the Operator under **clause 11.11(a)** fully compensates the End User and the Operator for the Net Financial Effect on the End User and the Operator of the variations to the Train Service Description for the relevant Train Service Type under this **clause 11**, and:
- (i) except for the payment of that amount, the End User must not make any Claim against Aurizon Network in respect of the variations to the Nominal Payload, Maximum Payload and Nominated Monthly Train Services for the relevant Train Service Type under this **clause 11**; and
 - (ii) the End User must ensure that except for payment of that amount, the Operator does not bring any Claim against Aurizon Network, its directors and/or Aurizon Network's Staff in respect of the variations to the Nominal Payload, Maximum Payload and Nominated Monthly Train Services for the relevant Train Service Type under this **clause 11**.

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12 Relinquishment of Access Rights

12.1 Notice of Intention to Relinquish

- (a) Unless otherwise specified in this Agreement, the End User may relinquish some or all of the Access Rights in accordance with this **clause 12**.
- (b) The End User must give Aurizon Network reasonable notice of the End User's intention to relinquish any of its Access Rights (**Notice of Intention to Relinquish**).
- (c) A Notice of Intention to Relinquish must specify:
- (i) the Access Rights which the End User intends to relinquish (**Nominated Access Rights**); and
 - (ii) the date (**Relinquishment Date**) on which, and the period for which, the Nominated Access Rights are to be relinquished (provided that

such Relinquishment Date must not be more than two years, after the date on which the End User gives the Notice of Intention to Relinquish to Aurizon Network).

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12.2 Relinquishment subject to Relinquishment Fee

(a) The relinquishment of any Nominated Access Rights in accordance with this **clause 12** is conditional on the End User's payment of the Relinquishment Fee to Aurizon Network.

(b) Aurizon Network must:

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(i) calculate the Relinquishment Fee; and

(ii) notify the End User of the amount of the Relinquishment Fee and how the Relinquishment Fee was calculated,

at the following times:

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(iii) promptly following a request by the End User where the End User is considering relinquishing some or all of the Access Rights; and

(iv) not less than five Business Days before the Relinquishment Date.

(c) The End User must pay the Relinquishment Fee specified in a notice given under **clause 12.2(b)(ii)** or determined through dispute resolution on or before the Relinquishment Date.

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(d) If the calculation of the Relinquishment Fee changes after Aurizon Network notifies the End User under **clause 12.2(b)** but before the End User seeks to pay the Relinquishment Fee, then Aurizon Network:

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(i) must advise the End User of the revised Relinquishment Fee and the circumstances giving rise to the change in the calculation; and

(ii) the End User must pay the revised Relinquishment Fee (to the extent not already paid).

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(e) Where Aurizon Network identifies an opportunity to enter into an Access Agreement with an existing or prospective Access Holder (other than the End User), Access Seeker or Accredited Railway Operator that would result in a lessening of the End User's Relinquishment Fee (through a Transfer of Access Rights), Aurizon Network will notify the End User of that fact and will not unreasonably delay the process for negotiating and executing an Access Agreement with that person.

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12.3 Determination of the Relinquishment Fee

(a) The **Relinquishment Fee** is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the aggregate TOP Charges (ATPY) for the relevant Train Service Types that would have been payable for the remainder of the Term if the Nominated Access Rights were not relinquished but the relevant Train Services did not operate (**NPV Amount**) less the amount which is the product of the NPV Amount and the greater of:

(i) 0.5; and

(ii) the Reduction Factor.

(b) If the calculation of the Relinquishment Fee requires information about future events (for example, assumptions about Reference Train Services or Train Services), then Aurizon Network:

(i) may make reasonable assumptions about those future events so as to calculate the maximum amount of aggregate TOP Charges (ATPY) for the relevant Train Service Types that could potentially be payable, provided that:

- (A) if an Access Charge Rate is based on a Reference Tariff, Aurizon Network must not make assumptions about the amount of future Reference Tariffs applicable to that Access Charge Rate; and
- (B) if an Access Charge Rate has been determined in accordance with the pricing principles in Part 6 of the Access Undertaking, where there is not yet a Reference Tariff for the Access Charge Rate but it is reasonably anticipated by Aurizon Network that a Reference Tariff applicable to that Access Charge Rate will be made or approved, Aurizon Network may make assumptions about the amount of the anticipated Reference Tariff and the variation that Aurizon Network could make to that Access Charge Rate to apply in the future in accordance with schedule 4 (if applicable) when the anticipated Reference Tariff is made or approved; and

(ii) _____ may assume that each of the Access Charge Rates (as at the Relinquishment Date) will escalate, on each 1 July, at the rate of 2.5% per annum for the remainder of the Term.

Aurizon Network will provide written reasons for the assumptions made under this clause.

(c) Where:

- (i) the Reduction Factor is calculated in accordance with **clause 14.1(b)**; and
- (ii) the Reference Tariff in relation to the Nominated Access Rights includes a System Discount or System Premium,

then the Relinquishment Fee must be further adjusted by Aurizon Network to account for any consequential decrease or increase (as applicable) in the System Discount or System Premium (as applicable) that would otherwise result in Aurizon Network under-recovering or over-recovering (as applicable) amounts from the End User due to the application of the System Discount or System Premium (as applicable).

(d) _____ Despite any other provision in this **clause 12.3**, if the Relinquishment Fee is calculated to be an amount that is less than zero, then the Relinquishment Fee will be zero.

(e) The End User may refer as a dispute the calculation of the Relinquishment Fee or the assumptions used by Aurizon Network to calculate the Relinquishment Fee for resolution under clause 35.3. The decision of the expert will be binding on Aurizon Network and the End User.

12.4 Timing

The Nominated Access Rights which are the subject of a Notice of Intention to Relinquish under **clause 12.1** will not be relinquished and the terms of this Agreement will continue to apply in respect of the Nominated Access Rights until the later of:

- (a) the date the End User pays the Relinquishment Fee to Aurizon Network; and
- (b) the Relinquishment Date.

13 Transfer of Access Rights by End User

13.1 Notice of Intention to Transfer

(a) Unless otherwise specified in this Agreement, the End User may Transfer all or part of the Access Rights to itself or a Third Party in accordance with this **clause 13. Aurizon Network must at all times act expeditiously and diligently in**

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dealing with a Transfer, including with a view to meeting the timing requirements of the Transfer, (including short term Transfers).

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- (b) If the End User intends to Transfer all or part of the Access Rights to itself or a Third Party (each a **Transferee**), the End User must give Aurizon Network reasonable notice of its intention to do so (**Notice of Intention to Transfer**).
- (c) A Notice of Intention to Transfer must:
 - (i) specify full details of the proposed Transfer including:
 - (A) the Access Rights which the End User proposes to Transfer (**Nominated Access Rights**);
 - (B) the date (**Transfer Date**) on which, and the period for which (**Transfer Period**), the Nominated Access Rights are proposed to be Transferred (provided that such Transfer Date must not be ~~more than two years, after the date on which the End User gives the Notice of Intention to Transfer to Aurizon Network~~);
 - (C) the identity of the Transferee; and
 - (D) the access rights proposed to be granted to the Transferee as part of the proposed Transfer, provided that such access rights must not use more than the Available Capacity that will be created by the relinquishment of the Nominated Access Rights as part of the proposed Transfer (**Transferred Access Rights**);
 - (ii) specify any Ancillary Access Rights requested to be granted to the Transferee for the Transfer Period in addition to the Transferred Access Rights (**Requested Ancillary Access Rights**);
 - (iii) include any other information in relation to the Transferee and the proposed Transfer reasonably required by Aurizon Network;
 - (iv) if the Transferee is not the End User, be accompanied by evidence that the Transferee consents to the Transfer of the Transferred Access Rights and the grant of the Requested Ancillary Access Rights (if any) proposed to be granted to the Transferee; and
 - (v) be in the form (if any) reasonably required by Aurizon Network.

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13.2 Limitation on discretion to refuse Transfer

If the End User gives a Notice of Intention to Transfer under **clause 13.1**, then

- (a) the End User will (upon entry into the agreement referred to in clause 13.2(b)) be taken to have relinquished the Nominated Access Rights under this Agreement; and
- (b) the Transferred Access Rights and the Requested Ancillary Access Rights (if any) will be granted to the Transferee for the Transfer Period under the Transferee Access Agreement, provided that:
 - (i) the Transferred Access Rights and the Requested Ancillary Access Rights (if any) are for Cyclic Traffic;
 - (ii) Aurizon Network and the End User have entered into an agreement, in a form reasonably acceptable to Aurizon Network, to vary the terms of this Agreement to reasonably address the relinquishment of the Nominated Access Rights;
- (c) the Transferred Access Rights and the Requested Ancillary Access Rights (if any) are granted under a new or varied access agreement between Aurizon Network and the Transferee (**Transferee Access Agreement**) that:

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- (i) has, to Aurizon Network's satisfaction, been negotiated and agreed in accordance with the requirements of the Access Undertaking; and
 - (ii) except for a condition in relation to the grant of the Transferred Access Rights and the Requested Ancillary Access Rights (if any) taking effect under this **clause 13**, is unconditional and binding upon the Transferee;
- (d) Aurizon Network's obligation to provide, and the Transferee's right to utilise, the Transferred Access Rights and the Requested Ancillary Access Rights (if any) under the Transferee Access Agreement does not commence until the later of:
- (i) the date upon which the End User pays the Transfer Fee to Aurizon Network; and
 - (ii) the Transfer Date;
- (e) the Transferee has demonstrated to the reasonable satisfaction of Aurizon Network that the Transferee will hold, or will have the benefit of, Supply Chain Rights (as if the Transferee was the End User for the purposes of that definition) for the commencement of operation of Network Train Services utilising the Transferred Access Rights and the Requested Ancillary Access Rights (if any);
- (f) the End User has complied with this **clause 13**;
- (g) the End User and the Transferee have complied with any requirements under the Access Undertaking in relation to the Transfer and the grant of the Requested Ancillary Access Rights (if any);
- (h) giving effect to the Transfer and the grant of the Requested Ancillary Access Rights (if any) will not cause Aurizon Network to breach the Access Undertaking; and
- (i) Aurizon Network has sufficient capability in its Infrastructure to grant the Transferred Access Rights and Requested Ancillary Access Rights (if any) to the Transferee without adversely affecting Aurizon Network's ability to comply with its obligations to Advanced Access Seekers and Access Holders.

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<#>will continue to hold, or have the benefit of, those Supply Chain Rights for the whole of the Transfer Period (or the whole of the Transfer Period if the Transferee or the holder of those Supply Chain Rights exercises an option granted in its favour to renew such Supply Chain Rights or extend the term of such Supply Chain Rights);¶

13.3 Transfer subject to Transfer Fee

- (a) The Transfer of any Nominated Access Rights in accordance with this **clause 13** is conditional on the payment of the Transfer Fee by the End User to Aurizon Network.
- (b) Aurizon Network must:
- (i) calculate the Transfer Fee; and
 - (ii) notify the End User of the amount of the Transfer Fee and how the Transfer Fee was calculated.
- at the following times:
- (iii) as soon as is possible after receiving Notice of Intention to Transfer (noting that the Transfer Fee will be an estimate at that time);
 - (iv) upon request by the End User (noting that the Transfer Fee will be an estimate at that time); and
 - (v) within 5 Business Days before the Transfer Date.
- (c) The End User must, on or before the Transfer Date, pay the Transfer Fee specified in a notice given under **clause 13.3(b)(ii)** or otherwise determined through dispute resolution.
- (d) If the calculation of the Transfer Fee changes after Aurizon Network notifies the End User under **clause 13.3(b)** but before the End User seeks to pay the Transfer Fee, then Aurizon Network:

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- (i) _____ must advise the End User of the revised Transfer Fee and the circumstances giving rise to the change in the calculation; and
 - (ii) the End User must pay the revised Transfer Fee (to the extent not already paid).
 - (e) If the End User has not paid the Transfer Fee with 20 Business Days after the later of the Transfer Date, the date a notice is given under clause 13.3(d) and the date of receipt of a valid tax invoice, then Aurizon Network may give the End User a notice (**Transfer Cancellation Notice**) with respect to Nominated Access Rights specified in the Notice of Intention to Transfer given by the End User under **clause 13.1(b)**.
 - (f) If Aurizon Network gives the End User a Transfer Cancellation Notice, then:
 - (i) the Notice of Intention to Transfer given by the End User under **clause 13.1(b)** is deemed to have never been given by the End User;
 - (ii) the Nominated Access Rights that were the subject of the Notice of Intention to Transfer will not be Transferred to the Transferee; and
 - (iii) _____ the terms of this Agreement will continue to apply in respect of the Nominated Access Rights that were the subject of the Notice of Intention to Transfer.
- but without limitation on the right of the End User to give any new Notice of Intention to Transfer, including in relation to the same subject matter as any previously the subject of a Transfer Cancellation Notice.

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13.4 Determination of the Transfer Fee

- (a) The **Transfer Fee** is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the aggregate TOP Charges (ATPY) for the relevant Train Service Types that would have been payable for the remainder of the Term if the Nominated Access Rights were not transferred but the relevant Train Services did not operate (**NPV Amount**) less the amount which is the product of the NPV Amount and the Reduction Factor.
- (b) If Aurizon Network requires information about future events (for example, assumptions about Reference Train Services or Train Services) to calculate the Transfer Fee, then Aurizon Network:
 - (i) may make reasonable assumptions about those future events so as to calculate the maximum amount of aggregate TOP Charges (ATPY) for the relevant Train Service Types that could potentially be payable, provided that:
 - (A) if an Access Charge Rate is based on a Reference Tariff, Aurizon Network must not make reasonable assumptions about the amount of future Reference Tariffs applicable to that Access Charge Rate; and
 - (B) if an Access Charge Rate has been determined in accordance with the pricing principles in Part 6 of the Access Undertaking, where there is not yet a Reference Tariff for the Access Charge Rate but it is reasonably anticipated by Aurizon Network that a Reference Tariff applicable to that Access Charge Rate will be made or approved, Aurizon Network may make reasonable assumptions about the amount of the anticipated Reference Tariff and the variation that Aurizon Network could make to that Access Charge Rate to apply in the future in accordance with schedule 4 (if applicable) when the anticipated Reference Tariff is made or approved; and

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(ii) _____ may assume that each of the Access Charge Rates (as at the Transfer Date) will escalate, on each 1 July, at the rate of 2.5% per annum for the remainder of the Term.

Aurizon Network will provide written reasons for the assumptions made under this clause.

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(c) Where:

- (i) the Reduction Factor is calculated in accordance with **clause 14.1(b)**; and
- (ii) the Reference Tariff in relation to the Nominated Access Rights includes a System Discount or System Premium,

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then the Transfer Fee must be further adjusted by Aurizon Network to account for any consequential decrease or increase (as applicable) in the System Discount or System Premium (as applicable) that would otherwise result in Aurizon Network under-recovering or over-recovering (as applicable) amounts from the End User due to the application of the System Discount or System Premium (as applicable).

(d) Despite any other provision in this **clause 13.4**, if:

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

(ii) the Nominated Access Rights to be Transferred are to be Transferred for a period which, when aggregated with the sum of the periods of all previous Free Transfers of Access Rights for Train Services for Train Service Types with the same Origin within the three year period ending on the last day of the Transfer Period, is less than two years.

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then the Transfer Fee will be zero.

For clarification, in identifying Transfers in the three year period, only those Transfers effective in the three year period should be considered (and not, for example, Transfers arranged in the three year period) and the relevant period of such transfers for the purpose of the calculation will be the period within the three years during which the transfer was effective.

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Free Transfer means a Transfer which, but for this clause 13.4(d) or [the equivalent UT3 clause], would have been subject to a Transfer Fee (other than a nominal Transfer Fee).

(e) The End User may refer as a dispute the calculation of the Transfer Fee or the assumptions used by Aurizon Network to calculate the Transfer Fee for resolution under clause 35.3. The decision of the expert will be binding on Aurizon Network and the End User.

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13.5 Timing

Subject to **clause 13.2**, the Nominated Access Rights which are the subject of a Notice of Intention to Transfer under **clause 13.1** will not be Transferred to the Transferee and the terms of this Agreement will continue to apply in respect of the Nominated Access Rights until the Note: deleted as it is inconsistent with the earlier parts of this clause

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the Transfer Date.

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13.6 Pre-approval of Transfer

(a) The End User may seek pre-approval for a Transfer.

(b) Aurizon Network must promptly consider such request for pre-approval and determine the Transfer Fee, whether Capacity is available for the Transfer and the period for which the Transfer is approved.

(c) It is acknowledged that a Transfer for a Loading Facility close to the Loading Facility would enable Aurizon Network to provide pre-approval for a longer period.

14 Reduction Factor

14.1 Determination of the Reduction Factor

(a) If:

- (i) Nominated Access Rights are intended to be relinquished under **clauses 12 or 13**;
- (ii) an Access Holder has executed an Access Agreement (or a variation to this Agreement or any other existing Access Agreement) in respect of access rights that Aurizon Network could not grant to that Access Holder without using the Available Capacity to be created by the relinquishment of the Nominated Access Rights under **clauses 12 or 13**;
- (iii) Aurizon Network's provision of the access rights referred to in **clause 14.1(a)(ii)** will commence on and from the date of the relinquishment of the Nominated Access Rights under **clauses 12 or 13**;
- (iv) the relevant Train Services of the End User and the Network Train Services of the Access Holder are coal carrying Network Train Services; and
- (v) the Access Holder's Network Train Services that will use the access rights referred to in **clause 14.1(a)(ii)** will operate predominantly in and have an unloading facility that is a Nominated Unloading Facility for a Reference Train Service in the same Coal System as the Train Services of the End User that used the Nominated Access Rights to be relinquished under **clauses 12 or 13**.

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then the Reduction Factor is an amount calculated as follows:

TOP_B / TOP_A

where:

TOP_A is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the aggregate TOP Charges (ATPY) that would have been payable for the remainder of the Term if the Nominated Access Rights were not to be relinquished under **clauses 12 or 13** but the relevant Train Services did not operate for a reason other than Aurizon Network Cause; and

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TOP_B is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the aggregate TOP Charges (ATPY) that would be payable in accordance with this Agreement or the other Access Agreement (as applicable) referred to in **clause 14.1(a)(ii)** if the Access Holder's Network Train Services using the access rights referred to in **clause 14.1(a)(ii)** were not operated by or for the Access Holder for a reason other than Aurizon Network Cause during the same period as the remainder of the Term.

(b) If:

- (i) Nominated Access Rights are intended to be relinquished under **clauses 12 or 13**; and
- (ii) **clauses 14.1(a)(ii) and 14.1(a)(iii)** are both satisfied but **clause 14.1(a)(iv) or 14.1(a)(v)** is not satisfied, then the Reduction Factor is an amount calculated as follows:

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A / B

where:

- A is the annual train kilometres over that part of the Common Corridor attributable to the Access Holder's Network Train Services to be operated using the access rights referred to in **clause 14.1(a)(ii)**; and
- B is the annual train kilometres over the Infrastructure attributable to the Train Services operated using the Nominated Access Rights to be relinquished under clauses **12 or 13**,

provided that to the extent that the Access Holder's average contribution to Common Costs per train kilometre for its relevant Network Train Services is less than the End User's average contribution to Common Costs per train kilometre for its relevant Train Services, the Reduction Factor will be decreased in proportion to that relative contribution.

- (c) If:
 - (i) Nominated Access Rights are intended to be relinquished under clauses **12 or 13**; and
 - (ii) clauses **14.1(a)** and **14.1(b)** do not apply, the Reduction Factor is zero.
- (d) If Aurizon Network requires information about future events to calculate the Reduction Factor (for example, assumptions about Reference Train Services or Train Services), then Aurizon Network:
 - (i) may make **reasonable** assumptions about those future events so as to calculate the maximum amount of aggregate TOP Charges (ATPY) that could potentially be payable, provided that:
 - (A) if an Access Charge Rate is based on a Reference Tariff, Aurizon Network must not make assumptions about the amount of future Reference Tariffs applicable to that Access Charge Rate; and
 - (B) if an Access Charge Rate has been determined in accordance with the pricing principles in Part 6 of the Access Undertaking, where there is not yet a Reference Tariff for the Access Charge Rate but it is reasonably anticipated by Aurizon Network that a Reference Tariff applicable to that Access Charge Rate will be made or approved, Aurizon Network may make assumptions about the amount of the anticipated Reference Tariff and the variation that Aurizon Network could make to that Access Charge Rate to apply in the future in accordance with **schedule 4** (if applicable) when the anticipated Reference Tariff is made or approved; and
 - (ii) may assume that each of the Access Charge Rates (as at the Transfer Date) will escalate, on each 1 July, at the rate of 2.5% per annum for the remainder of the Term.

The End User may refer as a dispute Aurizon Network's calculation of the Reduction Factor or any assumptions made in determining the Reduction Factor to an expert in accordance with clause 35.3. The decision of the expert will be binding on Aurizon Network and the End User.

14.2 Replacement Access Agreement

If Aurizon Network identifies an opportunity for it to enter into an Access Agreement with an existing or prospective Access Holder that would result in a lessening of the Relinquishment Fee or Transfer Fee (as applicable) that would otherwise be payable to Aurizon Network under clauses **12 or 13** (as applicable), Aurizon Network will not unreasonably delay the process for negotiating and executing an Access Agreement with that existing or prospective Access Holder.

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15 Resumptions, reductions, relinquishments and transfers - General

15.1 Termination where no Access Rights remain

- (a) Where Access Rights have been resumed, reduced, relinquished or transferred in accordance with this Agreement (including under clauses 7.3, 8, 9, 10, 11, 12, 13 and 36.5) to the extent that there is no longer any Access Rights remaining the subject of this Agreement, then Aurizon Network is entitled to terminate this Agreement by notice to the End User (without prejudice to those provisions which are stated to survive this Agreement).
- (b) Any termination under this clause 15.1 is without prejudice to any rights of any Party which accrued on or before termination.

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15.2 Effect on entitlement to operate and Access Charge Rates

Where Access Rights have been resumed, reduced, relinquished or transferred in accordance with this Agreement (including under clauses 7.3, 8, 9, 10, 11, 12, 13 and 36.5), then for the avoidance of doubt:

- (a) the End User's entitlement to cause the Operator to operate Train Services is also reduced in accordance with that resumption, reduction, relinquishment or transfer of Access Rights; and
- (b) the End User will no longer be obliged to pay Access Charges in respect of the resumed, reduced, relinquished or transferred Access Rights (except for any such Access Charges that accrued prior to the resumption, reduction, relinquishment or transfer, including any TOP Charges payable in respect of the part of the Year prior to the resumption, reduction, relinquishment or transfer.

15.3 No compensation or liability

- (a) Except for any payment specifically provided in this Agreement or liability for any breach by Aurizon Network of this Agreement, Aurizon Network is not liable for any loss or damage, however caused (including in contract, tort (including negligence) or otherwise) suffered or incurred by the End User in connection with any resumption, reduction, relinquishment or transfer of Access Rights in accordance with clause 7.3, 8, 9, 10, 11, 12, 13 and 36.5.
- (b) The End User releases Aurizon Network from any Claim for loss or damage referred to in clause 15.3(a) that the End User may otherwise have.

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16 Day to day Train Movements

16.1 Exclusive responsibility for Train Control

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

16.2 Train Control rights and obligations - Aurizon Network

- (a) Aurizon Network must exercise Train Control by the issue of Train Control Directions to the Operator and the End User's Staff consistent with the Network Management Principles.
- (b) In exercising Train Control, Aurizon Network must have regard to the safe conduct of rail operations on the Infrastructure and (acting reasonably and in good faith) and without limitation to the rights of the End User under or in respect of this Agreement:
- (i) may delay, alter or add a Train Service or other Network Train Services;

- (ii) may cancel, re-route or re-schedule a Train Service or other Network Train Services;
- (iii) may alter the Scheduled Times for Train Services or other Network Train Services in the Train Schedule; and
- (iv) may impose any Operational Constraint on the Nominated Network consistent with **clause 24.2**.

16.3 Train Control rights and obligations – End User

~~Without limiting the rights of the End User, the~~ End User must ensure that:

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

16.4 Train Control communications

The End User must ensure all Trains used to provide the Train Services are equipped with or have available means of communication to permit the End User's Staff to comply with this Agreement (including the Rollingstock Interface Standards and the Applicable Safeworking Procedures).

17 Compliance

17.1 General requirements - End User

To the extent relevant to the performance of its obligations under this Agreement, the End User must observe and comply with, and/or cause the Operator to observe and comply with (as applicable):

- (a) all applicable Laws;
- (b) the conditions of the Operator's Accreditation;
- (c) the lawful requirements of relevant Authorities **(to the extent such requirements have been disclosed to it)**;
- (d) the Train Service Description for each Train Service Type (subject to the Network Management Principles);
- (e) the description of the relevant Reference Train Service except as otherwise permitted by this Agreement;
- (f) the Operating Plan;
- (g) Train Control Directions;

- (h) the Applicable Safeworking Procedures and Applicable Safety Standards;
- (i) the Network Management Principles;
- (j) the Interface Coordination Arrangements;
- (k) to the extent applicable, the Emergency Procedures;
- (l) the Emergency Response Plan;
- (m) the Environmental Management Plan;
- (n) subject to the provision of reasonable notice specifying relevant requirements, the relevant requirements of the Environmental Authorities held by Aurizon Network from time to time and the permits, approvals and licences in respect of facilities to which access is provided by Aurizon Network to the End User;
- (o) the IRMP;
- (p) subject to the provision of reasonable notice from Aurizon Network to the End User specifying relevant Approvals and their applicability to the End User and the Operator, all Approvals affecting the operations of Aurizon Network;
- (q) the applicable requirements under the Noise Code; and
- (r) the Access Undertaking.

17.2 Non-compliance by the End User and/or the Operator with Train

Service Description

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

then, after consultation with the End User, Aurizon Network may, by notice to the End User:

- (iii) vary the applicable Train Service Description to a level it reasonably expects to be achievable by the Operator for the remainder of the Term, having regard to the extent of previous compliance with the applicable Train Service Description (ignoring, for the purpose of assessing previous compliance, any non-compliance to the extent that the non-compliance was attributable to another Railway Operator (other than the Operator) or to Aurizon Network);
- (iv) vary the Access Charge Rates to compensate Aurizon Network for:
 - (A) any reasonable and direct increase in cost or risk to Aurizon Network; or
 - (B) any direct increase in utilisation of the Capacity.

as a result of the Train Service Description as varied under this **clause 17.2** when compared to the Train Service Description prior to the variation; and

- (v) reasonably vary any other provisions of this Agreement (including the Operator Performance Levels) to reflect the impact of the change in the applicable Train Service Description.

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- (b) The End User is entitled to dispute any variation by Aurizon Network under **clause 17.2(a)** and such dispute will be referred to an Expert for resolution in accordance with **clause 35.3**.
- (c) This **clause 17.2** does not apply to a non-compliance with the Train Service Description for a Train Service Type to the extent that Aurizon Network exercises its rights under **clause 10** in respect of such non-compliance.
- (d) Subject **clause 17.2(c)**, this **clause 17.2** does not prejudice Aurizon Network's other rights and remedies in respect of any non-compliance with the Train Service Description for a Train Service Type.

17.3 General requirements - Aurizon Network

To the extent relevant to the performance of its obligations under this Agreement, Aurizon Network must observe and comply with:

- (a) all applicable Laws;
- (b) the conditions of its Accreditation;
- (c) the lawful requirements of relevant Authorities;
- (d) to the extent applicable, Train Control Directions;
- (e) the Applicable Safeworking Procedures and Applicable Safety Standards;
- (f) the Network Management Principles;
- (g) the Interface Coordination Arrangements;
- (h) the Emergency Procedures;
- (i) the IRMP;
- (j) all licences and permits affecting the operations of Aurizon Network; and
- (k) the Access Undertaking (including the ring fencing obligations).

17.4 Certain matters to apply consistently to all Railway Operators

Aurizon Network must ensure that as far as practicable:

- (a) the Network Management Principles;
- (b) the Safeworking Procedures and Safety Standards;
- (c) the Emergency Procedures; and
- (d) the Investigation Procedures,

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

17.5 Provision of information

Aurizon Network will provide the Operator with information relevant to the Operator's operation of Train Services if and when required to do so under the Network Management Principles (including on a daily, weekly, monthly and annual basis).

17.6 Compliance with Aurizon Network's Accreditation

- (a) Despite any other provision of this Agreement, Aurizon Network will not be in breach of this Agreement with respect to any act or omission which is reasonably required in order for Aurizon Network to:
 - (i) comply with its Accreditation; or
 - (ii) ensure that its Accreditation is not at risk of:
 - (A) amendment such that it cannot perform its role as rail infrastructure manager for the Infrastructure; or

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- (B) suspension, cancellation or revocation other than where arising from a breach of the Accreditation Network or the negligence of Aurizon Network.
- (b) Subject to clause 17.6(c), the End User must not, and must ensure that the Operator does not, do or fail to do anything which the End User or Operator (as applicable) knew or should reasonably have known would be likely to result in:
- (i) the amendment of Aurizon Network's Accreditation such that Aurizon Network cannot perform its role as rail infrastructure manager for the Infrastructure; or
 - (ii) the suspension, cancellation or revocation of Aurizon Network's Accreditation.
- (c) For the purposes of clause 0:
- (i) the End User and the Operator will only be taken to know or should reasonably have known about the requirements of Aurizon Network's Accreditation to do or not to do anything and whether the consequences of failure to comply would be likely to have any of the consequences set out in clause 17.6(b)(i) or (ii) if and to the extent Aurizon Network has given prior notice of such; and
 - (ii) the End User and the Operator are entitled to request advice from Aurizon Network as to any uncertainty or as to interpretation of the requirements of Aurizon Network's Accreditation and to rely on any such advice.

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18 Operating Plan

18.1 Approval of Operating Plan

- (a) Before the commencement of any Train Services the End User must cause the Operator to develop and submit to Aurizon Network for Aurizon Network's approval a plan (**Operating Plan**) which:
- (i) specifies reasonable details of the Operator's planned operations of Train Services;
 - (ii) without limiting **clause 18.1(a)(i)**, addresses the matters required under schedule C of the Access Undertaking; and
 - (iii) must be, at all times during the Term, consistent with the terms of this Agreement.
- (b) Aurizon Network may withhold its approval of an Operating Plan submitted under **clause 18.1(a)** if Aurizon Network is not reasonably satisfied that the Operating Plan complies with **clause 18.1(a)**.
- (c) Within 20 Business Days (or other period agreed between the Parties) after receipt of an Operating Plan submitted under **clause 18.1(a)**, Aurizon Network must:
- (i) notify the End User whether or not it approves of the Operating Plan; and
 - (ii) if not, provide reasonable details of its reasons for withholding its approval of the Operating Plan.
- (d) If Aurizon Network does not notify the End User whether or not it approves of the Operating Plan submitted under **clause 18.1(a)** within the time required by **clause 18.1(c)**, then Aurizon Network will be taken to have withheld its approval of the Operating Plan.

- (e) If Aurizon Network withholds (or is taken to have withheld) its approval of an Operating Plan, the End User may give Aurizon Network a Dispute Notice that Disputes the withholding of approval of the Operating Plan in accordance with clause 35. If the Dispute is not resolved in accordance with clause 35.2, then the Parties must refer the Dispute to an Expert to determine whether the Operating Plan complies with clause 18.1(a).
- (f) A plan submitted under **clause 18.1(a)** will not be taken to be an Operating Plan unless and until Aurizon Network notifies the End User that it approves of the plan under **clause 18.1(c)** or if the matter is referred as a Dispute under clause 18.1(e), if and when it is determined that the Operating Plan complies with clause 18.1(a).

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18.2 Approval of amendments to Operating Plan

- (a) The Operator may amend the Operating Plan from time to time provided that the End User must ensure that the Operator complies with this **clause 18.2**.
- (b) Without limiting **clause 18.2(a)**, if schedule 2 is varied to include an additional Train Service Type or the Train Service Description for an existing Train Service Type is varied, then before the Operator commences or continues (as applicable) to operate any Train Services for such Train Service Type, the End User must:
 - (i) cause the Operator to amend the Operating Plan to the extent reasonably required to address the operation of Train Services for such additional Train Service Type or the operation of Train Services in accordance with such varied Train Service Description (as applicable); or
 - (ii) if the End User reasonably determines that no amendments to the Operating Plan are required to address the operation of Train Services for such additional Train Service Type or the operation of Train Services in accordance with such varied Train Service Description (as applicable), notify Aurizon Network of that determination and the reasons for that determination.
- (c) Without limiting **clause 18.2(a)**, if, at any time, the End User gives an Authorisation Request Notice to Aurizon Network in respect of a proposal to operate Train Services for a Train Service Type using Rollingstock Configurations which are not Authorised Rollingstock Configurations for that Train Service Type, the End User must cause the Operator to amend the Operating Plan to the extent reasonably required to address the operation of Train Services for that Train Service Type using such Rollingstock Configurations for that Train Service Type (assuming that they will become Authorised Rollingstock Configurations for the Train Service Type).
- (d) Without limiting **clause 18.2(a)**, if, at any time, the Operating Plan ceases to be consistent with the terms of this Agreement or any document that the End User is required under this Agreement to comply with, Aurizon Network must notify the End User and then the End User must cause the Operator to amend the Operating Plan to the extent reasonably required to address the inconsistency.
- (e) If the Operator intends, or is required under **clause 18.2(b)**, **18.2(c)** or **18.2(d)**, to amend the Operating Plan, the End User must cause the Operator to submit to Aurizon Network for Aurizon Network's approval full details of each proposed amendment to the Operating Plan and the Operator's reasons for each proposed amendment.
- (f) Aurizon Network may only withhold its approval of any amendments to the Operating Plan submitted under **clause 18.2(e)** if Aurizon Network is not reasonably satisfied that the Operating Plan, as amended, will comply with **clause 18.1(a)**.

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- (g) Within 20 Business Days after receipt of any amendments to the Operating Plan submitted under **clause 18.2(e)**, Aurizon Network must notify the End User whether or not it approves of the amendments to the Operating Plan.
- (h) If Aurizon Network does not notify the End User whether or not it approves of an amendment to the Operating Plan submitted under **clause 18.2(e)** within the time required by **clause 18.2(g)**, Aurizon Network will be taken to have withheld its approval of the Operating Plan.
- (i) The provisions of **clause 18.1(e)** apply where Aurizon Network withholds (or is taken to have withheld) its approval of any amendment to the Operating Plan.
- (j) Subject to **clause 18.2(k)**, an amendment to the Operating Plan takes effect on the day that Aurizon Network notifies the End User that it approves of the amendment to the Operating Plan under **clause 18.2(g)** or if the matter is referred as a Dispute under **clause 18.2(i)**, if and when it is determined that the Operating Plan, as amended, complies with **clause 18.1(a)**.
- (k) An amendment to the Operating Plan required under **clause 18.2(c)** takes effect on the later of:
 - (i) the day that Aurizon Network notifies the End User that it approves of the amendment to the Operating Plan under **clause 18.2(g)** or if the matter is referred as a Dispute under **clause 18.2(i)**, if and when it is determined that the Operating Plan, as amended, complies with **clause 18.1(a)**; and
 - (ii) the day that relevant Rollingstock Configurations for the Train Service Type become Authorised Rollingstock Configurations for that Train Service Type.
- (l) No amendment to the Operating Plan is effective unless approved by Aurizon Network under this **clause 18.2** or if the matter is referred as a Dispute under **clause 18.2(i)**, if and when it is determined that the Operating Plan, as amended, complies with **clause 18.1(a)**.

19 Train operations

19.1 Compliance with Scheduled Time

- (a) The ~~Parties~~ must use reasonable endeavours to, and the End User must cause the Operator to use reasonable endeavours to:
 - (i) operate Train Services in accordance with the relevant Daily Train Plan unless:
 - (A) otherwise permitted by the Network Management Principles;
 - (B) varied in the circumstances specified in this Agreement;
 - (C) otherwise directed in a Train Control Direction; or
 - (D) otherwise agreed between the Parties (such agreement not to be unreasonably withheld); and
 - (ii) otherwise comply with all other Scheduled Times.
- (b) A Train Service is deemed to operate in accordance with its Scheduled Time if it does not vary more than three minutes from the Scheduled Time.

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19.2 Alterations to Train Services by Operator

- (a) Unless Aurizon Network has already given the Operator a Train Control Direction under **clause 19.3(a)** in respect of a Train Service, the End User must notify or must ensure that the Operator notifies Aurizon Network as soon as reasonably practicable after the Operator is instructed by the End User not to,

decides not to, or becomes aware that it will be unable to, operate a Train Service which is scheduled in the Daily Train Plan.

(b) If the End User or the Operator gives Aurizon Network a notice in accordance with **clause 19.2(a)** in respect of a Train Service:

(i) more than 48 hours before the time for the commencement of the operation of that Train Service as scheduled in the Daily Train Plan (**Original Scheduled Time**), then Aurizon Network must, unless the Train Service has already been rescheduled in accordance with this **clause 19.2** or **19.3**, use reasonable endeavours to reschedule that Train Service to commence to operate at a time, within 48 hours (or such other long period as the Operator may advise as acceptable should Aurizon Network be unable, notwithstanding its reasonable endeavours, to reschedule the Train Service prior to 48 hours after the Original Scheduled Time in accordance with this clause) before or after the Original Scheduled Time for that Train Service, that is reasonably acceptable to the Operator; and

(ii) less than 48 hours before the Original Scheduled Time for that Train Service, Aurizon Network must use reasonable endeavours to reschedule the Train Service to operate at a time prior to, or within 48 hours (or such other longer period as the Operator may advise as acceptable should Aurizon Network be unable, notwithstanding its reasonable endeavours, to reschedule the Train Service prior to 48 hours after the Original Scheduled Time in accordance with this clause) after, the Original Scheduled Time for that Train Service, that is reasonably acceptable to the Operator, provided that Aurizon Network is under no obligation to alter the Scheduled Times for any other Train Movements.

(c) If Aurizon Network reschedules a Train Service in accordance with **clause 19.2(b)**, then Aurizon Network must notify the Operator (by way of a Train Control Direction) of the revised Scheduled Time for that Train Service.

(d) If:

(i) the End User and the Operator do not give Aurizon Network a notice in accordance with **clause 19.2(a)** in respect of a Train Service and that Train Service does not operate; or

(ii) the End User or the Operator gives Aurizon Network a notice in accordance with **clause 19.2(a)** in respect of a Train Service but:

(A) if **clause 19.2(b)(i)** applies, Aurizon Network having complied with its obligations to use reasonable endeavours under clause 19.2(b)(i) is unable to reschedule the Train Service in accordance with **clause 19.2(b)(i)**; or

(B) if **clause 19.2(b)(ii)** applies, Aurizon Network having complied with its obligation to use reasonable endeavours, is unable to reschedule the Train Service in accordance with **clause 19.2(b)(ii)**.

(iii) the Train Service will be taken to be cancelled by the End User;

(iv) the reason for the failure to operate the Train Service will not be taken to be an Aurizon Network Cause;

(v) Aurizon Network will not be obliged under this Agreement to reschedule or to endeavour to reschedule the Train Service;

(vi) despite the Train Service being cancelled, Aurizon Network will not be obliged under this Agreement to provide a replacement or make-up Train Service; and

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- (vii) if **clause 19.2(b)(ii)** applies, despite the Train Service being cancelled and not operated, the Train Service will be taken to be one of the Nominated Monthly Train Services for the Train Service Type for the Month in which the Original Scheduled Time occurred.

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19.3 Alterations to Train Services by Aurizon Network

- (a) Without limitation to the rights of the End User, Aurizon Network must notify the Operator (by way of a Train Control Direction) as soon as reasonably practicable after it becomes aware that it is unable to make the Infrastructure available for the operation of a Train Service which is scheduled in the Daily Train Plan.

- (b) If Aurizon Network gives the Operator a Train Control Direction in accordance with **clause 19.3(a)** in respect of a Train Service, then Aurizon Network must, unless the Train Service has already been rescheduled in accordance with **clause 19.2** or **19.3**, use reasonable endeavours to reschedule that Train Service to commence to operate at a time prior to, or within 48 hours (or such longer period as the Operator may advise as acceptable should Aurizon Network be unable, notwithstanding its reasonable endeavours, to reschedule the Train Service prior to 48 hours after the Original Scheduled Time in accordance with this clause) after, the Original Scheduled Time for that Train Service, that is reasonably acceptable to the Operator, provided that Aurizon Network is under no obligation to alter the Scheduled Times for any other Train Movements.

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- (c) Without limitation to the rights of the End User, if Aurizon Network does not give the Operator a Train Control Direction in accordance with **clause 19.3(a)** in respect of a Train Service and does not make the Infrastructure available for the operation of that Train Service, then Aurizon Network must, unless the Train Service has already been rescheduled in accordance with **clause 19.2** or **19.3**, use reasonable endeavours to reschedule that Train Service to commence to operate at a time within 48 hours after (or such longer period as the Operator may advise as acceptable should Aurizon Network be unable, notwithstanding its reasonable endeavours, to reschedule the Train Service prior to 48 hours after the Original Scheduled Time in accordance with this clause) the Original Scheduled Time, that is reasonably acceptable to the Operator, provided that Aurizon Network is under no obligation to alter the Scheduled Times for any other Train Movements.

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- (d) If Aurizon Network reschedules a Train Service in accordance with **clause 19.3(b)** or **19.3(c)**, then Aurizon Network must notify the Operator (by way of a Train Control Direction) of the revised Scheduled Time for that Train Service.

- (e) If **clause 19.3(b)** or **clause 19.3(c)** applies, but Aurizon Network, having complied with its obligation to use reasonable endeavours under **clause 19.3(b)** or **clause 19.3(c)** (as applicable), is unable to reschedule the Train Service in accordance with **clause 19.3(b)** or **clause 19.3(c)** (as applicable) then:

- (i) the Train Service will be taken to be cancelled by Aurizon Network; and
- (ii) for the avoidance of doubt, despite the Train Service being taken to be cancelled by Aurizon Network, the reason for the failure to operate the Train Service will be an Aurizon Network Cause.

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<#>Aurizon Network gives the Operator a Train Control Direction in accordance with clause 18.3(a) in respect of a Train Service but Aurizon Network is unable to reschedule the Train Service in accordance with clause 18.3(b), then:¶

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19.4 Authorisation of other Train Movements

If:

- (a) the End User or the Operator gives Aurizon Network a notice in accordance with **clause 19.2(a)**;
- (b) Aurizon Network gives the Operator a Train Control Direction in accordance with **clause 19.3(a)**; or

- (c) for any reason, the Operator does not operate a Train Service at its Scheduled Time in the Train Schedule (including a revised Scheduled Time for that Train Service),

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

19.5 Notification

- (a) Aurizon Network must notify the Operator's Controller (such notification to include, where relevant, the anticipated effect on the relevant Train Service) as soon as Aurizon Network becomes aware of any circumstances (including Obstructions but excluding circumstances of which the Operator is aware or ought to have been aware) which:
 - (i) have materially affected, or could potentially materially affect, the ability of the Operator to operate any Train Service in accordance with its Scheduled Time; or
 - (ii) have affected, or could potentially affect, the security or safety of a Train Service or the End User's Staff.
- (b) Aurizon Network must, as soon as becoming aware of the relevant changes, advise the Operator's Controller from time to time of changes to notices previously provided under **clause 19.5(a)**.
- (c) The End User must inform, and must ensure that the Operator informs, Aurizon Network of any failure by the End User or the Operator to comply with:
 - (i) any requirement specified in **clause 17.1**;
 - (ii) Train Control Directions; or
 - (iii) the Authorised Rollingstock and Authorised Rollingstock Configurations for each Train Service Type.

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19.6 End User to supply information

- (a) The End User must cause the Operator to:
 - (i) provide to Aurizon Network, and at all times maintain operable, all necessary software, hardware and associated communication links to establish (to Aurizon Network's reasonable satisfaction) an interface with Aurizon Network's information systems; and
 - (ii) provide information to Aurizon Network in relation to each Train Service in accordance with **item 1.2 of schedule 10** before the operation of that Train Service on the Nominated Network.
- (b) The End User must ensure that the Operator allows its interface with Aurizon Network's information systems to be subject to any controls specified by Aurizon Network to protect the integrity and confidentiality of Aurizon Network's information systems and the information contained in them.

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19.7 Operation of Trains and Rollingstock

The End User is responsible for the safe operation of Rollingstock used in the operation of a Train Service on the Nominated Network and must ensure that at all times all loading and unloading of Rollingstock used in the operation of a Train Service on the Nominated Network is undertaken in a manner that:

- (a) is consistent with the requirements of **schedule 5** and the Rollingstock Interface Standards (subject to any Approved Derogations);
- (b) does not affect the safe operation of such Rollingstock used in the operation of a Train Service or any other Train Movements; and
- (c) ensures that all items on or in such Rollingstock used in the operation of a Train Service remain secured in position during transit.

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20 Authorisation of Rollingstock and Rollingstock Configurations

20.1 Prohibition

- (a) The End User must ensure that the Operator does not operate Train Services using any Rollingstock which:
 - (i) do not comply with the Rollingstock Interface Standards (subject to any Approved Derogations);
 - (ii) are not Authorised Rollingstock; or
 - (iii) do not comply with applicable Laws.
- (b) The End User must ensure that the Operator does not operate Train Services for a Train Service Type using Rollingstock Configurations which:
 - (i) do not comply with the Rollingstock Interface Standards (subject to any Approved Derogations);
 - (ii) are not Authorised Rollingstock Configuration for that Train Service Type; or
 - (iii) do not comply with applicable Laws.

20.2 Authorisation Request Notice

- (a) Subject to **clause 20.2(b)**, if, at any time during the Term, the Operator proposes to operate:
 - (i) Train Services using Rollingstock which are not Authorised Rollingstock; or
 - (ii) Train Services for a Train Service Type using Rollingstock Configurations which are not Authorised Rollingstock Configurations for that Train Service Type,then the End User may give Aurizon Network a notice (**Authorisation Request Notice**) of the Operator's proposal, specifying reasonable details of the proposed Rollingstock or Rollingstock Configurations (as applicable).
- (b) The End User must not give Aurizon Network an Authorisation Request Notice in respect of a proposal to operate Train Services for a Train Service Type using Rollingstock Configurations which are not Authorised Rollingstock Configurations for that Train Service Type unless the proposed Rollingstock Configurations are only comprised of Rollingstock which, at the time of the notice, are Authorised Rollingstock.

20.3 Compliance Statement

If the End User gives Aurizon Network an Authorisation Request Notice, then the End User must procure (or cause the Operator to procure) a Certifier to:

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

20.4 Rollingstock Interface Standards Risk Assessment

If the End User gives Aurizon Network an Authorisation Request Notice, the Interface Risk Assessment required to be conducted under **clause 28.2** will, unless otherwise required by Aurizon Network, be limited to a Rollingstock Interface Standards Risk

Assessment in respect of the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Authorisation Request Notice.

20.5 Certificate of Compliance

If:

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

then promptly after:

- (c) the Parties and the Operator have conducted an Interface Risk Assessment under **clause 28.2** in respect of such Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable); and
- (d) any amendments to the IRMP have been agreed or determined in accordance with **clause 28** following such Interface Risk Assessment, the End User must procure (or cause the Operator to procure) a Certifier to:
- (e) assess whether or not the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) comply with the Rollingstock Interface Standards (subject to any Approved Derogations); and
- (f) if the Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) comply with the Rollingstock Interface Standards (subject to any Approved Derogations), provide certification to Aurizon Network that the Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the certificate comply with the Rollingstock Interface Standards (subject to any Approved Derogations).

20.6 Request for further information

If:

- (a) a Certifier provides a Certificate of Compliance to Aurizon Network under **clause 20.5**; and
- (b) Aurizon Network reasonably requests (which may be on one or more occasions) the End User to provide any information or documentation (including reports on trials and/or commissioning tests) in relation to the Rollingstock or Rollingstock Configurations for a Train Service Type (as applicable) specified in that Certificate of Compliance,

then the End User must provide (or procure the Operator and/or the Certifier to provide) that information or documentation to Aurizon Network promptly (and in any event, within 10 Business Days) after being requested to do so by Aurizon Network.

20.7 Decision by Aurizon Network

Within 20 Business Days (or such longer period agreed between the Parties) after the later of the date that:

- (a) a Certifier provides a Certificate of Compliance to Aurizon Network under **clause 20.5**; and
- (b) Aurizon Network is provided with all information or documentation requested by Aurizon Network under **clause 20.6**, Aurizon Network must:
- (c) if Aurizon Network is reasonably satisfied that the Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Certificate of Compliance complies with the Rollingstock Interface Standards (subject to any Approved Derogations), notify the End User that, as applicable:
 - (i) the Rollingstock specified in the Certificate of Compliance is taken to be Authorised Rollingstock; or

- (ii) the Rollingstock Configurations for the Train Service Type specified in the Certificate of Compliance is taken to be Authorised Rollingstock Configurations for that Train Service Type; or
- (d) if Aurizon Network is not reasonably satisfied that the Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Certificate of Compliance complies with the Rollingstock Interface Standards (subject to any Approved Derogations), notify the End User that:
 - (i) it is not satisfied that the Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Certificate of Compliance complies with the Rollingstock Interface Standards (subject to any Approved Derogations), and provide reasonable details of any non-compliance; and
 - (ii) as applicable:
 - (A) the Rollingstock specified in the Certificate of Compliance is not taken to be Authorised Rollingstock; or
 - (B) the Rollingstock Configurations for the Train Service Type specified in the Certificate of Compliance is not taken to be Authorised Rollingstock Configurations for that Train Service Type.

20.8 Deemed refusal

If Aurizon Network does not give the End User a notice under **clause 20.7** within the time required by **clause 20.7**, then Aurizon Network will be deemed to have given the End User a notice referred to in **clause 20.7(d)**.

20.9 Disputes

- (a) If Aurizon Network gives (or is deemed to give) the End User a notice under **clause 20.7(d)** and the End User disputes that notice (or deemed notice), then the End User may give a Dispute Notice to Aurizon Network under **clause 35.1**.
- (b) If a Dispute referred to in **clause 20.9(a)** is not resolved in accordance with **clause 35.2**, then:
 - (i) the End User may refer the Dispute to an Expert under **clause 35.3** to determine whether or not the Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Certificate of Compliance comply with the Rollingstock Interface Standards (subject to any Approved Derogations); and
 - (ii) if the Expert determines that the Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) comply with the Rollingstock Interface Standards (subject to any Approved Derogations), then, as applicable:
 - (A) the Rollingstock specified in the Certificate of Compliance will be taken to be Authorised Rollingstock; or
 - (B) the Rollingstock Configurations for the Train Service Type specified in the Certificate of Compliance will be taken to be Authorised Rollingstock Configurations for that Train Service Type.

20.10 Issue of Train Route Acceptance or Authority to Travel

Within five Business Days, after Rollingstock Configurations for a Train Service Type become Authorised Rollingstock Configurations for the Train Service Type, Aurizon Network must give the End User (or, if requested by the End User, the Operator) a Train Route Acceptance or Authority to Travel (as applicable) authorising the End User to cause the Operator to operate Train Services for that Train Service Type using the Authorised Rollingstock Configurations for that Train Service Type.

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20.11 Variation to Access Charge Rates

- (a) If at any time during the Term:
- (i) any Rollingstock becomes Authorised Rollingstock; or
 - (ii) any Rollingstock Configurations for a Train Service Type become Authorised Rollingstock Configurations for the Train Service Type, then Aurizon Network may, by notice to the End User, vary the Access Charge Rates to fully compensate Aurizon Network for:
 - (iii) ~~any reasonable and proper increase cost to Aurizon Network~~
 - when compared to a Reference Train Service as a result of, as applicable:
 - (iv) the Rollingstock becoming Authorised Rollingstock; or
 - (v) the Rollingstock Configurations for the Train Service Type becoming Authorised Rollingstock Configurations for the Train Service Type.
- (b) If Aurizon Network varies the Access Charge Rates under **clause 20.11(a)**, then either Party may refer a dispute about the variation to the Access Charge Rates to the QCA for determination in accordance with **clause 35.5. Aurizon Network must provide all information reasonably required to verify a cost claimed under clause 20.11.**

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21 Amendments to System Wide Requirements

21.1 Amendment Notice

- (a) Aurizon Network may, acting reasonably and in good faith, amend a System Wide Requirement by the issue of a notice (**Amendment Notice**) to the End User:
- (i) ~~to ensure the ongoing safe operation of the network~~, at any time without the consent of the End User subject to providing reasonable notice of the proposed amendment and consulting with the End User before its implementation;
 - (ii) if required pursuant to a Material Change; or
 - (iii) in any other circumstance (**Discretionary System Amendment**), subject to:
 - (A) the End User's agreement to such proposed amendment (such agreement not to be unreasonably withheld or delayed); or
 - (B) the other provisions of this **clause 21**.
- (b) An Amendment Notice must specify:
- (i) such details of the proposed amendments as reasonably necessary to:
 - (A) properly inform the End User of the terms of the proposed amendments; and
 - (B) enable the End User to assess the consequences for the End User (and the Operator) of the proposed amendments;
 - (ii) whether the Amendment Notice is issued on the ground referred to in **clause 21.1(a)(i), 21.1(a)(ii) or 21.1(a)(iii)**; and
 - (iii) details of the proposed implementation date for the proposed amendments.

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21.2 Response to a Discretionary System Amendment

- (a) Within 20 Business Days after receiving an Amendment Notice which proposes a Discretionary System Amendment, the End User must ~~notify~~ Aurizon Network whether:
- (i) irrespective of any financial arrangements agreed or determined under **clause 21.4(c)**, the proposed amendments will materially impact the End User's operations; and/or
 - (ii) the Net Financial Effect on the End User or the Operator of the Discretionary System Amendment is equivalent to one percent or greater of the annual Access Charges.
- (b) If the End User does not advise Aurizon Network as required under **clause 21.2(a)**, the Discretionary System Amendment is deemed not to have any of the impacts referred to in **clause 21.2(a)(i)** or **21.2(a)(ii)**.

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21.3 Discretionary System Amendment which frustrate operations

- (a) This **clause 21.3** applies if the End User ~~notifies~~ Aurizon Network under **clause 21.2(a)(i)** that the proposed amendments will materially impact the End User's operations as contemplated in that **clause 21.2(a)(i)**.
- ~~(b) If, within 20 Business Days after receipt by Aurizon Network of a notice from the End User under clause 21.2(a)(i), Aurizon Network:~~
- ~~(i) determines, acting reasonably, that the Operator's operation of Train Services will be materially impacted; or~~
 - ~~(ii) does not make a determination of the type contemplated by either clause 21.3(b)(i) or clause 21.3(c).~~
- then Aurizon Network will not implement the proposed amendments.
- (c) ~~If, within 20 Business Days after receipt by Aurizon Network of a notice from the End User under clause 21.2(a)(i), Aurizon Network determines, acting reasonably that the Operator's operation of Train Services under this Agreement will not be materially impacted, then Aurizon Network may implement the proposed amendments at any time except that:~~
- (i) if the End User has advised Aurizon Network within the required timeframe that **clause 21.2(a)(ii)** applies, then such implementation is subject to **clause 21.4**; and
 - (ii) if the End User disputes Aurizon Network's determination under **clause 21.3(c)**, then either Party may refer the dispute for determination by an Expert in accordance with **clause 35.3** and Aurizon Network must not implement the proposed amendments pending the Expert's determination.

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21.4 Discretionary System Amendment with negative financial impact

- (a) If the End User advises Aurizon Network under **clause 21.2(a)(ii)** that the Net Financial Effect on the End User or the Operator of the Discretionary System is equivalent to one percent or greater of the annual Access Charges then, within 20 Business Days after providing such advice, the End User must provide to Aurizon Network details of such Net Financial Effect, including estimates of any additional costs, savings, benefits or detriments to be obtained or suffered, or reasonably expected to be obtained or suffered, by the End User or the Operator as a direct result of Aurizon Network implementing the proposed amendments.
- (b) The End User warrants that any estimates given by it under **clause 21.4(a)** are accurate on the basis of the information reasonably available to it.

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- (c) Once the End User has provided details of the Net Financial Effect on the End User or the Operator as contemplated in **clause 21.4(a)**, the Parties must negotiate in good faith to seek to agree appropriate financial arrangements between them with respect to such Net Financial Effect and, failing agreement within a further 20 Business Days after the End User provides the relevant details under **clause 21.4(a)**, either Party may refer the matter to an Expert to determine an appropriate financial arrangement to compensate the End User for the Net Financial Effect on the End User or the Operator of the Discretionary System Amendment in accordance with **clause 35.3** and Aurizon Network must not implement the proposed amendments pending the Expert's determination.

21.5 Expert must have regard to certain matters

In making a determination referred to in **clause 21.3(c)** or **21.4(c)**, the Expert must have regard to, except in circumstances where consequences are otherwise provided under this Agreement, the costs and benefits accruing to the End User or the Operator.

21.6 Costs of implementing amendments to a System Wide Requirement

Requirement

- (a) The Parties must use (and the End User must ensure that the Operator uses) all reasonable endeavours to minimise the Net Financial Effect on the End User or the Operator of any proposed amendments to a System Wide Requirement.
- (b) Despite **clause 21.4**, where any System Wide Requirement is reasonably varied by Aurizon Network to ensure the ongoing safe operation of the network:
 - (i) and the amendment or variation to the System Wide Requirement is required due to conduct (including omissions) attributable to Aurizon Network, its directors or Aurizon Network's Staff, Aurizon Network will fund all Parties' costs (including the Operator) associated with the amendment or variation; and
 - (ii) in all other circumstances, each Party will fund its own costs, and the End User will ensure that the Operator funds its own costs, of implementing the proposed amendments including the equipping of Rollingstock with new or additional equipment such as Signalling and Telecommunications Equipment or making any other modification to Rollingstock.
- (c) At any time before Aurizon Network implements any proposed amendments, Aurizon Network may elect not to proceed with the proposed amendments.
- (d) The Parties must account to each other in respect of the contributions agreed or determined under **clause 21.4(c)** after completion of the implementation of the proposed amendments and subsequent modifications to the End User's or the Operator's systems, equipment or Rollingstock as required by the amendments.

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21.7 Implementation of amendments to System Wide Requirements

- (a) Where Aurizon Network implements the proposed amendments in accordance with this **clause 21**, the relevant System Wide Requirement will be altered as contemplated in the Amendment Notice following completion of the implementation of the proposed amendments.
- (b) The Parties must (and the End User must cause the Operator to) take all necessary action and make all necessary amendments to the IRMP, Environmental Management Plan, the Operating Plan and/or the Emergency Response Plan in response to the relevant amendments, (including providing Aurizon Network with a further Certificate of Compliance where the Authorised Rollingstock or Rollingstock Configurations require modification as a result of a change to a System Wide Requirement).
- (c) Aurizon Network will allow a reasonable period for the End User and the Operator to amend their procedures and plans to comply with any such

amended System Wide Requirement, except in the case of emergency circumstances for safety reasons where Aurizon Network may require immediate compliance.

22 Weighbridges and Overload Detectors

22.1 Weighbridges and Overload Detectors

- (a) The Weighbridges to be used by Aurizon Network in the calculation of Access Charges are those (if any) specified in **item 6.1 of schedule 3**.
- (b) Where a Weighbridge or Overload Detector is located en route between an Origin and Destination for a Train Service Type:
 - (i) the Party responsible for that Weighbridge or Overload Detector (as specified in **item 6 of schedule 3**) must use reasonable endeavours to ensure that such Weighbridge or Overload Detector is available; and
 - (ii) the End User must ensure that the Operator uses reasonable endeavours to operate any Trains operated by the Operator utilising the End User's Access Rights over such Weighbridge or Overload Detector in a manner so that the Weighbridge or Overload Detector weighs such Trains.
- (c) Aurizon Network may vary at any time the numbers and locations of Weighbridges and Overload Detectors, subject to providing reasonable notice to the End User.

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22.2 Exceeding Maximum Allowable Gross Tonnage

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

22.3 Exceeding Maximum Desirable Gross Tonnage

- (a) If any Wagon or Train operated by the Operator utilising the Access Rights is determined by a Weighbridge or Overload Detector to be in excess of the relevant Maximum Desirable Gross Tonnage, then Aurizon Network may:
 - (i) if determined by a Weighbridge, charge the End User (and the End User must pay) an Overload Charge (in accordance with **item 3.10 of schedule 4**) in respect of that Wagon or Train; and
 - (ii) impose any Operational Constraints which Aurizon Network considers to be reasonable in the circumstances.
- (b) **If Aurizon Network chooses to charge the End User an Overload Charge, it must be included in the invoice for Access Charges for the Billing Period immediately following the Billing Period in which the determination under clause 22.3(a) was made. Aurizon Network will not be entitled to back-charge the End User any Overload Charges if it fails to comply with this clause 22.3.**

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22.4 Record keeping

Where the Operator's Trains or Wagons are weighed by an operational Weighbridge or Overload Detector, the Party responsible for the Weighbridge or Overload Detector as specified in **item 6 of schedule 3**, must use reasonable endeavours to ensure that:

- (a) if it is not the owner or operator of the Weighbridge or Overload Detector, it obtains all relevant records from the Weighbridge or Overload Detector including records of the gross mass of each loaded Wagon and Train;
- (b) whether or not it is the owner or operator of the Weighbridge or Overload Detector, it keeps a record of the gross mass of each loaded Wagon and Train;
- (c) the records referred to in **clause 22.4(a)** and **22.4(b)** (as applicable) are provided to the Party or other person loading the Trains; and
- (d) the records referred to in **clause 22.4(a)** and **22.4(b)** (as applicable) are provided to the other Party within 10 Business Days after the end of each Month.

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22.5 Verification

- (a) If the Party that is not responsible for the Weighbridge or Overload Detector, as specified in **item 6 of schedule 3**, reasonably believes that any Weighbridge or Overload Detector may be inaccurate, that Party may by notice to the other Party require the other Party to procure the testing of the accuracy of such Weighbridge or Overload Detector.
- (b) As soon as reasonably practicable after being given a notice under **clause 22.5(a)**, the Party responsible for the Weighbridge or Overload Detector, as specified in **item 6 of schedule 3**, must use reasonable endeavours to procure a suitably qualified person to:
 - (i) test the calibration of the relevant Weighbridge or Overload Detector (as applicable); and
 - (ii) make any adjustments required to correct the calibration of the Weighbridge or Overload Detector (as applicable).
- (c) Unless otherwise determined by the calibration testing, the relevant Weighbridge or Overload Detector (as applicable) is deemed to have malfunctioned from the date the notice is given under **clause 22.5(a)** until the testing referred to in **clause 22.5(b)** has been carried out and, if required, the Weighbridge or Overload Detector has been recalibrated. Until such testing has been carried out and the Weighbridge or Overload Detector has been recalibrated, the mass of the relevant Train or Wagon which would otherwise have been measured by that Weighbridge or Overload Detector will be the Maximum Desirable Gross Tonnage for the Train or Wagon, as applicable.
- (d) Except in the case of manifest error or fraud, the determination of the person conducting the test in accordance with **clause 22.5(b)** will be final and binding on the Parties.
- (e) Where the person conducting the test in accordance with **clause 22.5(b)** determines that the Weighbridge is measuring within the tolerances specified in **item 6 of schedule 3**, the Weighbridge will be treated as having been measuring accurately from the date on which the relevant notice was given under **clause 22.5(a)** and the Access Charges (including any Overload Charge) will be determined from that date in accordance with **schedule 4**. The invoice for Access Charges for the Billing Period immediately following the Billing Period in which such determination is made will be adjusted to appropriately account for the difference in payment of Access Charges arising from the Weighbridge or Overload Detector having been treated as malfunctioning under **clause 22.5(c)**.

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- (f) The cost of conducting the test in accordance with **clause 22.5(b)** must be borne by:
- (i) the Party responsible for the Weighbridge or Overload Detector as specified in **item 6 of schedule 3** if the Weighbridge or Overload Detector is determined to be not measuring within the tolerances specified in **item 6 of schedule 3**; or
 - (ii) the Party giving notice under **clause 22.5(a)** if the Weighbridge or Overload Detector is determined to be measuring within the tolerances specified in **item 6 of schedule 3** (and, to the extent that the Party responsible for the Weighbridge or Overload Detector has paid any costs of conducting the test, the Party giving the notice must reimburse the Party responsible for the Weighbridge or Overload Detector such reasonable costs of conducting the test).

22.6 No Claim

- (a) Despite any other provision in this Agreement, neither Party (first Party) is liable to the other Party for any damage, loss, cost or expense that the other Party may suffer or incur as a result of the first Party, in good faith, acting on the basis of any mass determined in accordance with this Agreement.
- (b) Despite any other provision in this Agreement, neither Party will have any Claim against the other Party as a result of, or arising from, any delay to or cancellation of Train Services as a result of the operation of this clause 22.

23 Performance Levels

23.1 Performance levels

The Performance Levels which apply to the performance by the respective Parties of their obligations under this Agreement are set out in **schedule 6**.

23.2 Consequences of failure to comply with Performance Levels

- (a) A failure by either Party to achieve the relevant Performance Level does not constitute a breach of this Agreement and the only consequences of such failure as between the Parties are the consequences set out in this **clause 23**.
- (b) If the Operator does not comply with the Operator Performance Level, then, subject to clause 5.4:
 - (i) the End User must pay to Aurizon Network the amount (if any) determined in accordance with schedule 6 as part of the invoice issued by Aurizon Network for Access Charges and other charges for the Billing Period immediately following Aurizon Network becoming entitled to that amount; or
 - (ii) if there is no next Billing Period, the End User must pay such amount to Aurizon Network within 10 Business Days after receipt of an invoice from Aurizon Network.
- (c) If Aurizon Network does not comply with the Aurizon Network Performance Level, then Aurizon Network will credit to the End User the amount (if any) determined in accordance with **schedule 6** by way of a deduction from the invoice issued by Aurizon Network for Access Charges and other charges for the Billing Period immediately following the End User becoming entitled to that amount, provided that if there is no next Billing Period, then Aurizon Network must pay such amount to the End User within 10 Business Days after receipt of an invoice from the End User.

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the End User must ensure that the Operator does not bring any Claim against Aurizon Network, its directors and/or Aurizon Network's Staff for any damage, loss, cost or expense that the Operator may suffer or incur as a result of Aurizon, in good faith, acting on the basis of any mass determined in accordance with this Agreement.

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23.3 Review of Performance Levels

- (a) The Parties must, if requested by either Party, meet to review the Performance Levels subject to such review not occurring within six Months after the Commitment Date or any previous review of the Performance Levels.
- (b) If either Party notifies the other that it considers that the Performance Levels are no longer appropriate, the Parties ~~must use best endeavours to~~ agree on varied Performance Levels and any associated variations to the Agreement (including the Access Charge Rates and the applicable Train Service Descriptions).
- (c) If the Parties are unable to agree to such variations then ~~either Party may refer the matter to an Expert for determination in accordance with clause 35.3 and~~ the existing Performance Levels will continue to apply ~~until the Expert has made his/her determination or~~ unless ~~otherwise~~ varied by Aurizon Network in accordance with **clause 17.2**.

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24 Infrastructure management

24.1 Management and control of the Nominated Network

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

24.2 Maintenance of the Nominated Network

- (a) Aurizon Network must carry out Maintenance Work on the Nominated Network such that, subject to any criteria or derogations for the Nominated Network specified in the IRMP and the Network Management Principles:
 - (i) the Infrastructure is consistent with the Rollingstock Interface Standards; and
 - (ii) the Operator can operate Train Services utilising the End User's Access Rights in accordance with their Scheduled Times.
- (b) Aurizon Network may impose (either temporarily or permanently) such Operational Constraints ~~as are reasonably~~ necessary for the protection of any person or any property (including the Infrastructure) or to facilitate the carrying out of Maintenance Work or Infrastructure Enhancements provided that, in exercising its rights under this **clause 24.2(b)**, Aurizon Network must:
 - (i) use its reasonable endeavours to minimise disruption to Train Services (including giving as much notice as possible and, where possible, providing alternative Scheduled Times having regard to the reasonable requirements of the End User and the Operator); and
 - (ii) comply with the relevant procedures specified in the Interface Coordination Arrangements.
- (c) The End User must notify (and must cause the Operator to notify) Aurizon Network as soon as is reasonably practicable of any damage to, or disrepair or failure in operation or function of, any part of the Infrastructure of which the End User or the Operator (as applicable) becomes aware.
- (d) The End User must provide (and must cause the Operator to provide) reasonable cooperation to Aurizon Network in relation to the timetabling of Planned Possessions provided that any such Planned Possessions are consistent with the Network Management Principles and implemented in accordance with the Possession Protocols.
- (e) Subject to the Possession Protocols, Aurizon Network must use its reasonable endeavours to carry out:
 - (i) Emergency Possessions within seven days after the detection of the fault giving rise to the need for the Emergency Possession; and

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- (ii) ~~Urgent Possessions within between seven days and three Months after the detection of the fault giving rise to the need for the Urgent Possession.~~

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25 Incident management

25.1 Emergency Response Plan

- (a) Before the commencement of any Train Services the End User must cause the Operator to develop and submit to Aurizon Network a plan (Emergency Response Plan) which:
 - (i) contains the set of procedures developed by the Operator which are adequate for dealing with an Incident, including all actions to be taken to minimise or alleviate any threat or danger to any person or property or the environment;
 - (ii) must at all times during the Term be compatible with the Emergency Procedures and this Agreement.
- (b) If Aurizon Network is not reasonably satisfied that the Emergency Response Plan submitted under **clause 25.1(a)** complies with **clause 25.1(a)**, then, within 10 Business Days after receipt of the Emergency Response Plan under **clause 25.1(a)**, Aurizon Network must notify the End User.
- (c) If Aurizon Network gives a notice under **clause 25.1(b)** and the Parties cannot agree on a mutually acceptable course of action to address Aurizon Network's concerns within 10 Business Days after the date of Aurizon Network's notice under **clause 25.1(b)**, then either Party may refer the matter to an Expert for determination in accordance with **clause 35.3**.
- (d) If a matter is referred to an Expert for determination as contemplated in **clause 25.1(c)**, then:
 - (i) the Expert is required to determine whether or not the Emergency Response Plan:
 - (A) is **reasonably** compatible with the Emergency Procedures and this Agreement; and
 - (B) otherwise complies with **clause 25.1(a)**; and
 - (ii) if the Expert determines that the Emergency Response Plan:
 - (A) is not compatible with the Emergency Procedures and otherwise complies with **clause 25.1(a)**, then the Expert must determine how the non-compliance should be rectified and the End User must cause the Operator to rectify the Emergency Response Plan accordingly; or
 - (B) is compatible with the Emergency Procedures and otherwise complies with **clause 25.1(a)**, then the Emergency Response Plan must be treated as complying with **clause 25.1(a)**.
- (e) If, after receipt of an Emergency Response Plan under **clause 25.1(a)**, Aurizon Network does not give the End User a notice under, and within the time required by, **clause 25.1(b)**, then the Emergency Response Plan will be taken to be the Emergency Response Plan given to Aurizon Network under **clause 25.1(a)**.

25.2 Amendments to the Emergency Response Plan

- (a) The Operator may amend the Emergency Response Plan from time to time provided that the End User must ensure that the Operator complies with this **clause 25.2**.

- (b) If ~~schedule 2~~ is varied to include an additional Train Service Type or the Train Service Description for an existing Train Service Type is varied, then before the Operator commences or continues (as applicable) to operate any Train Services for such Train Service Type, the End User must cause the Operator to:
- (i) amend the Emergency Response Plan to the extent **reasonably** required to address the operation of Train Services for such additional Train Service Type or the operation of Train Services in accordance with such varied Train Service Description (as applicable); or
 - (ii) if the Operator reasonably determines that no amendments to the Emergency Response Plan are required to address the operation of Train Services for such additional Train Service Type or the operation of Train Services in accordance with such varied Train Service Description (as applicable), notify Aurizon Network of that determination and the reasons for that determination.
- (c) The End User must ensure that any amendments to the Emergency Response Plan comply with the requirements in **clause 25.1(a)**.
- (d) If the Operator intends, or is required under **clause 25.2(b)**, to amend the Emergency Response Plan, the End User must cause the Operator to:
- (i) notify Aurizon Network of that fact; and
 - (ii) provide Aurizon Network with full details of each proposed amendment to the Emergency Response Plan and the Operator's reasons for each proposed amendment.
- (e) Within 10 Business Days after receipt of a notice under **clause 25.2(d)**, Aurizon Network must notify the End User if Aurizon Network disputes any proposed amendments.
- (f) Any dispute referred to in **clause 25.2(e)** must be resolved in accordance with **clauses 25.1(c)** and **25.1(d)** as if the dispute is a dispute under **clause 25.1(c)**.
- (g) If, after receipt of a notice under **clause 25.2(d)**, Aurizon Network does not give the End User a notice under, and within the time required by, **clause 25.2(e)**, then the Emergency Response Plan will be taken to be amended as proposed by the Operator in the notice under **clause 25.2(d)**.
- (h) An amendment to the Emergency Response Plan, to the extent that it relates to the Operator's operations on the Nominated Network, is effective on the date it has complied with this **clause 25.2 or is otherwise approved (or deemed to be approved) in accordance with this clause 25.2**.

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25.3 Compliance

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

25.4 Obstructions

The End User must not cause (and must ensure that the Operator does not cause) any Obstruction or permit (and must ensure that the Operator does not permit) any Obstruction caused by the End User or the Operator to continue.

25.5 Notification

(a) The End User must cause the Operator to notify the Train Controller as soon as reasonably practicable after the Operator or the End User's Staff discover or become aware of:

- (i) any Obstruction (including all Incidents) or any breach of Safeworking Procedures;
- (ii) anything which the Operator or the End User's Staff observe which may reasonably be considered to cause or contribute to the occurrence of an Incident or Obstruction; or
- (iii) any harm to the Environment.

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(b) The End User must notify the Train Controller as soon as reasonably practicable after the End User or any of the End User's Staff become aware of:

- (i) any Obstruction (including all Incidents) or any breach of Safeworking Procedures; or
- (ii) anything which the End User or the End User's Staff observe which may reasonably be considered to cause or contribute to the occurrence of an Incident or Obstruction; or
- (iii) any harm to the Environment.

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(c) Aurizon Network must notify the End User of all Incidents involving the End User's or the Operator's Rollingstock where such Rollingstock was operated at the time of the Incident by the Operator utilising End User's Access Rights.

25.6 Management of Incident response

(a) Aurizon Network is responsible for the overall coordination and management of the response to an Incident (including notifying all relevant emergency services) so that Restoration and Recovery are effected as soon as practicable.

(b) If an Incident occurs:

- (i) the End User is, subject to **clause 25.6(c)**, responsible for effecting Recovery and Retrieval;
- (ii) the End User must (or must cause the Operator to):
 - (A) make arrangements to effect Recovery and Retrieval within three hours after the Incident occurred;
 - (B) cooperate with and assist Aurizon Network in Restoration; and
 - (C) effect timely Recovery and Retrieval within 12 hours after the Incident occurred (or within such other period as the Parties may agree) in accordance with the Emergency Response Plan.

(c) If an Incident occurs and Aurizon Network reasonably believes that it will be able to effect Recovery more quickly than the End User or the Operator, then Aurizon Network may, subject to using reasonable efforts to consult with the End User:

- (i) take such action as is reasonably necessary (including the use of a Railway Operator's or the End User's Rollingstock to clear the Operator's Rollingstock) to effect Recovery; and

- (ii) recover such reasonable costs incurred by Aurizon Network in doing so. ~~Subject to clause 5.4, the End User must, upon demand, pay to Aurizon Network such reasonable and direct costs incurred by Aurizon Network.~~
- (d) If an Incident occurs, then the End User must (or must cause the Operator to), as soon as reasonably practicable, notify Aurizon Network and:
 - (i) take action as soon as reasonably practicable in respect of an Incident to prevent or minimise injury to any person or damage to any property (including harm to the Environment) where there is an imminent risk of such injury or damage, but otherwise take no action without the prior approval of Aurizon Network (not to be unreasonably withheld); and
 - (ii) comply with the directions of Aurizon Network in respect of the coordination and management of Recovery, Retrieval and Restoration.
- (e) Subject to **clause 25.6(f)**, each Party must (and the End User must cause the Operator to) use all reasonable endeavours to ensure that any property damage, actual or potential harm to the Environment or delays to the recommencement of Train Movements arising from Restoration or Recovery are minimised.
- (f) Aurizon Network may, subject to Aurizon Network using reasonable efforts to first consult with the End User about such action, take such action (including to give directions to the End User, the Operator and the End User's Staff and to remove or require the End User or the Operator to remove any of their Rollingstock from the Nominated Network) as Aurizon Network considers reasonably necessary to recommence Train Movements as soon as practicable and, subject to ~~clauses 25.6(g) and 25.6(i)~~, Aurizon Network will not be liable to the End User for any damage to or loss of freight or Rollingstock caused by such action. The End User must cause the Operator to comply with any directions given by Aurizon Network to the Operator or the End User's Staff under this **clause 25.6(f)**.
- (g) Where:
 - (i) Aurizon Network seeks to remove, or require the End User or the Operator to remove, any Relevant Rollingstock from the Nominated Network under **clause 25.6(f)**; and
 - (ii) such removal would reasonably be expected to cause material damage to or materially increase the damage to the Relevant Rollingstock, then Aurizon Network and the End User must:
 - (iii) use all reasonable efforts to consult and agree on the removal of the Relevant Rollingstock as soon as reasonably practicable and, in any event, within six hours after the occurrence of the Incident or such longer period as the Parties may agree; and
 - (iv) if the Parties do not consult or reach agreement within the period referred to in **clause 25.6(g)(iii)**, then the Parties must refer the decision to the chief executive officer of Aurizon Network and the chief executive officer of the End User who must in good faith seek to agree a course of action within two hours of the referral to them or such longer period as the Parties may agree.
- (h) If the chief executive officer of Aurizon Network and the chief executive officer of the End User do not consult or do not agree within the specified period in **clause 25.6(g)(iv)**, then Aurizon Network must refer its proposed course of action with respect to the removal of the Relevant Rollingstock to an Expert who must determine in accordance with **clause 35.3** whether, having regard to:

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- (i) the potential to further damage the Relevant Rollingstock;
- (ii) the impact on Aurizon Network's ability to effect Restoration; and
- (iii) the time critical nature of the decision,

following completion of the processes set out in **clauses 25.6(g) and 25.6(h) (as applicable)**, the course of action proposed by Aurizon Network is reasonable. Aurizon Network:

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- (iv) is entitled to progress with the proposed course of action; and
- (v) will not be liable for any damage to or loss of freight or Rollingstock caused by such action, unless the Expert determines that Aurizon Network's proposed course of action is **not** reasonable.

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(i) Aurizon Network may, where it is reasonable and practicable in the circumstances to do so, issue a Train Control Direction to the Operator to provide assistance with clearing any Network Incident including providing Rollingstock, where appropriate, for use by or under the direction of Aurizon Network and undertaking any variation in the operation of a Train Service (including coupling the End User's (where applicable) or the Operator's Rollingstock with Rollingstock of Aurizon Network or another Railway Operator). The End User must cause the Operator to comply with any such Train Control Direction. The End User may recover from Aurizon Network (on behalf of the Operator) such reasonable costs incurred by the Operator in complying with this **clause 25.6(i)** as agreed or, failing agreement within 20 Business Days after notice by the End User to Aurizon Network, as determined by an Expert in accordance with **clause 35.3**.

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(j) The assessment of the costs to be recovered under **clause 25.6(c)** or **clause 25.6(i)** for the use of Rollingstock must have regard to any industry or other agreement covering such costs and any payments facilitated by such agreement **but such agreements will not in themselves limit the End User's ability to recover costs under clause 25.6(i)**.

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(k) Except as otherwise provided in this Agreement, Aurizon Network is not liable to the End User and the End User must not bring any Claim against Aurizon Network, its directors and/or Aurizon Network's Staff for any delays, cancellation of Train Services or Claims suffered or incurred by, or made or brought by or against, the End User as a result of complying with a request by Aurizon Network pursuant to **clause 25.6(i)**.

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25.7 Investigations

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

25.8 Management of Environmental Incidents

- (a) If:

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

then:

- (iii) Aurizon Network may notify the End User of the actions which are required; and
- (iv) the End User must, at its cost and as soon as reasonably practicable after receiving such notice from Aurizon Network, ensure such actions are implemented.

(b) If any actions which Aurizon Network could require the End User to implement under **clause 25.8(a)** ought ~~reasonably be best~~ undertaken by Aurizon Network, then Aurizon Network may ~~(acting reasonably and in good faith)~~ elect to undertake such actions and the End User must pay to Aurizon Network the ~~direct and reasonable~~ costs and expenses incurred by Aurizon Network in doing so.

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(c) If the End User disputes any actions taken by Aurizon Network under this **clause 25.8**, either Party may refer the dispute to an Expert in accordance with **clause 35.3** and if the Expert determines the dispute in favour of the End User, then Aurizon Network must reimburse the End User for the costs incurred by the End User as a result of the actions implemented by the End User at Aurizon Network's request (or, if applicable, Aurizon Network will bear the costs and expenses incurred by Aurizon Network in accordance with **clause 25.8(b)** and will not be entitled to recover those costs from the End User) to the extent determined by the Expert.

25.9 Environmental Incident reporting

- (a) The End User must, as soon as reasonably practicable after ~~becoming aware of~~ the occurrence of an Environmental Incident caused, or contributed to, by the End User or the Operator, notify Aurizon Network of the Environmental Incident.
- (b) The End User must notify all relevant Environmental Regulators of the occurrence of any Environmental Incident which is caused, or contributed to, by the End User or the Operator in accordance with the End User's obligations under Environmental Laws.
- (c) The End User must ensure that the Operator notifies all relevant Environmental Regulators of the occurrence of any Environmental Incident which is caused, or contributed to, by the End User or the Operator in accordance with the Operator's obligations under Environmental Laws.
- (d) If Aurizon Network is uncertain about whether the End User has reported the occurrence of an Environmental Incident to an Environmental Regulator in accordance with **clause 25.9(b)**, Aurizon Network may report the occurrence of the Environmental Incident to any relevant Environmental Regulator.
- (e) In the event that an Environment Regulator requires information, or undertakes an investigation, in relation to an Environmental Incident, the Parties must cooperate, and the End User must ensure that the Operator, cooperates, with the Environmental Regulator and provide appropriate resources to comply with

any lawful requirements of the Environmental Regulator in relation to the Environmental Incident.

26 Accreditation

- (a) The End User must, before the commencement of any Train Services, provide to Aurizon Network evidence of the Operator's Accreditation (including all conditions and/or variations).
- (b) Aurizon Network must have and maintain Accreditation to the extent required to perform its obligations and exercise its rights under this Agreement and, if requested to do so in writing by the End User, must provide to the End User copies of documentation evidencing currency, renewal or amendment of Aurizon Network's Accreditation within five Business Days after such request.
- (c) The End User must ensure that the Operator has and maintains Accreditation to the extent required to operate the Train Services under this Agreement and, if the End User or the Operator is requested to do so in writing by Aurizon Network, the End User must cause the Operator to provide to Aurizon Network copies of documentation evidencing currency, renewal or amendment of the Operator's Accreditation within five Business Days after such request.
- (d) Aurizon Network will notify the End User as soon as possible of any notice from an Authority affecting, or likely to affect, Aurizon Network's Accreditation, and will provide a copy of that notice to the End User on request.
- (e) The End User will cause the Operator to notify Aurizon Network as soon as possible of any notice from an Authority affecting or likely to affect the Operator's Accreditation and to provide a copy of that notice to Aurizon Network on request.
- (f) If:
 - (i) ~~schedule 2~~ is varied to include an additional Train Service Type; or
 - (ii) the Train Service Description for an existing Train Service Type is varied, then before the Operator commences or continues (as applicable) to operate any Train Services for such Train Service Type, the End User must ensure that the Operator:
 - (A) if the Operator's Accreditation is required to be varied to address the operation of Train Services for such additional Train Service Type or the operation of Train Services in accordance with such varied Train Service Description (as applicable), provides to Aurizon Network evidence of the Operator's Accreditation as varied; or
 - (B) if the Operator reasonably determines that no variations to the Operator's Accreditation are required to address the operation of Train Services for such additional Train Service Type or the operation of Train Services in accordance with such varied Train Service Description (as applicable), notifies Aurizon Network of that determination and the reasons for that determination.

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27 End User's staff

27.1 Safety of End User's Staff

The End User and the Operator are fully responsible and liable for the health and safety of the End User's Staff and the personal property of the End User's Staff, and the End User.

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indemnifies and releases Aurizon Network to the extent permitted by Law from any liability in relation to the End User's Staff except to the extent that such liability is caused or contributed to by the breach or negligence of Aurizon Network or Aurizon Network's Staff.

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27.2 Qualifications of End User's Staff

The End User must:

- (a) ensure that all risks associated with Safety Related Work (including the competence of all End User's Staff to safely and properly discharge their duties related to the exercise of the End User's rights or performance of its obligations under this Agreement) are addressed in the Interface Risk Assessment;
- (b) ensure that all End User's Staff:
 - (i) hold and keep current all qualifications and accreditations required under any Law and as specified in the IRMP; and
 - (ii) undertake any additional training from time to time in order to keep current such qualifications and accreditations;
- (c) meet all costs of any training and/or testing required to meet the requirements of this **clause 27.2**; and
- (d) keep Aurizon Network advised of the position titles (and if reasonably requested by Aurizon Network, the names) of all End User's Staff engaged in Safety Related Work on the Nominated Network and ensure that all Safety Related Work is performed only by those End User's Staff who satisfy the requirements of this **clause 27.2**.

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27.3 Entry onto Aurizon Network Land

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

28 Interface and environmental risk management

28.1 Development of Interface Risk Management Plan

- (a) Prior to the operation of any Train Services, the Parties must:
 - (i) jointly with the Operator conduct an Interface Risk Assessment; and
 - (ii) as soon as reasonably practicable after the completion of such Interface Risk Assessment, negotiate diligently and in good faith to endeavour to agree an IRMP.
- (b) If, following an Interface Risk Assessment under **clause 28.1(a)**, the IRMP is agreed in writing:
 - (i) between the Parties; or
 - (ii) if End User notifies Aurizon Network that the Operator's written agreement to the IRMP is required, between the Parties and the Operator, the IRMP will take effect as agreed between the Parties and, if **clause 28.1(b)(ii)** applies, the Operator on the date of such agreement.

28.2 Amendments to Interface Risk Management Plan

- (a) If, at any time during the Term:

- (i) a Party notifies the other Party or the Operator notifies Aurizon Network that it believes that:
 - (A) the IRMP is no longer effective in managing an Interface Risk or Environmental Risk addressed in the IRMP; or
 - (B) an additional or varied Interface Risk or Environmental Risk exists, or will likely exist, that is not addressed in the IRMP;
- (ii) ~~schedule 2~~ is varied to include an additional Train Service Type or the Train Service Description for a Train Service Type is varied; or
- (iii) Aurizon Network notifies the End User that the Rollingstock Interface Standards are varied and Aurizon Network considers that a further Interface Risk Assessment is required; or
- (iv) a Certifier gives Aurizon Network a Compliance Statement in respect of proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in an Authorisation Request Notice,

then:

- (v) as soon as reasonably practicable after a notification is given under **clause 28.2(a)(i)**;
- (vi) before the Operator commences or continues (as applicable) to operate any Train Services for a Train Service Type referred to in **clause 28.2(a)(ii)**;
- (vii) as soon as reasonably practicable after Aurizon Network notifies the End User under **clause 28.2(a)(iii)**; or
- (viii) ~~as soon as reasonably practicable after the Certifier gives Aurizon Network the Compliance Statement, the Parties must:~~
- (ix) subject to **clause 20.4**, jointly with the Operator conduct a further Interface Risk Assessment; and
- (x) as soon as reasonably practicable after the completion of the further Interface Risk Assessment, negotiate diligently and in good faith to endeavour to agree any amendments to the IRMP.

- (b) If, following an Interface Risk Assessment under **clause 28.2**, any amendments to the IRMP are agreed in writing:
 - (i) between the Parties; or
 - (ii) if End User notifies Aurizon Network that the Operator's written agreement to the IRMP is required, between the Parties and the Operator,

then the IRMP will be taken to be amended as agreed between the Parties and, if **clause 28.2(b)(ii)** applies, the Operator with effect on the date of such agreement.

28.3 Inability to agree Interface Risk Assessment or amendments

If:

- (a) in the case of an Interface Risk Assessment under **clause 28.1**, 20 Business Days; or
- (b) in the case of a further Interface Risk Assessment under **clause 28.2**, 10 Business Days, after the commencement of the Interface Risk Assessment, the Parties (or, if **clause 28.1(b)(ii)** or **28.2(b)(ii)** applies, the Parties and the Operator) are unable to agree to the IRMP, or any aspect of or amendment to the IRMP, then:
- (c) Aurizon Network must promptly:

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- (i) determine, acting reasonably, the IRMP or the relevant aspect of or amendment to the IRMP; and
 - (ii) notify the End User of the IRMP, or the relevant aspect of or amendment to the IRMP, as determined by Aurizon Network; and
- (d) the IRMP, or the relevant aspect of or amendment to the IRMP, as determined by Aurizon Network will take effect on the date notified to the End User.

28.4 Dispute resolution

- (a) If the End User considers that an IRMP, or any aspect of or amendment to an IRMP, determined by Aurizon Network under **clause 28.3** or **28.4(d)(ii)** (Disputed Aspect) is Unreasonable then the End User may give a Dispute Notice to Aurizon Network under **clause 35.1** specifying reasonable details of:
- (i) the Disputed Aspect that the End User considers is Unreasonable; and
 - (ii) the reasons why the End User considers that the Disputed Aspect is Unreasonable.
- (b) If a Dispute referred to in **clause 28.4(a)** is not resolved in accordance with **clause 35.2**, then the End User may refer the Dispute to an Expert under **clause 35.3** to determine whether or not the Disputed Aspect is Unreasonable.
- (c) If a Dispute referred to in **clause 28.4(a)** is referred to an Expert to determine whether or not the Disputed Aspect is Unreasonable and the Expert determines that the Disputed Aspect is Unreasonable, then the Expert must, in the report of its determination of the Dispute, specify the amendments to the IRMP which the Expert reasonably considers, if made, would result in the Disputed Aspect ceasing to be Unreasonable.
- (d) If it is agreed or determined through the Dispute resolution process that the Disputed Aspect is Unreasonable, then (unless otherwise agreed between the Parties through the Dispute resolution process):
- (i) despite the Dispute, the IRMP, or the aspect of it or amendment to it, determined by Aurizon Network under **clause 28.3** or **28.4(d)(ii)** (as applicable) is taken to be valid and binding; but
 - (ii) as soon as reasonably practicable (and in any event within 20 Business Days) after such agreement or determination, Aurizon Network must:
 - (A) determine, acting reasonably, the amendments to the IRMP (in the case of an Expert determination, having regard to the reasons for the Expert's determination and the amendments to the IRMP specified in the Expert's report of the determination of the Dispute) which result in the Disputed Aspect ceasing to be Unreasonable; and
 - (B) notify the End User of the amendments to the IRMP determined by Aurizon Network;
 - (iii) the amendments to the IRMP, as determined by Aurizon Network, will take effect on the date notified to the End User under **clause 28.4(d)(ii)(B)**; and
 - (iv) if Aurizon Network does not notify the End User of amendments to the IRMP by the time referred to in **clause 28.4(d)(ii)**, then the IRMP will be taken to be amended as specified in the Expert's report of the determination of the Dispute with effect immediately after the end of the time referred to in **clause 28.4(d)(ii)**.

28.5 Variation to Access Charge Rates

- (a) Aurizon Network may, by notice to the End User, vary the Access Charge Rates to ~~compensate Aurizon Network for~~ ~~any direct and reasonable increase in cost to Aurizon Network~~.
- (b) ~~If Aurizon Network varies the Access Charge Rates under clause 28.5(a), then either Party may refer a dispute about the variation to the Access Charge Rates to the QCA for determination in accordance with clause 35.5.~~

28.6 Compliance with Interface Risk Management Plan

- (a) Aurizon Network must advise the End User of any failure by Aurizon Network to comply with the IRMP as soon as reasonably practicable after Aurizon Network becomes aware of such non-compliance, including details of the nature of the non-compliance and how Aurizon Network has rectified or intends to rectify the non-compliance.
- (b) The End User must advise (and must cause the Operator to advise) Aurizon Network of any failure by the End User or the Operator (as applicable) to comply with the IRMP as soon as reasonably practicable after the End User or the Operator (as applicable) becomes aware of such non-compliance, including details of the nature of the non-compliance and how the End User or the Operator (as applicable) has rectified or intends to rectify the non-compliance.

28.7 Environmental consultant

The Parties must ~~engage suitably qualified persons (reasonably acceptable to both Parties) to undertake any specialist assessments required for the purpose of identifying and assessing Environmental Risks as part of an Interface Risk Assessment.~~

28.8 Interface representative

- (a) Prior to the commencement of any Train Services, the End User must nominate (and must cause the Operator to nominate), for Aurizon Network's approval as contemplated in this **clause 28.8**, one or more appropriately qualified representatives of the End User and the Operator (by identifying the name, title, experience (including length of experience) and qualifications of each representative) (Interface Representative) who is or are (as applicable) to be responsible for:
- (i) making decisions in relation to interface and environmental issues that arise in connection with this Agreement;
 - (ii) liaising and cooperating with representatives of Aurizon Network on those interface and environmental issues; and
 - (iii) meeting with representatives of Aurizon Network at locations, times and by means (including in person) specified by Aurizon Network from time to time.
- (b) If Aurizon Network approves a representative nominated by the End User and the Operator under **clauses 28.8(a) or 28.8(d)**, Aurizon Network must notify the End User of the approval.
- (c) The End User must ensure that any representative approved by Aurizon Network from time to time under this **clause 28.8** is available to efficiently and effectively perform the responsibilities of the Interface Representative specified in **clause 28.8(a)**.
- (d) If at any time, ~~acting reasonably:~~
- (i) Aurizon Network is not satisfied with a person nominated by the End User or the Operator to perform the responsibilities of an Interface Representative (including under this **clause 28.8(d)**); or

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- (ii) Aurizon Network becomes dissatisfied (for whatever reason) with an Interface Representative,

then Aurizon Network may notify the End User and the End User must, within five Business Days, nominate (or cause the Operator to nominate) a different representative of the End User (by identifying the name, title, experience (including length of experience) and qualifications of that representative) for Aurizon Network's approval as contemplated in this **clause 28.8**.

28.9 Training

If Aurizon Network and the End User agree that training of the End User's Staff is required as a control or part of a control for a particular Interface Risk identified in the Interface Risk Assessment and the End User and/or the Operator can only obtain that training from Aurizon Network, then Aurizon Network will provide the End User's Staff with that training and Aurizon Network will be entitled to recover from the End User a reasonable commercial charge for providing such training.

28.10 End User's Safety Management System

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

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

28.11 Aurizon Network's safety management system

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

28.12 Environmental Management Plan

The End User must cause the Operator to develop, implement and maintain a plan (Environmental Management Plan) which must specify (as a minimum):

- (a) the Environmental Risks identified in the IRMP from time to time and the measures in respect of those Environmental Risks specified in the IRMP from time to time which the End User or the Operator are responsible for implementing, complying with, ensuring compliance with and/or ensuring the ongoing effectiveness of;
- (b) processes for ensuring that the End User and the Operator at all times comply with all requirements imposed on them under Environmental Laws from time to time;
- (c) processes for ensuring that the End User and the Operator at all times comply with any requirements of the Environmental Authorities held by Aurizon Network from time to time that are relevant to the Train Services operated by the Operator under this Agreement;
- (d) processes for ensuring that the End User, the Operator, their Rollingstock, Rollingstock Configurations and the Train Services at all times comply with the requirements of this Agreement, including the IRMP and the Emergency Response Plan;

- (e) systems (including audit systems) and procedures to address and monitor all relevant Environmental Risks identified in the IRMP and to ensure compliance with all Environmental Laws;
- (f) the relevant roles, responsibilities and training of the End User's Staff involved in the implementation of the Environmental Management Plan; and
- (g) the requirements specified in item 3.2 of ~~schedule 7~~.

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28.13 Aurizon Network's environmental management system

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

28.14 Carriage of Dangerous Goods on Train Services

- (a) If Dangerous Goods are to be carried on a Train Service, the End User must ensure that:
 - (i) all requirements of the Dangerous Goods Code are fully complied with (including placement of relevant, accurate and current documentation on Trains);
 - (ii) Aurizon Network is advised of the details of the Dangerous Goods (including a description of them and the applicable Dangerous Goods United Nations (UN) Number) as part of the Train List before the operation of the Train Service; and
 - (iii) any authorisation or prior approvals required under the Dangerous Goods Code have been obtained and are available for inspection by Aurizon Network (if requested).
- (b) Before any Dangerous Goods can be carried on a Train Service, the End User must ensure that the Emergency Response Plan prepared in accordance with **clause 25.1** includes procedures for responding to an Incident involving Dangerous Goods of the type to be carried on the Train Service.

28.15 Noise management during Train Services

- (a) In addition to any noise attenuation or noise management measures which may form part of or be identified in the IRMP or the Environmental Management Plan, the End User must contribute to ~~Aurizon Network's reasonable and direct costs of~~ taking ~~reasonable~~ noise abatement measures on or adjacent to the Nominated Network ~~undertaken by Aurizon Network~~ where the Noise Levels are (or, but for the taking of these measures by Aurizon Network, would be) exceeded during the Term.
- (b) If, during the Term, the Noise Levels are varied (reduced) such that noise from the Nominated Network exceeds the reduced Noise Levels, then Aurizon Network may elect, ~~acting reasonably~~, to implement ~~reasonable~~ noise abatement measures on the Nominated Network to ensure compliance with the reduced Noise Levels. The End User must contribute to ~~Aurizon Network's reasonable and direct costs~~ of those noise abatement measures.
- (c) If the End User disputes any determination made by Aurizon Network under this **clause 28.15** regarding the contribution of costs, then the End User may refer that dispute to an Expert for determination in accordance with **clause 35.3**.

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28.16 Community liaison and environmental complaint procedures

- (a) Before the commencement of any Train Services the End User must (and the End User must cause the Operator to) take all steps necessary to comply with all relevant community liaison requirements required by Law, any Authority or reasonably required by Aurizon Network.

- (b) ~~If Aurizon Network receives noise complaints or other complaints dealing with Environmental issues in relation to the Nominated Network, then Aurizon Network must:~~
 - (i) inform the End User of those complaints as soon as reasonably practicable; and
 - (ii) cooperate with the End User in investigating and responding to those complaints.
- (c) If the End User or the Operator receives noise complaints or other complaints dealing with Environmental issues in relation to the Nominated Network, then the End User must (and must cause the Operator to):
 - (i) inform Aurizon Network of those complaints as soon as reasonably practicable; and
 - (ii) cooperate with Aurizon Network in investigating and responding to those complaints.

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28.17 Audit and review

- (a) The End User must, if requested by Aurizon Network, promptly provide to Aurizon Network copies of those parts of any environmental audits undertaken by or on behalf of the End User (or the Operator) in respect of its Train Services operated on the Nominated Network.
- (b) Aurizon Network will provide the End User with copies of those parts of Aurizon Network's environmental audits that are relevant to the operation of the Train Services operated on the Nominated Network.
- (c) Without limiting **clause 28.2**, if Aurizon Network becomes aware of any inadequacy of the IRMP or the Operator's Environmental Management Plan due to:
 - (i) any change in Environmental Laws of relevance to the operation of Train Services on the Nominated Network; or
 - (ii) any Activities of the End User or the Operator in connection with this Agreement which cause or contribute to, or will likely cause or contribute to, an Environmental Incident,

then Aurizon Network can give the End User a notice under **clause 28.2** notifying the End User that it requests that the IRMP be reviewed.

28.18 Notification

- (a) The End User must notify (and must cause the Operator to notify) Aurizon Network of any failure by the End User or the Operator to comply with the IRMP or the Environmental Management Plan or their obligations under any Safety Law or Environmental Law as soon as reasonably practicable after the End User or the Operator becomes aware of such failure and must provide (and must cause the Operator to provide) details of how the End User and/or the Operator intend to address the non-compliance.
- (b) Without limiting any other provisions of this Agreement, the End User must remedy (or must cause the Operator to remedy) such non-compliance as soon as reasonably practicable having regard to the nature of the non-compliance, and any action required by any Safety Regulator or any Environmental Regulator.
- (c) The End User must comply with (and must ensure that the Operator complies with) all notices given by Aurizon Network requiring the End User or the Operator to cease conduct which:
 - (i) ~~is causing or threatening to cause:~~ a risk to the safety of persons or property; or

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- (ii) harm to the Environment.
- (d) The End User must promptly provide (and must ensure that the Operator promptly provides) to Aurizon Network any material notices, directions or orders relating to the operation of Train Services that the End User (or the Operator) receives from any Safety Regulator or Environmental Regulator.
- (e) Aurizon Network will notify the End User of any changes to any Environmental Authorities held by Aurizon Network or variations to any other environmental information provided by Aurizon Network to the End User relevant to the operation of Train Services.

29 Inspection and audit rights

29.1 Right of inspection by End User

- (a) Subject to **clause 29.1(b)**, the End User or the Operator may, before the initial commencement of Train Services for any Train Service Type, at its cost and risk, inspect the Infrastructure comprising the Nominated Network, including fencing and level crossing protection, in order to satisfy itself as to the standard of the Infrastructure and assess the operational, environmental and safety risks associated with the operation of Train Services on the Nominated Network.
- (b) Any inspection by the End User or the Operator under **clause 29.1(a)**:
 - (i) is subject to:
 - (A) the End User providing reasonable written notice to Aurizon Network of the End User's or the Operator's requirement to inspect the Infrastructure and conducting that inspection at reasonable times;
 - (B) any such inspection being conducted in the presence of a representative of Aurizon Network; and
 - (C) such other reasonable conditions as may be imposed by Aurizon Network on such inspection, including compliance with any Safeworking Procedures and Safety Standards; and
 - (ii) must be conducted by the End User (and, if conducted by the Operator, the End User must ensure the inspection is conducted by the Operator) in a manner which does not cause any disruption to any Train Movements or to the carrying out of Maintenance Work or Infrastructure Enhancements.

29.2 Rights of inspection and audit

- (a) Either Party may conduct, or require the conduct of, an inspection or audit in accordance with this **clause 29** to assess the other Party's (or the Operator's) compliance with the IRMP, the Applicable Safeworking Procedures and Applicable Safety Standards periodically as specified in the IRMP.
- (b) Without limiting **clause 29.2(a)**, if a Party reasonably believes that the other Party (or the Operator) has not complied, or is not complying, with any aspect of the IRMP, then that Party may conduct, or require the conduct of, an inspection or audit in accordance with this **clause 29** to assess the other Party's (or the Operator's) compliance with the IRMP.

29.3 Right of inspection of Trains and Rollingstock by Aurizon Network

- (a) If Aurizon Network reasonably believes that Rollingstock or Rollingstock Configurations for a Train Service Type used in the operation of Train Services do not comply with:

- (i) the Authorised Rollingstock or the Authorised Rollingstock Configurations for the Train Service Type;
- (ii) the Rollingstock Interface Standards (subject to any Approved Derogations);
- (iii) the IRMP; or
- (iv) any applicable Laws relevant to the Train Services,

and Aurizon Network cannot otherwise **reasonably** determine whether this is the case, then Aurizon Network may inspect any Trains or Rollingstock which is utilised, or intended to be utilised, in the operation of Train Services, or require the End User to have an inspection conducted, and for this purpose the End User must ensure that it allows, and causes the Operator to allow, Aurizon Network or Aurizon Network's Staff at any time to enter and ride on the End User's or the Operator's Trains or Rollingstock.

- (b) Subject to Aurizon Network giving notice to the End User or the Operator, if required, under **clause 29.4(a)**, Aurizon Network may require any of the End User's or the Operator's Rollingstock (either loaded or empty) to be available at such location as Aurizon Network may reasonably require, including locations on the Infrastructure but not on the Nominated Network, for weighing, measurement or other inspection at any reasonable time specified by Aurizon Network. The End User must ensure that the Operator complies with any of Aurizon Network's requirements under this **clause 29.3(b)**.

(c) Despite **clause 22**, if any of the End User's or the Operator's Rollingstock is loaded in excess of the limits specified in **schedule 5**, or in an unsafe or insecure manner, then Aurizon Network may at any time:

- (i) require the Operator to discontinue the Train Service **until such time that the Rollingstock is loaded in accordance with this Agreement**; or
- (ii) **after notifying the End User**, remove the excess or adjust the load at the End User's expense.

The End User must ensure that the Operator complies with any of Aurizon Network's requirements under this **clause 1.1(a)**.

29.4 Notice of inspection or audit

- (a) The party conducting, or requiring the conduct of, an inspection or audit (Inspecting Party) must give the party that is subject to the inspection or audit (Other Party) at least five Business Days prior written notice of such inspection or audit except in the case of emergencies or if an event or circumstance referred to in **clause 37** or **38** has occurred.
- (b) A notice under **clause 29.4(a)** must include:
 - (i) details of the inspection or audit to be carried out;
 - (ii) the name of the person conducting the inspection or audit;
 - (iii) the timing and expected duration of the inspection or audit;
 - (iv) the location of the inspection or audit;
 - (v) the grounds upon which the Inspecting Party requires the inspection or audit; and
 - (vi) the Inspecting Party's requirements of the Other Party in relation to the inspection or audit.

29.5 Conduct of inspection or audit

- (a) Any inspection or audit carried out pursuant to this Agreement may be conducted by the Inspecting Party, its appointed representative or by a suitably qualified person reasonably acceptable to the Inspecting Party and the Other

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Party, provided that if the inspection or audit would require access to commercially sensitive information of the Other Party, then:

- (i) the inspection or audit must be conducted by a suitably qualified independent person reasonably acceptable to the Inspecting Party and the Other Party; and
- (ii) such independent person:
 - (A) will execute a confidentiality agreement on terms reasonably acceptable to the Other Party;
 - (B) subject to clause 29.5(a)(ii)(A), will be given access to the commercially sensitive information by the Other Party; and
 - (C) will be prohibited from disclosing that commercially sensitive information to the Inspecting Party or any Third Party.

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- (b) The End User must use reasonable endeavours to ensure that Aurizon Network, its appointed representative or the person appointed to conduct an inspection or audit are entitled to enter and be upon land and premises (whether or not owned or leased by the End User or the Operator) on which the End User's or the Operator's Rollingstock is located from time to time (which location is specified in a notice pursuant to **clause 29.4**) for the purposes of carrying out any inspection or audit or exercising any other right under this Agreement.
- (c) In exercising any right of inspection or audit under this Agreement, an Inspecting Party:
 - (i) must not (and where the Inspecting Party is the Operator, the End User must ensure that the Operator does not) interfere unreasonably with the Infrastructure or the End User's or the Operator's Trains and Rollingstock or any Train Movements on the Nominated Network; and
 - (ii) must use (and where the Inspecting Party is the Operator, the End User must ensure that the Operator uses) its reasonable endeavours to avoid damage or injury and to minimise any disruption to the Other Party's business activities.

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<#>where the Inspecting Party is Aurizon Network, the End User must ensure that the Operator does not bring any Claim against Aurizon Network, its directors and/or Aurizon Network's Staff as a result of the exercise by Aurizon Network of its rights under this **clause 29** provided that Aurizon Network complies with **clause 29.5(c).**¶

The End User is liable for and indemnifies Aurizon Network in respect of any Claim made against Aurizon Network by a Third Party as a result of a delay or cancellation of a Network Train Service of that Third Party as a result of:¶
<#>the exercise by the End User of its inspection or audit rights under this **clause 29**; and¶
<#>the Operator conducting an inspection under **clause 29.1**, provided that the End User is not liable for, and is not required to indemnify Aurizon Network in respect of, any such Claim where:¶
<#>the End User has complied with **clause 29.5(c)** in exercising its inspection or audit rights; and¶
<#>the inspection or audit reveals that Aurizon Network is in breach of its obligations under this Agreement.¶

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29.6 **The Inspecting Party is not liable for any delays or cancellation of Train Services or Claims suffered or incurred by or made or brought by or against the Other Party as a result of the exercise by the Inspecting Party of its rights under this clause 29 provided the Inspecting Party complies with clause 29.5(c). Cooperation by the Parties**

Each Party must provide (and the End User must cause the Operator to provide) all reasonable assistance required by the Inspecting Party in conducting any inspection or audit under this Agreement, including allowing a Party or the Operator, the Party's or the Operator's appointed representative or person appointed to conduct an inspection or audit to discuss any relevant matter with Aurizon Network's Staff or the End User's Staff (as applicable). A member of Aurizon Network's Staff or the End User's Staff (as applicable) may be present at the inspection or audit.

29.7 **Costs of inspection or audit**

- (a) Subject to **clause 29.7(b)**, the Inspecting Party bears the reasonable costs of conducting the inspection or audit.
- (b) Where the stated grounds for the conduct of an inspection or audit of the Other Party's operations under **clause 29.2(b)** or **29.3** have been demonstrated to exist, the Other Party must (and where the Other Party is the Operator, the End User must cause the Operator to):

- (i) bear the direct and reasonable costs of conducting such inspection or audit; and
- (ii) to the extent that the Inspecting Party has paid any costs of conducting such inspection or audit, reimburse the Inspecting Party such reasonable amounts paid by the Inspecting Party in conducting the inspection or audit.

29.8 Copies of reports

The Parties must provide each other (and the End User must ensure that the Operator provides Aurizon Network) with a copy of any report of any inspection or audit undertaken under this **clause 29** in respect of its compliance (or the Operator's compliance) with the IRMP.

29.9 Consequences of inspection or audit

- (a) Unless otherwise agreed, where a Party requires the conduct of an inspection or an audit under **clause 29.2(b)**, **29.3(a)(ii)** or **29.3(a)(iii)**, that Party is liable to the other Party in respect of loss or damage (including damages for Consequential Loss) suffered or incurred by the other Party arising from the conduct of the inspection or audit if, and only if, no reasonable person in the position of the Party who required the conduct of the inspection or audit could have formed the view that the stated grounds for such inspection or audit existed, provided that the other Party must use all reasonable endeavours to mitigate the loss or damage arising from the conduct of the inspection or audit.
- (b) The Party who required the conduct of the inspection or audit bears the burden of establishing that a reasonable person in its position could have formed that view.

29.10 Parties' obligations

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

30 Insurance by End User

30.1 Maintain insurance policies

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

30.2 Required insurance policies

The End User must effect and maintain, or must cause the Operator to effect and maintain, insurance for the risks and on the terms specified in schedule 8.

30.3 Disclosure of insurance policies

The End User must provide, or must cause the Operator to provide, to Aurizon Network evidence of the insurance policies effected and maintained pursuant to this clause 30 (including evidence that the cover provided under those insurance policies complies with this clause 30 and of the currency of those insurance policies), to Aurizon Network's reasonable satisfaction:

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

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if requested by Aurizon Network, provide, or must cause the Operator to provide, to Aurizon Network copies of such insurance policies; and ¶
if requested by Aurizon Network, permit, or must cause the Operator to permit, Aurizon Network to inspect such policies of insurance at a location in Brisbane; ¶

30.4 Failure to disclose insurance policies

Without prejudice to Aurizon Network's other rights and remedies in respect of such default, if the End User or the Operator, whenever required to do so under this Agreement, fail to produce to Aurizon Network evidence to the reasonable satisfaction of Aurizon Network of insurances that have been effected or maintained by it, Aurizon Network may, after giving the End User ten Business Days written notice, effect and maintain the insurance and pay the premiums and any amount so paid will be a debt due from the End User to Aurizon Network.

30.5 Minimum terms of policies

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

- (a) note the interests of the End User or the Operator (as applicable), any contractor and Aurizon Network;
- (b) not contain any exclusions, endorsements or alterations to the accepted policy wording that adversely and materially amends the cover provided without the written consent of Aurizon Network (not to be unreasonably withheld or delayed); and
- (c) include the terms and be for the amounts referred to in schedule 8.

30.6 End User not to render policy void

The End User must not, and must ensure that the Operator does not, render any of the insurances effected in accordance with this **clause 30** void or voidable or liable to refusal of any claim.

30.7 Compliance

The End User must, and must cause the Operator to, at all times comply with the terms and conditions of all insurance policies effected pursuant to this **clause 30**.

30.8 Notice of potential claims

In addition to any other obligation on the Operator pursuant to this Agreement, the End User must, and must cause the Operator to:

- (a) notify Aurizon Network as soon as practicable after the making of any claim under any insurance policy required by this Agreement;
- (b) notify Aurizon Network of that event in reasonable detail; and
- (c) thereafter keep Aurizon Network informed of subsequent developments concerning any claim.

to the extent such claim arises from the performance of this Agreement.

30.9 End User to pay all excess/eductibles

- (a) The End User must in respect of any claims by it or any other insured for which it is responsible (including the Operator), pay and bear, or must cause the Operator to pay and bear (as applicable), all excesses/deductibles provided for in any insurances effected in accordance with this **clause 30**.
- (b) If the End User or the Operator (as applicable) fails to pay any excesses/deductibles provided for in any insurances effected in accordance with this **clause 30**, Aurizon may pay the relevant excesses/deductibles and any amount so paid will be a debt due from the End User to Aurizon Network.

30.10 Settlement of claims

Upon settlement of a claim under any policy required by this Agreement covering damage to Infrastructure, the portion of monies owing by the End User to Aurizon Network under this Agreement for damage to the Infrastructure (if any) must be paid to Aurizon Network from the monies received by the End User.

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31 Indemnities

31.1 Indemnity by End User for personal injury and property damage

Subject to **clause 32**, the End User is solely liable for, and releases, indemnifies and will keep indemnified Aurizon Network, its directors and Aurizon Network's Staff against, all Claims of any nature suffered or incurred by, or made or brought against, Aurizon Network, its directors or Aurizon Network's Staff in respect of:

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

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

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

31.2 Indemnity by Aurizon Network for personal injury and property damage

Subject to **clauses 31.3** and **32**, Aurizon Network is solely liable for, and releases, indemnifies and will keep indemnified the End User, the End User's directors and the End User's Staff against, all Claims of any nature suffered or incurred by, or made or brought against, the End User, the End User's directors or the End User's Staff in respect of:

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

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

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

31.3 Indemnity by End User for certain liabilities to third parties

(a) Despite **clause 31.2** but subject to clause 32, the End User is solely liable for, and releases, indemnifies and will keep indemnified Aurizon Network, its directors and Aurizon Network's Staff against, all Claims of any nature suffered or incurred by, or made or brought against, Aurizon Network, its directors or Aurizon Network's Staff in respect of:

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

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

- (iii) any breach of this Agreement by Aurizon Network; or
- (iv) any negligent act or omission of Aurizon Network or Aurizon Network's Staff.

31.4 Duty to mitigate

Each Party must use (and the End User must ensure that the Operator uses) all reasonable endeavours to mitigate the damage, loss, cost, liability or expense in respect of which an indemnity in this Agreement applies.

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Clause 32.1 does not apply to the indemnity under this clause 31.3, and the indemnity under this clause 31.3 extends to any Consequential Loss suffered or incurred by Aurizon Network.

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31.5 General provisions regarding indemnities

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

32 Limitations and exclusions of liability

32.1 Exclusion of Consequential Loss

Except as expressly provided otherwise in **clauses 29.9 and 37.5(c)**, neither Party is liable to the other under or in connection with this Agreement (including under an indemnity) for any Consequential Loss however caused (including any breach of this Agreement or negligent act or omission of a Party).

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32.2 Time limit and minimum threshold on Claims

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

- (a) notice of the Claim has been given to the first Party within twelve Months after the other Party becomes aware of the occurrence of the event or circumstance giving rise to the Claim; and
- (b) the amount of the Claim exceeds \$100,000 in respect of any one event or cause of action or series of related events or causes of action, provided that if this condition is satisfied then the other Party may proceed for the full amount of the Claim and not only the amount in excess of \$100,000.

32.3 Claims and exclusions in respect of Infrastructure standard

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

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

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must ensure that the Operator does not bring any Claim against Aurizon Network, its directors and/or Aurizon Network's Staff,

arising out of or in connection with the standard of the Infrastructure or any failure of or defect in the Infrastructure, except to the extent that such loss, damage, injury or death, cost or expense results from the **breach of this Agreement or negligence of Aurizon Network or Aurizon Network's Staff**.

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32.4 Claims and exclusions in respect of non-provision of access

Despite any other provision of this Agreement, Aurizon Network, its directors and Aurizon Network's Staff are not liable to the Operator or the End User for any Claim, and the End User must not bring any Claim against Aurizon Network, its directors and/or Aurizon Network's Staff in respect of any failure by Aurizon Network to make the Infrastructure available for the Operator to operate a Train Service at the Scheduled Time in the Train Schedule unless (and then only to the extent that):

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- (a) Aurizon Network did not use reasonable endeavours to reschedule the relevant Train Service in accordance with **clause 19.2 or 19.3**;
- (b) if the failure by Aurizon Network to make the Infrastructure available was caused by or the result of an Operational Constraint, that Operational Constraint resulted from a breach of this Agreement by Aurizon Network **or the negligence of Aurizon Network; or**

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must ensure that the Operator does not bring any Claim against Aurizon Network, its directors and/or Aurizon Network's Staff,

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(c) the failure by Aurizon Network to make the Infrastructure available was a result of a breach of this Agreement by, or negligent act or omission of, Aurizon Network;

and the failure by Aurizon Network to make the Infrastructure available was not attributable to:

- (i) the Operator, the End User or the End User's Staff;
- (ii) ~~[Note: this is inconsistent with (a).]~~ a Force Majeure Event;
- (iii) Major Periodic Maintenance of, or Infrastructure Enhancements to, the Infrastructure scheduled in a manner consistent with the Network Management Principles;
- (iv) if:
 - (A) the Access Rights for the relevant Train Service are Conditional Access Rights;
 - (B) there is a Capacity Shortfall in respect of any Segment of the applicable Expansion and the reason for the Capacity Shortfall is other than as a result of an act or omission of Aurizon Network; and
 - (C) the Conditional Access Rights have not been varied under clause 9, the unavailability in the Infrastructure is attributable to the Capacity Shortfall in relevant Infrastructure; or
- (v) any action taken by Aurizon Network, acting reasonably, in response to an emergency or a genuine safety risk; and

(d) either:

- (i) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of clause 23 and Schedule 6, and the total number of Train Services (expressed as a percentage) cancelled in a Billing Period as a result of a failure by Aurizon Network to make the Infrastructure available (other than any failure by Aurizon Network to make the Infrastructure available which is attributable to an event or circumstance specified in clauses 32.4(c)(i) to 32.4(c)(v)) exceeds the Allowable Threshold for that Billing Period; or
- (ii) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of clause 23 and Schedule 6, but the failure to make the Infrastructure available is of a magnitude which is beyond the scope of that performance and adjustment regime.

32.5 Claims and exclusions in respect of delays to Train Movements

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

- (a) the delay was a result of a breach of this Agreement by the Defaulting Party, or negligence on the part of the Defaulting Party; ~~or~~
- (b) if the delay was caused by or the result of an Operational Constraint, that Operational Constraint resulted from a breach of this Agreement by the Defaulting Party; and
- (c) the delay is not attributable to:
 - (i) the Affected Party or where the Affected Party is:
 - (A) Aurizon Network - Aurizon Network's Staff;

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<#>a customer of another Railway Operator or any employees, contractors, volunteers or agents of a customer of another Railway Operator;¶
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where the Affected Party is the Operator, the End User must ensure that the Operator does not bring any Claim against Aurizon Network, its directors and/or Aurizon Network's Staff,
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- (B) the End User - the End User's Staff or the Operator; or
- (C) the Operator – the End User's Staff or the Operator;
- (ii) ~~[Note: Paragraphs (ii) and (iii) are unnecessary given the scope of the obligation is to use reasonable endeavours to re-schedule.]~~ a Force Majeure Event;
- (iii) Major Periodic Maintenance of, or Infrastructure Enhancements to, the Infrastructure scheduled in a manner consistent with the Network Management Principles; or
- (iv) any action taken by Aurizon Network, acting reasonably, in response to an emergency or a genuine safety risk; and
- (d) either:
 - (i) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of **clause 23** and **Schedule 6**; or
 - (ii) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of **clause 23** and **Schedule 6**, but the delays are of a magnitude which is beyond the scope of that performance and adjustment regime.

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32.6 Defence of Claims by Third Parties

- (a) Each Party must provide (and the End User must cause the Operator to provide) such reasonable assistance as requested by the other Party in the defence of any Claim made against the other Party by a Third Party arising out of any Incident or other event giving rise to the Claim.
- (b) The Party that requested assistance under **clause 32.6(a)** must, **within five Business Days** upon demand, pay to the other Party any costs and expenses reasonably incurred by the other Party in providing the assistance requested under **clause 32.6(a)**.

33 Determination of liability and loss adjustment

33.1 Determination of liability

In the event of an Incident involving the End User or the Operator or any other event which results or could result in a Claim by or against the End User, the Operator or Aurizon Network, liability as between the End User and Aurizon Network is determined, for the purposes of **clauses 31** and **32.3**:

- (a) as agreed between the Parties;
- (b) subject to **clause 33.1(c)**, failing such agreement within one Month of either Party giving notice to the other requiring agreement on liability, by a loss adjuster appointed under **clause 33.2**; or
- (c) where the amount of the Claim exceeds \$100,000 and either Party is dissatisfied with the report of the loss adjuster, by a court of competent jurisdiction.

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~~[QRC drafting note: Threshold amended so consistent with Claims threshold in clause 32.2]~~

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33.2 Loss Adjuster

Where a matter is to be referred to a loss adjuster in accordance with **clause 33.1**:

- (a) the loss adjuster:
 - (i) must be appointed by the Parties; or

- (ii) in default of such appointment within 10 Business Days after the need to appoint a loss adjuster, is to be nominated at either Party's request by the President of The Australasian Institute of Chartered Loss Adjusters;
- (b) if the loss adjuster is to be nominated under **clause 33.2(a)(ii)** and the President of The Australasian Institute of Chartered Loss Adjusters declines to nominate a person as the loss adjuster but provides a list of people that could be appointed as the loss adjuster, then:
 - (i) the first person specified in that list will be taken to be nominated as the loss adjuster;
 - (ii) if the first person specified in that list does not accept the appointment as the loss adjuster, the next person specified in that list will be taken to be the first person specified in that list and will be nominated as the loss adjuster; and
 - (iii) the process specified in **clause 33.2(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the loss adjuster accepts the appointment as the loss adjuster;
- (c) the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated loss adjuster (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of the President of The Australasian Institute of Chartered Loss Adjusters agreeing to nominate a loss adjuster;
- (d) the loss adjuster must:
 - (i) be a Fellow of the Australasian Institute of Chartered Loss Adjusters or have equivalent qualifications and experience;
 - (ii) have no interest or duty which conflicts or may conflict with the loss adjuster's function as a loss adjuster (the loss adjuster being required to fully disclose any such interest or duty before their appointment); and
 - (iii) not be, or have been in the last **eight** years, an employee of the End User, the Operator or Aurizon Network or of a Related Body Corporate of any of them;
- (e) the loss adjuster appointed under this **clause 33.2** is not permitted to act until the loss adjuster has given written notice of the acceptance of the appointment to both Parties;
- (f) any loss adjuster appointed under this **clause 33.2** is required to undertake to keep confidential all matters coming to the loss adjuster's knowledge by reason of their appointment and the performance of their duties; and
- (g) any person nominated as a loss adjuster under this **clause 33.2** is deemed to be and act as an expert and not an arbitrator, and the law relating to arbitration, including the *Commercial Arbitration Act 1990* (Qld), does not apply to the loss adjuster or their determination or the procedures by which they may reach a determination.

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33.3 Parties to assist loss adjuster

- (a) Each Party must ensure to the best of its ability (and the End User must cause the Operator to ensure to the best of its ability) that the loss adjuster appointed under **clause 33.2** is given the opportunity to interview any employee, agent or contractor involved in, or with knowledge of, the Incident or event giving rise to the Claim or with any other relevant information that may be of use to the loss adjuster.

- (b) Each Party must make available (and the End User must ensure that the Operator makes available) to the loss adjuster appointed under **clause 33.2** any files, documents, data, recordings or other information in the possession or control of the Party (or the Operator (as applicable)) that may be of use to, or is requested by, the loss adjuster for the purposes of their investigation.

33.4 Decision of the loss adjuster

- (a) The loss adjuster appointed under **clause 33.2** will determine the quantum of the relevant Claim and the liability of the End User and/or Aurizon Network in respect of such Claim and must provide a copy of their report on such matters to each of the Parties within a reasonable time after their appointment.
- (b) In the absence of manifest error, the decision of the loss adjuster is final and binding upon the Parties where the total claims arising from the Incident or event giving rise to the Claim are equal to or less than \$100,000.

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33.5 Costs of the loss adjuster

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

34 Material Change

34.1 Adjustment for a Material Change

- (a) If there is no Reference Tariff applicable to the Train Services for a Train Service Type under this Agreement, then:
 - (i) if at any time after the Commencement Date a Material Change occurs which affects the financial position of Aurizon Network or the cost to Aurizon Network of performing its obligations or exercising its rights under this Agreement, then Aurizon Network may notify the End User giving details of the Net Financial Effect on Aurizon Network of the Material Change;
 - (ii) within 10 Business Days after receipt of a notice under **clause 34.1(a)(i)**, the Parties must meet and negotiate in good faith any appropriate adjustments to the amounts payable under this Agreement to remove as far as practicable the Net Financial Effect on Aurizon Network of the Material Change and return Aurizon Network to the position it would have been in had it not been for the Material Change; and
 - (iii) if the Parties have not agreed on the relevant adjustments within 15 Business Days after Aurizon Network's notice, then either Party may refer the matter to an Expert for determination in accordance with **clause 35.3**.
- (b) If there is a Reference Tariff applicable to the Train Services for a Train Service Type under this Agreement, then the relevant Reference Tariff Provisions will provide for the consequences of Material Change.

34.2 Parties' obligations continue

The Parties' obligations under this Agreement continue despite the existence of a Material Change.

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For the purpose of determining the Net Financial Effect on Aurizon Network of a Material Change under **clause 34**, any change in the funding from governments in respect of the Nominated Network which is adverse to Aurizon Network will,¶ to the extent that change affects the financial position of Aurizon Network, be deemed to be an additional cost to Aurizon Network of performing its obligations under this Agreement.

35 Disputes

35.1 Method

If any claim, dispute or question (Dispute) arises under this Agreement or in relation to the Access Rights, then unless otherwise expressly provided to the contrary in this Agreement, such Dispute must be resolved in accordance with this **clause 35** and either Party may give to the other Party a notice in writing (Dispute Notice) specifying the Dispute and requiring that it be dealt with in accordance with this **clause 35**.

35.2 Chief executive resolution

- (a) Except as otherwise provided in this Agreement, within five Business Days after a Dispute Notice is given, the Dispute must be referred for resolution to:
 - (i) the chief executive officer of Aurizon Network (or their nominee); and
 - (ii) the chief executive officer of the End User (or their nominee).
- (b) Within 10 Business Days after a Dispute Notice is given, the officers referred to in **clause 35.2(a)** must meet to resolve the Dispute.
- (c) Meetings referred to in **clause 35.2(b)** may be held in person or by telephone, video conference or other means of instantaneous communication.
- (d) If the Dispute is not resolved within 10 Business Days after:
 - (i) the date that officers first meet to resolve the Dispute in accordance with **clause 35.2(b)**; or
 - (ii) if the officers do not meet within the time required under **clause 35.2(b)**, the date the Dispute Notice is given,

then the relevant Dispute may, by agreement between Aurizon Network and the End User, be referred for resolution by an Expert in accordance with **clause 35.3** or by arbitration in accordance with **clause 35.4**.

35.3 Expert

Where any matter may be referred to an expert (Expert) pursuant to **clause 35.2(d)**, or is expressly required by this Agreement to be referred to an Expert, then except as otherwise provided for in this Agreement:

- (a) an Expert must be appointed by agreement between the Parties, or in default of such appointment within 10 Business Days of the requirement or right (as applicable) to refer the matter to an Expert, then that person is to be nominated at either Party's request by:
 - (i) if the Parties agree the Dispute is purely of a financial or accounting nature, the President (for the time being) of The Institute of Chartered Accountants in Australia;
 - (ii) if the Parties agree the Dispute is purely of a technical nature, the President (for the time being) of the Institute of Arbitrators and Mediators Australia; or
 - (iii) in any other case, the President (for the time being) of the Queensland Law Society Inc;
- (b) if the Expert is to be nominated by a person referred to in **clause 35.3(a)** and that person declines to nominate a person as the Expert but provides a list of people that could be appointed as the Expert, then:
 - (i) the first person specified in that list will be taken to be nominated as the Expert;

- (ii) if the first person specified in that list does not accept the appointment as the Expert, then the next person specified in that list will be taken to be nominated as the Expert; and
- (iii) the process specified in **clause 35.3(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the Expert accepts the appointment as the Expert;
- (c) subject to **clause 35.3(b)**, if the Expert is to be nominated by a person referred to in **clause 35.3(a)** and the person nominated as the Expert does not accept appointment as the Expert, then an alternative person is to be nominated as the Expert at either Party's request by the same person referred to in **clause 35.3(a)**;
- (d) the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated Expert (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person accepting the appointment as an Expert;
- (e) the Expert must:
 - (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (ii) have no interest or duty which conflicts or may conflict with their function as Expert, the Expert being required to fully disclose any such interest or duty by notice to the Parties before their appointment;
 - (iii) not be, or have been in the last eight years, an employee of the End User, the Operator, or Aurizon Network or of a Related Body Corporate of any of them;
 - (iv) not be permitted to act until the Expert has given notice to the Parties that the Expert is willing and able to accept the appointment;
 - (v) have regard to the provisions of this Agreement and consider all submissions (including oral submissions by either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter submitted by the Parties or submitted by the Parties as soon as reasonably practicable at the Expert's request;
 - (vi) provide both Parties with a copy of the determination in the form of a report setting out reasonable details of the reasons for the Expert's determination within a reasonable time after their appointment; and
 - (vii) be required to undertake to keep confidential all matters coming to their knowledge by reason of their appointment and performance of their duties (including, if required by a Party, by entering into a confidentiality agreement in favour of the Parties);
- (f) the Expert is deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration (including the *Commercial Arbitration Act 1990* (Qld)) will not apply to the Expert or the determination or the procedures by which the Expert may reach a determination;
- (g) in the absence of manifest error, the decision of the Expert is final and binding upon the Parties;
- (h) the costs of the Expert (and the costs of any advisers to the Expert) must be borne by the Parties in equal shares, with each Party bearing its own costs of participating in the dispute resolution process (unless otherwise agreed by the Parties);

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- (i) any determination made by an Expert must be consistent with the provisions of this Agreement; and
- (j) the Parties must do everything reasonably requested by the Expert to assist the Expert in determining the Dispute, including producing information and materials requested by the Expert and attending any hearing convened by the Expert.

35.4 Arbitration

The Parties may agree to refer any Dispute to arbitration by a single arbitrator sitting in Brisbane agreed upon between the Parties and, failing agreement upon such arbitrator within 10 Business Days after the date of written notice from one Party to the other requiring the appointment of an arbitrator, by an arbitrator appointed by the President of the Institute of Arbitrators. Every such reference will be an arbitration within the meaning of the *Commercial Arbitration Act 1990* (Qld), and subject to the provisions relating to arbitration contained in that Act.

35.5 Queensland Competition Authority (QCA)

The Parties may agree to refer, and where required by this Agreement must refer, any Dispute to the QCA.

35.6 Determination by Court

If any Dispute is not:

- (a) resolved in accordance with **clause 35.2**;
- (b) referred to an Expert in accordance with **clause 35.3**;
- (c) referred to arbitration by agreement of the Parties in accordance with **clause 35.4**; nor
- (d) referred to the QCA in accordance with **clause 35.5**,

then the Dispute must be referred to the courts of the State.

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36 Force Majeure

36.1 Claim of Force Majeure

If, by reason of a Force Majeure Event affecting a Party, that Party is prevented or hindered from carrying out, whether wholly or in part, its obligations under this Agreement (other than an obligation to pay money), then that Party must, as soon as reasonably practicable after it becomes aware of the Force Majeure Event, give to the other Party prompt written notice of the Force Majeure Event together with full particulars of all relevant matters including:

- (a) details of the Force Majeure Event and (if applicable) that part of the Nominated Network affected;
- (b) details of the obligations affected;
- (c) details of the action that the Party has taken to remedy the situation and details of the action that the Party proposes to take to remedy the situation; and
- (d) an estimate of the time during which the Party will be prevented or hindered from carrying out, whether wholly or in part, its obligations under this Agreement due to the Force Majeure Event.

36.2 Suspension of obligations

If, by reason of a Force Majeure Event affecting a Party, that Party is prevented or hindered from carrying out, whether wholly or in part, its obligations under this Agreement (other than an obligation to pay money), then the obligations of that Party will be suspended during that time to the extent that the performance of such obligations is prevented or hindered by the Force Majeure Event.

36.3 Duty to mitigate

- (a) Subject to **clause 36.3(b)**, a Party must use (and the End User must cause the Operator to use) all reasonable endeavours to remedy or overcome the effect of the Force Majeure Event affecting the Party as soon as possible and must attempt to:
 - (i) mitigate the effect of the Force Majeure Event; and
 - (ii) in the case of a Force Majeure Event affecting Aurizon Network, identify alternative viable means of providing the Access Rights affected (if applicable).
- (b) No Party is obliged to settle any strike, lockout or other labour dispute other than on terms acceptable to it.

36.4 End of period of Force Majeure

Subject to **clauses 36.5** and **36.6**, the suspension of the obligations of the Parties due to a Force Majeure Event ends when the Party that issued the notice of the Force Majeure Event is able to resume full performance of its obligations under this Agreement, at which time it must:

- (a) issue a notice to the other Party advising that it is recommencing the performance of its obligations; and
- (b) recommence the performance of its obligations.

36.5 Reduction of Access Rights due to loss or damage to Nominated

Network

- (a) If:
 - (i) any part of the Nominated Network specified in **item 2 of schedule 3** is damaged or destroyed by a Force Majeure Event; and
 - (ii) in Aurizon Network's reasonable opinion the cost of repairing such damage or destruction or replacing that part of the Nominated Network is not economic on the basis of the then and committed future utilisation of that part of the Nominated Network,
 - (iii) then Aurizon Network may by written notice advise the End User of: the estimated cost of effecting the necessary repairs or replacement; and
 - (iv) Aurizon Network's intention to not repair or replace the relevant part of the Nominated Network unless the End User, the Operator and any other Railway Operator (or any of their customers) using that part of the Nominated Network pay the amounts specified by Aurizon Network towards the cost of effecting the necessary repairs or replacement.
- (b) If the End User notifies Aurizon Network that:
 - (i) it agrees to bear the whole of the cost of necessary repairs or replacement; or
 - (ii) it agrees to bear that part requested by Aurizon Network of the cost of necessary repairs or replacement (and subject to Aurizon Network being satisfied that all other relevant Railway Operators including, if applicable, the Operator (or their customers) have also agreed to bear their respective part of such costs,then Aurizon Network will proceed with the repairs or replacement within a reasonable time after:
 - (iii) if **clause 36.5(b)(i)** applies, receipt by Aurizon Network from the End User of payment of the relevant amount; and

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- (iv) if **clause 36.5(b)(ii)** applies, receipt by Aurizon Network from the End User or a relevant Railway Operator including, if applicable, the Operator (or, if applicable, its customer) of the last payment of the relevant amount.
- (c) Where the End User pays to Aurizon Network the whole of the estimated cost, on completion of the necessary repairs or replacement:
 - (i) Aurizon Network must refund to the End User any amount by which the amount paid by the End User exceeds the actual cost; or
 - (ii) the End User must pay to Aurizon Network the amount by which the actual cost exceeds the amount paid by the End User, (as applicable).
- (d) If, within 40 Business Days after receipt of a notice from Aurizon Network under **clause 36.5(a)**, the End User has not given notice to Aurizon Network pursuant to **clause 36.5(b)** indicating that it agrees to pay the whole, or that part requested by Aurizon Network, of the cost of the necessary repairs or replacement, then Aurizon Network may, by giving not less than 20 Business Days notice in writing to the End User, reduce the Access Rights by the FM Access Rights, in which case, the FM Access Rights will cease to form part of the Access Rights on and from the date specified in the notice (which must be at least 20 Business Days from the date of the notice).

36.6 Termination after extended Force Majeure Event

If, by reason of a Force Majeure Event affecting a Party, that Party (affected Party) is wholly prevented or hindered from carrying out its obligations under this Agreement (other than an obligation to pay money) for a period of more than three consecutive Months, then:

- (a) the Parties must meet to endeavour to identify any alternative viable means to perform the suspended obligations; and
- (b) failing any alternative means being agreed within one Month after the end of the three Month period, the other Party may terminate this Agreement by 20 Business Days written notice to the affected Party and **clauses 36.4** and **36.5** apply without prejudice to any of the rights of the Parties which accrued before the date of such termination.

37 Suspension

37.1 Suspension of Train Services for a Train Service Type

If a Suspension Event specified in part A of **schedule 9** occurs in respect of a Train Service Type, Aurizon Network may, by notice in writing to the End User (which may be given before or immediately after the suspension) (Suspension Notice), suspend the right of the End User to permit the Operator to operate some or all of the Train Services for that Train Service Type on the Nominated Network.

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37.2 Suspension of Train Services generally

If a Suspension Event specified in part B of **schedule 9** occurs, Aurizon Network may, by notice in writing to the End User (which may be given before or immediately after the suspension) (also a Suspension Notice), suspend the right of the End User to permit the Operator to operate some or all of the Train Services (for any one or more Train Service Types) on the Nominated Network.

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37.3 Suspension of certain Rollingstock or Rollingstock Configurations

- (a) If:
 - (i) Rollingstock or Rollingstock Configurations used by the Operator in the operation of Train Services:

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

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

- (b) If Aurizon Network, acting reasonably, anticipates that:
 - (i) Rollingstock or Rollingstock Configurations that will be used by the Operator in the operation of Train Services:
 - (A) will not be Authorised Rollingstock or Authorised Rollingstock Configurations for the Train Service Type; or
 - (B) will not comply with:
 - (1) applicable Laws; or
 - (2) the Rollingstock Interface Standards (subject to any Approved Derogations); or
 - (ii) the End User or the Operator will otherwise fail to comply with the Rollingstock Interface Standards,

and such non-compliance would create a risk to the safety of any person or a material risk to property then Aurizon Network may, by notice in writing to the End User (which may be given before or immediately after the suspension), suspend the right of the End User to permit the Operator to operate Train Services using such Rollingstock or Rollingstock Configurations.

37.4 Details of suspension

A Suspension Notice given by Aurizon Network to the End User under

clause 37.1, 37.2 or 37.3 must set out:

- (a) the rights of the End User which are affected by the suspension;
- (b) the reason for the suspension; and
- (c) ~~the actions the End User and/or the Operator must take to have the suspension lifted.~~

37.5 Effect of suspension

- (a) If Aurizon Network exercises a right of suspension under this **clause 37**, then the End User must, and must ensure that the Operator and the relevant End User's Staff, immediately cease to operate:
 - (i) the relevant Train Services; or

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 <#>Suspension due to suspension under End User Agreement¶
 If:¶
 <#>the End User is a party to an End User Agreement; and¶
 <#>any of the End User's rights under the End User Agreement are suspended under the End User Agreement for any reason,¶
 then Aurizon Network may, by notice in writing to the End User (which may be given before or immediately after the suspension) (also a Suspension Notice), suspend the right of the End User to permit the Operator to operate Train Services on the Nominated Network.

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- (ii) the Train Services using the relevant Rollingstock or Rollingstock Configurations,
as applicable, until such time as the suspension is lifted by Aurizon Network.
- (b) The suspension of any rights under this **clause 37** does not affect or suspend any other obligation of the End User, including the obligation to pay Access Charges under this Agreement, and is without prejudice to Aurizon Network's other rights and remedies in respect of that or any other default.
- (c) Where Aurizon Network suspends the End User's right to permit the Operator to operate some or all of the Train Services:
 - (i) Aurizon Network will be liable to the End User in respect of loss or damage (including damages for Consequential Loss) arising from the suspension if, and only if, provided that the End User must use all reasonable endeavours to, and must ensure that the Operator uses all reasonable endeavours to, mitigate the loss or damage arising from the suspension; and
 - (ii) Aurizon Network bears the burden of establishing that a reasonable person in Aurizon Network's position could have formed that view.

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37.6 Duration of suspension

The suspension of any rights under **clause 37.1, 37.2 or 37.3** continues until such time as:

- (a) the End User or the Operator (as applicable) has remedied the relevant default or non-compliance and, where appropriate, the End User has taken action (or caused the Operator to take action) to prevent its recurrence; or
- (b) in the case of a suspension as a result of an Anticipated Suspension Event or an anticipated non-compliance referred to in **clause 37.3(b)**, the End User or the Operator has demonstrated that it is in compliance, and will continue to be in compliance, with the relevant requirement to which the Anticipated Suspension Event or anticipated non-compliance (as applicable) relates.

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38 Termination

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

- (a) Subject to **clause 38.1(b)** and without limiting any rights of termination contained elsewhere in this Agreement, Aurizon Network may, by notice in writing to the End User, immediately reduce the Access Rights by the Train Services for a Train Service Type if a Termination Event specified in part A of **schedule 9** occurs in relation to that Train Service Type. **[Note: Reference to at Law undermines the purpose of being prescriptive about default events.]**
- (b) If there is a Corresponding Suspension Event in respect of the Termination Event referred to in **clause 38.1(a)**, then Aurizon Network may only exercise its rights under **clause 38.1(a)** if it has first exercised its right of suspension in respect of the Corresponding Suspension Event under **clause 37**.

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38.2 Termination of Agreement

- (a) Subject to **clause 38.2(b)** and without limiting any rights of termination contained elsewhere in this Agreement, Aurizon Network may, by notice in writing to the End User, terminate this Agreement if a Termination Event specified in part B of **schedule 9** occurs. **[See note above.]**
- (b) If there is a Corresponding Suspension Event in respect of the Termination Event referred to in **clause 38.2(a)**, then Aurizon Network may only exercise its

rights under **clause 38.2(a)** if it has first exercised its right of suspension in respect of the Corresponding Suspension Event under **clause 37**.

38.3 Termination by the End User

Without limiting any rights of termination contained elsewhere in this Agreement, the End User may, by notice in writing to Aurizon Network, terminate this Agreement if any of the following occurs:

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

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38.4 Grounds for termination to be specified

A notice given under **clause 38.1**, **38.2** or **38.3** must set out the grounds for the termination.

38.5 Obligations and other rights upon termination or expiry

- (a) Neither termination of this Agreement by a Party pursuant to this **clause 38** nor expiry of this Agreement prejudices:
 - (i) a Party's right to make a Claim, recover damages or avail itself of other remedies under this Agreement or at Law; or
 - (ii) either Party's rights to recover money due to it under this Agreement.
- (b) Subject to clause 38.5(b), termination of this Agreement, Aurizon Network and the End User are released from all further obligations or liabilities under this Agreement except for:
 - (i) rights which accrued on or before termination, including for any breach of this Agreement which occurred before termination. Any liability in respect of such prior breach will be limited in the manner provided in this Agreement; or
 - (ii) any provisions which are expressed as surviving the expiry or termination of this Agreement.

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38.6 Removal of Rollingstock following termination

- (a) Immediately on expiry of the Term, and as soon as practicable after termination of this Agreement for any other reason, the End User must, at the End User's cost, remove (or cause the Operator to remove) all of the End User's or Operator's Rollingstock which are no longer required because the Operator will not be operating Train Services utilising the End User's Access Rights from the Nominated Network.
- (b) If the End User fails to remove (or cause to have removed) the End User's or the Operator's Rollingstock referred to in **clause 38.6(a)** from the Nominated Network, then Aurizon Network may give a notice to the End User demanding the removal of the Rollingstock within a reasonable specified time.
- (c) If the End User fails to remove (or to have removed) any of the End User's or the Operator's Rollingstock from the Nominated Network the subject of the

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notice under **clause 38.6(b)** within the time specified in the notice, then Aurizon Network is entitled to remove the Rollingstock and recover the reasonable costs of removal from the End User.

- (d) The End User is liable for, and indemnifies Aurizon Network against, any costs incurred by Aurizon Network in relation to any damage or obstruction caused to the Infrastructure or the Nominated Network by the End User or the Operator in removing any Rollingstock in accordance with this **clause 38.6**.
- (e) The End User must comply with (and ensure that the Operator complies with) all reasonable directions issued by Aurizon Network in relation to the removal of the Rollingstock in accordance with this **clause 38.6**.

39 Assignment

39.1 Assignment by Aurizon Network

- (a) Aurizon Network may Assign the whole or any part of its rights or obligations under this Agreement without the prior consent of the End User, provided that Aurizon Network procures that the Assignee covenants with the End User by deed to be bound by and to perform the obligations of Aurizon Network under this Agreement to the extent of the rights and obligations Assigned to the Assignee.
- (b) On the Assignee entering into the deed referred to in **clause 39.1(a)**, Aurizon Network is released and discharged from further liability under this Agreement in respect of the obligations which the Assignee has undertaken under that deed to be bound by and to perform.

39.2 Assignment by the End User

- (a) The End User may not Assign its rights or obligations under this Agreement other than in accordance with this **clause 39.2**.
- (b) The End User may, provided it is not in default in the performance or observance of any of its obligations under this Agreement, Assign the whole of its rights and obligations under this Agreement to:
 - (i) a Related Body Corporate of the End User which is capable of performing the obligations of the End User under this Agreement, provided that:
 - (A) the End User remains liable for the performance of the duties, responsibilities and obligations assumed by the Assignee; and
 - (B) the performance by the Assignee will (to the extent of such performance) discharge the End User's liability for the performance of the duties, responsibilities and obligations Assigned; or
 - (ii) a person other than a Related Body Corporate of the End User with the prior written consent of Aurizon Network, provided that such consent will not be unreasonably withheld if Aurizon Network is satisfied that such person is:
 - (A) financially sound; and
 - (B) otherwise capable of performing the obligations of the End User under this Agreement.
- (c) Any Assignment by the End User of its rights and obligations under this Agreement is conditional on and will not take effect until the Assignee covenants with Aurizon Network by deed, in such terms as Aurizon Network may reasonably require, to be bound by and to perform the obligations of the End User and the Operator under this Agreement.

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- (d) Subject to **clause 39.2(e)**, if a Change in Control of the End User occurs without Aurizon Network's prior written consent, the occurrence of the Change in Control will be taken to be an Assignment of the End User's rights and obligations under this Agreement which is not permitted under this **clause 39.2**.
- (e) **Clause 39.2(d)** does not apply to a Change in Control where:
 - (i) the End User or its Ultimate Holding Company is listed on a recognised stock exchange; and
 - (ii) the Change in Control is a result of a Change in Control of that listed entity.

39.3 Charging

A Party (Chargor) may create a Charge over all of its rights under this Agreement in favour of a recognised financial institution (Chargee) to secure financial accommodation provided to the Chargor in relation to its obligations under this Agreement, provided that the Chargee must first covenant in writing in favour of the other Party (Non-Charging Party), pursuant to a deed in such terms as the Non-Charging Party may reasonably require, that in relation to the exercise of any power of sale or other right or remedy under the Charge granted to the Chargee, the Chargee and any person (including any receiver or receiver and manager or agent) claiming through the Chargee will comply with the provisions of this **clause 39** as if it were originally a party to this Agreement, and will not exercise any power of sale of the rights and/or obligations of the Chargor under the Agreement except in accordance with this **clause 39**.

40 GST

40.1 Construction

In this **clause 40**:

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law;
- (b) GST Law has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*; and
- (c) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

40.2 Consideration GST exclusive

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

40.3 Payment of GST

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

40.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 40.3** in addition to, and at the same time that, the consideration for the supply is to be provided under this Agreement.

40.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under **clause 40.3**. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

40.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the recipient under **clause 40.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.

40.7 Reimbursements

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

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

41 Confidentiality

41.1 Confidentiality

Subject to **clause 41.2**, the Recipient must:

- (a) keep confidential, and must not disclose to any Third Party, any Confidential Information disclosed to the Recipient by the Discloser; and
- (b) not use the Confidential Information for any purpose other than for the purposes of this Agreement.

41.2 Permitted disclosures

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

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- (a) the Recipient has obtained the prior written approval of the Discloser to such disclosure. The Discloser must not unreasonably withhold such approval if the Recipient has procured a confidentiality undertaking in respect of the information from such Third Party in favour of both Parties on terms and conditions satisfactory to both Parties, acting reasonably; or
- (b) disclosure is:
 - (i) required or compelled by any order of a court of competent jurisdiction;
 - (ii) required or compelled by any Law;
 - (iii) required or compelled by notice validly issued by any Authority;
 - (iv) necessary for the conduct of any dispute resolution process under this Agreement;
 - (v) reasonably required for the performance of Train Control functions;
 - (vi) required under any stock exchange listing requirement or rule;
 - (vii) required by the Rail Safety Regulator or an Environmental Regulator;
 - (viii) to the Operator provided that:
 - (A) the Confidential Information including any Disclosed Information disclosed to the Operator does not relate to the Access Rights for any other Access Holder (other than the End User) or Railway Operator; and
 - (B) the End User must ensure that the Operator keeps the Confidential Information including the Disclosed Information

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confidential on terms no less onerous than this **clause 41**; and

- (C) for the purposes of **clause 41.2(b)(viii)**, if the Operator comes into possession of any information (regardless of its form) from Aurizon Network which is:
 - (1) in any way associated with this Agreement, the Train Services for the relevant Train Service Type or Aurizon Network's relationship, contractual or otherwise, with the End User; and
 - (2) which is not Disclosed Information;

then such information will be deemed to be Disclosed Information;

- (ix) where the Discloser is Aurizon Network, to a Railway Operator (other than the Operator) provided that:
 - (A) the End User has requested the transfer of some or all of its Access Rights under this Agreement to the Railway Operator under **clause 41**; and
 - (B) the Confidential Information disclosed to the Railway Operator only relates to those Access Rights;
- (x) to the Recipient's banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the Discloser;
- (xi) to an expert for the purposes of a dispute resolution process, or an auditor for the purposes of an audit, under a "User Funding Arrangement" (as defined in the Access Undertaking), if such expert or auditor has executed a legally enforceable confidentiality deed in favour of the Discloser;
- (xii) to legal practitioners and accountants of the Recipient or a Related Body Corporate of it:
 - (A) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;
 - (B) who are under a duty of confidentiality to the Recipient; and
 - (C) who have been advised of the confidential nature of the Confidential Information; or
- (xiii) otherwise permitted or required in accordance with this Agreement or the Access Undertaking.

41.3 Discloser may give certain directions

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

- (a) subject to the lawful requirements of the Recipient to retain copies of Confidential Information for business records and document control registers, to immediately deliver to the Discloser the Confidential Information specified by the Discloser;
- (b) to immediately destroy the Confidential Information specified by the Discloser; and
- (c) where the Recipient has disclosed the Confidential Information to any Third Party, to procure the compliance by that Third Party with the requirements of this **clause 41.3** as if that Third Party were the Recipient.

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(2) the Operator does not bring any Claim against Aurizon Network, its directors and/or Aurizon Network's Staff in respect of any disclosure of Confidential Information or Disclosed Information; and;

41.4 PPS Act

In addition to the obligations imposed under this **clause 41**, each Party agrees to not disclose any information of the kind described in section 275(1) of the PPS Act, including:

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

41.5 Survival

Without limiting **clause 44.1**, this **clause 41** survives the destruction of Confidential Information and the delivery-up of Confidential Information in accordance with this Agreement.

41.6 Injunctive relief

The Recipient acknowledges and agrees that a breach of this **clause 41** would be harmful to the business interests of the Discloser and that, as a result, the Discloser may seek urgent injunctive relief, specific performance or a similar remedy to prevent the occurrence or continuance of any breach or suspected breach of this **clause 41** in addition to any other remedies available at law or in equity under or independently of this Agreement.

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42 Intellectual property

- (a) Subject to **clause 42(b)**, all intellectual property rights in any material supplied or made available by one Party (first Party) to the other Party remains the intellectual property of the first Party and cannot be reproduced or used for any purpose other than the purpose for which it was supplied without the prior written approval of the first Party.
- (b) The End User grants (and must ensure the Operator grants) Aurizon Network an irrevocable, perpetual, non-exclusive, royalty-free license to use, modify and reproduce the intellectual property rights in any material supplied or made available by the End User (or the Operator) to Aurizon Network for purposes in connection with:
 - (i) this Agreement
 - (ii) capacity assessment;
 - (iii) the investigation and planning of Infrastructure Enhancements; and
 - (iv) Aurizon Network complying with its obligations under the Access Undertaking.

subject always to **clause 41**.

43 Notices

43.1 Form of Notice

Any notice, demand, invoice, certification, process or other communication authorised or required to be given by a Party to another under this Agreement (other than a Train Control Direction or a direction from the Incident Commander) (Notice) must be in writing and signed by an authorised officer of that Party and may, if agreed by Aurizon Network, be in electronic form.

43.2 Method of service

Subject to **clause 43.5**, a Notice may be given by being:

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

43.3 Deemed Notice

Subject to **clause 43.5**, a Notice given in accordance with this **clause 43** is deemed to be given if:

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

43.4 Addresses for notices

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

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43.5 Train Control Direction or Incident Commander's direction

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

44 General

44.1 Survival

This **clause 44** and **clauses 5, 6, 15, 22.6, 29.9, 30, 32, 33, 35, 38, 40** and **41** survive the expiration or termination of this Agreement.

44.2 Amendment

Except as otherwise provided in this Agreement, any variation or amendment to this Agreement must be in writing signed by both Parties.

44.3 Entire agreement

- (a) This Agreement, the Schedules and other documents referred to in the Schedules constitute the entire understanding and agreement between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and are of no force or effect whatever, and no Party is liable to any other Party in respect of those matters.

- (c) The End User has not relied on any representations made by Aurizon Network relating to the subject matter of this Agreement or otherwise.
- (d) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

44.4 Non-merger

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

44.5 Authority to enter into agreement

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

44.6 Consents and approvals

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

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44.7 Relationship

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

44.8 Certificate

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

44.9 Costs

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

44.10 Duty

- (a) The End User is, as between the Parties, liable for and must duly pay all stamp duty (including any fine or penalty) on or relating to this Agreement and any document executed under or in connection with it.
- (b) If Aurizon Network pays any stamp duty (including any fine or penalty) on or relating to this Agreement, or any document executed under or in connection with it, the End User must reimburse Aurizon Network the amount paid upon demand.

44.11 Waiver and exercise of rights

- (a) A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

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

44.12 Computation of time

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

44.13 Severance of invalid or illegal terms

- (a) If any term of this Agreement, or its application to any Party, person or circumstance, is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatever, then:
 - (i) that term, or its application to such Party, person or circumstance, is severed from this Agreement;
 - (ii) the remainder of this Agreement, excluding the severed part, remains in force, and any term which includes the severed part applies to such Party, person or circumstance without reliance on the part severed; and
 - (iii) to the extent permissible by Law, the Parties must agree to replace the severed term, effective from the date of severance, with a valid and enforceable term which so far as possible achieves the same purpose, object or effect as the invalid, void, voidable or otherwise unenforceable term was intended to achieve and does not cause any substantial reduction in the benefits of either Party or material re-allocation of risks between the Parties.
- (b) The Parties must act reasonably and in good faith in seeking an agreement under this **clause 44.13** as to a replacement term.
- (c) If the Parties cannot agree upon a replacement term, this Agreement is continued in accordance with **clauses 44.13(a)(i) and 44.13(a)(ii)**.

44.14 Rights cumulative

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

44.15 Approvals and consents

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

44.16 Third Party Land

The End User acknowledges that:

- (a) the land specified in **item 5 of ~~schedule 3~~** (Third Party Land) is not owned or controlled by Aurizon Network; and
- (b) entry onto that Third Party Land is not included within the definition of "Access" in the Access Undertaking (as those provisions are amended or replaced from time to time), and agrees that in respect of that Third Party Land:

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- (c) the End User will comply, and will cause the Operator to comply, with the requirements of the person that owns or controls that Third Party Land (Landowner) in relation to that Third Party Land as notified to the End User by Aurizon Network from time to time;
- (d) if, after the Commencement Date, there is a change in the costs incurred by Aurizon Network due to the requirements of the Landowner in respect of that Third Party Land, then that change is deemed to be a Material Change; and
- (e) if Aurizon Network's rights in respect of that Third Party Land are terminated for any reason other than the default of Aurizon Network of any agreement that affects Aurizon Network's use of that Third Party Land or other than by agreement with the Landowner, then Aurizon Network may, by notice to the End User, suspend and/or terminate the Access Rights insofar as they relate to that part of the Nominated Network which is situated on that Third Party Land.

44.17 Implementation of agreement

- (a) Aurizon Network must promptly execute all documents and do all such acts and things as are necessary or desirable to implement and give full effect to the provisions of this Agreement.
- (b) The End User must promptly execute (and must ensure that the Operator promptly executes) all documents and do all such acts and things (and must ensure that the Operator does all such acts and things) as are necessary or desirable to implement and give full effect to the provisions of this Agreement.

44.18 Governing law and jurisdiction

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

44.19 PPS Act

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

- (ii) section 121(4) (notice by Secured Party of enforcement of Security Interest in liquid assets);
- (iii) section 125 (obligation of Secured Party to dispose of or retain Collateral after seizure);
- (iv) section 130, to the extent that it requires a party to give any notice to the other party (notice by Secured Party of disposal of Collateral);
- (v) section 132(3)(d) (obligation of Secured Party to show amounts paid to other Secured Parties in statement of account);
- (vi) section 132(4) (statement of account by Secured Party if it does not dispose of Collateral within prescribed period);
- (vii) section 135 (notice by Secured Party of retention of Collateral);
- (viii) section 142 (redemption of Collateral); and
- (ix) section 143 (reinstatement of Security Agreement).

45 Most favoured nation status

[Note: There is merit in the MFN extending to Train Scheduling. The effectiveness of the MFN is limited if there is no audit right.]

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45.1 Notice of contravention of price differentiation limitations

If the End User believes on reasonable grounds that:

- (a) Aurizon Network has entered into an Access Agreement with another Access Holder for a Network Train Service that transports the same specified commodity in the same specified geographic area as a Train Service under this Agreement (Like Train Service); and
- (b) the charge for Access applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in the Access Undertaking (including the value of the access charge, take or pay terms and terms of payment), **[Note: "Access Charges" are specific to this Agreement.]**

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then the End User may provide written notification to Aurizon Network which must include the reasons why the End User considers this to be the case.

45.2 Aurizon Network's response

Within 20 Business Days after receipt of such notification, Aurizon Network must advise the End User:

- (a) whether or not Aurizon Network agrees that the Access Agreement with the other Access Holder is for a Like Train Service and, if not, the reasons why Aurizon Network considers this to be the case;
- (b) if Aurizon Network agrees that the Access Agreement with the other Access Holder is for a Like Train Service, whether or not Aurizon Network agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in the Access Undertaking and, if not, the reasons why Aurizon Network considers that the access charge applicable to the Like Train Service has not been developed in contravention of the limits on price differentiation; and
- (c) if Aurizon Network agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation, then within 40 Business Days after the advice provided under this **clause 45.2**, Aurizon Network must advise the End User:
 - (i) whether or not Aurizon Network has been able to vary the access charge applicable to the Like Train Service such that it no longer

contravenes the limits on price differentiation set out in the Access Undertaking; or

- (ii) if Aurizon Network has not been able to vary the access charge applicable to the Like Train Service, that Aurizon Network agrees to the reduction of the Access Charges payable by the End User, including the amount of the proposed reduced Access Charges.

45.3 Disputes

If the End User does not agree with Aurizon Network's response to the End User's notification under **clause 0**, the dispute must be referred to an Expert for resolution in accordance with **clause 35.3**.

45.4 Interaction with other Access Holders

If:

- (a) another Access Holder provides Aurizon Network with notification that it believes that some or all of the End User's Train Services are a "Like Train Service" as defined in the other Access Holder's Access Agreement to a Network Train Service operated by the other Access Holder, and that the Access Charge has been developed in contravention of the limits on price differentiation set out in the Access Undertaking; and
- (b) Aurizon Network agrees that this Agreement is for a Like Train Service and that any Access Charge under this Agreement has been developed in contravention of the limits on price differentiation set out in the Access Undertaking,

then Aurizon Network has the right by notice to the End User to vary the Access Charge such that it no longer contravenes the limits on price differentiation set out in the Access Undertaking.

46 [JV Participants and liability

[Drafting note: Optional clause to be included if the End User is a Joint Venture.]

46.1 Applicability

This **clause 46** only applies if **item 5** of **schedule 1** states that it applies.

46.2 Warranty

The End User warrants that it enters into this Agreement as agent for the JV Participants in their respective percentage interests in the Joint Venture from time to time.

46.3 JV Participants and percentage interests

- (a) The percentage interest of the JV Participants in the Joint Venture will be as notified in writing by the End User to Aurizon Network from time to time.
- (b) As at the date of this Agreement, the respective percentage interests of the JV Participants in the Joint Venture are as specified in **item 7** of **schedule 1**.

46.4 Liability of JV Participants

- (a) The liability of each JV Participant under this Agreement will, subject to **clause 46.4(c)**, be several in respect of Financial Obligations in proportion to their respective percentage interests.
- (b) Each JV Participant will be jointly and severally liable in respect of the performance of any obligations under this Agreement that are not Financial Obligations.
- (c) If a JV Participant is in default of a Financial Obligation, and the End User has not given notice to Aurizon Network identifying the defaulting JV Participant within five Business Days after the date of Aurizon Network giving a notice to

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the End User identifying the default, all JV Participants will be jointly and severally liable for the performance of the Financial Obligation.

- (d) Any notice given by the End User under **clause 46.4(c)** is conclusive evidence that the JV Participant specified in the notice is the JV Participant that is in default and the notice binds all JV Participants.

46.5 Suspension and termination

For the avoidance of doubt, where a Suspension Event or Termination Event is attributable to or relates to an act or omission of one or more (but not all) of the JV Participants, Aurizon Network will be entitled to suspend or terminate (as applicable) this Agreement under **clause 37** and **38** (as applicable) despite the Suspension Event or Termination Event (as applicable) not being attributable to or relating to an act or omission of all of the JV Participants.]

Schedule 1

Reference Schedule

Item	Description	Details	
End User details			
1	End User	Name:	[insert]
		ABN:	[insert]
Particulars for Notices			
2	Address for Notices	Aurizon Network	
		Address:	[insert]
		Facsimile:	[insert]
		Email:	[insert]
		Attention:	[insert]
		End User	
		Address:	[insert]
		Facsimile:	[insert]
		Email:	[insert]
		Attention:	[insert]
Security Details			
3	Does clause 6.1 apply?	[yes/no]	
4	Security Amount	<i>[Note: Please refer to our submission in relation to the Security Amount]</i>	
Joint Venture			
5	Does clause 46 apply?	[yes/no]	
6	Name of Joint Venture	[insert name of Joint Venture or "Not Applicable" if not Joint Venture]	
7	JV Participants and percentage interests	Name of JV Participant	Percentage Interest
		[insert name]:	[insert name]%
		[insert name]:	[insert name]%
		[insert name]:	[insert name]%

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 (a) the maximum amount of aggregate TOP Charges (ATPY) for all Train Service Types under this Agreement that could potentially be payable during the applicable Year if the End User does not cause the Operator to operate any Train Services for a reason other than Aurizon Network Cause; and¶
 (b) the sum of the maximum amount of the deductibles for each of the insurance policies for any one loss as specified in **Schedule 8**.

Schedule 2

Train Service Descriptions

Part A - Matters applicable to specific Train Service Types

1 Train Service Type #1

1.1 Key characteristics of Train Service Type Details of dates

Details of dates	
Train Service Compliance Date	[insert]
Train Service Compliance Date	[insert]
Train Service Expiry Date	[insert]
General details	
Commodity	Coal
Coal System	[insert]
Reference Train Service	[insert]
Details of route and facilities	
Origin	[insert]
Destination	[insert]
Loaded distance from Origin to Destination (km)	[insert]
Empty distance from Destination to Origin (km)	[insert]
Loading Facility (at Origin)	[insert]
Unloading Facility (at Destination)	[insert]
Depot	[insert]
Though Running Train Service Type	[yes/no]
Details of maximum dwell times	
Maximum Time at Loading Facility (hours)	[insert]
Maximum Time at Unloading Facility (hours)	[insert]
Maximum Time at Depot (hours)	[insert]
Maximum Other Dwell Times (hours)	[insert]
Maximum Sectional Running Times	
Maximum Sectional Running Times	The Maximum Sectional Running Time for a Section for the Train Service Type are set out in appendix A to this Schedule 2 .
Nominated Monthly Train Services	
Nominated Monthly Train Services	The Nominated Monthly Train Services for the Train Service Type is set out in appendix B to this Schedule 2 .
Maximum Payload	
Maximum Payload	The Maximum Payload for the Train Service Type is set out in appendix B to this Schedule 2 .

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Conditional Access Rights	
Does clause 9 apply?	[yes/no] [If yes, insert description of Expansion]
Operator	
Name:	[insert]
Address:	[insert]
Facsimile:	[insert]
Email:	[insert]
Attention:	[insert]

1.2 Special operating restrictions

Without limiting the special operating restrictions which are specified in **item 1.2 of Part B** of **Schedule 2**, as being applicable to all Train Service Types, in scheduling Train Services for the Train Service Type in accordance with the Network Management Principles, Aurizon Network will comply with the following special operating restrictions (if any):

Item	Special operating restriction
1	[insert]
2	[insert]

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1.3 Cycle description

Subject to:

- (a) any Train Control Direction given to the Operator in respect of a Train Service;
- (b) any exceptions which are specified in **part B** of this **Schedule 2**, as being applicable to all Train Service Types; and
- (c) any exceptions specified in the table below,

the End User must ensure that the Operator operates Train Services for the Train Services Type over the most direct route on the Nominated Network between the Origin and Destination and Destination and Origin (as applicable).

Item	Exceptions
1	[insert]
2	[insert]

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1.4 Permitted Train Movements on the Nominated Network

Item	Permitted Movements
1	[Insert any permitted Train Movements by the End User on the Nominated Network other than direct corridor travel of the Train Service in accordance with the specified Sectional Running Times and Dwell Times.]
2	[insert]

Part B - Matters applicable to all Train Service Types

1 Matters applicable to all Train Service Types

1.1 Overview

The matters set out in this **part B** of **Schedule 2** are applicable to all Train Service Types and form part of the Train Service Description for all Train Service Types.

1.2 Special operating restrictions

Without limiting the special operating restrictions for a Train Service Type which are specified in **item 1.2** of **Part A** of **Schedule 2**, (if any), in scheduling Train Services in accordance with the Network Management Principles, Aurizon Network will comply with the following special operating restrictions:

Item	Special operating restriction
1	[insert]
2	[insert]

1.3 Cycle description

Subject to the exceptions set out in the table below, Train Services Cycle description is the most direct route over the Nominated Network between the Origin and Destination and Destination and Origin (as applicable).

Item	Exceptions
1	[insert]
2	[insert]

1.4 Stowage

Item	Stowage requirements
1	[Insert short term Stowage requirements additional to that provided in the relevant Reference Tariff Provisions.]
2	[insert]

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Appendix A to Schedule 2

Sectional Running Times

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1 Train Services that are Reference Train Services

[Drafting note: This item will set out the Maximum Sectional Running Times for Train Services that a Reference Train Services.]

Maximum Section Running Times: Reference Train Services

Location From	Location To	Empty (mins)	Loaded (mins)

Standard Section Running Times: Reference Train Services

Location From	Location to	Empty (mins)			Loaded (mins)		
		Pass to stop	Start to Pass	Start to Stop	Pass to Stop	Start to Pass	Start to Stop

2 Train Services that are not Reference Train Services

[Drafting note: If a Train Service for a Train Service Type is a not a Reference Train Service, the Maximum Sectional Running Times for Train Services for that Train Service Type for each Section will be specifically set out in this item.]

Maximum Section Running Times: Non-Reference Train Services

Location From	Location To	Empty (mins)	Loaded (mins)

Standard Section Running Times: Non-Reference Train Services

Location From	Location to	Empty (mins)			Loaded (mins)		
		Pass to stop	Start to Pass	Start to Stop	Pass to Stop	Start to Pass	Start to Stop

Appendix B to Schedule 2

Nominated Monthly Train Services

1 Train Service Type #1

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

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

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

where:

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

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

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

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

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Appendix C to Schedule 2

Conditional Access Rights

1 Train Service Type #1

Details of Expansion	
Details of Expansion	[insert]
Details of Segments	
Details of Segment #1	Description: [insert] Initial Available Capacity: [insert]
Details of Segment #2	Description: [insert] Initial Available Capacity: [insert]
Details of Segment # [#]	Description: [insert] Initial Available Capacity: [insert]

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Schedule 3

Nominated Network

1 Nominated Network

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

[Insert diagram(s)/table(s)]

2 Parts of Nominated Network subject to **clause 36.5**

For the purpose of **clause 36.5**, the specified parts of the Nominated Network are those parts of the Nominated Network described by reference the diagrams and/or tables set out below:

[Insert diagram(s)/table(s) (if applicable)]

3 Train Control centres and signal cabins

The movement of the End User's or the Operator's Trains while on the Nominated Network will be controlled by the Train Control centres and signal cabins at locations to be notified by Aurizon Network from time to time.

4 Parts of the Nominated Network

For the purpose of paragraph (d) of the definition of Material Change, the specified parts of the Nominated Network are those parts of the Nominated Network described by reference to the diagrams and/or tables set out below:

[Insert diagram(s)/table(s) (if applicable)]

5 Third Party Land

[Insert diagram(s)/table(s) (if applicable)]

6 Weighbridges and Overload Detectors

6.1 Weighbridges

Location	Party responsible for Weighbridge	Tolerance
[insert]	[insert]	[The tolerances required to achieve verification under the National Measurement Act 1960 (Cth)]

6.2 Overload Detectors

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

Schedule 4

Access Charges [\[Refer to Schedule F Submissions\]](#)

1 Definitions

1.1 Definitions

In this [Schedule 4](#):

Access Charge Rate for a Train Service Type means the rates specified in [item 2](#) of this [Schedule 4](#) for the Train Service Type.

Access Charges:

- (a) for a Billing Period means the amount calculated in accordance with [item 3.1](#) of this [Schedule 4](#) for the Billing Period; and
- (b) for a Train Service Type for a Billing Period means the amount calculated in accordance with [item 3.2](#) of this [Schedule 4](#) for the Train Service Type and Billing Period.

Access Holder Access Agreement has the meaning given in the Access Undertaking.

Adjustment Charge for a Billing Period means the amount calculated in accordance with [item 3.11](#) of this [Schedule 4](#) for the Billing Period.

Advice Date in respect of a Change in Reference Tariff Provisions means the date on which the QCA's decision making or approving the Change in Reference Tariff Provisions is first published by the QCA.

Allocated Tariff 1 Charge for a Train Service Type for a Billing Period means the amount calculated in accordance with [item 3.5](#) of this [Schedule 4](#) for the Train Service Type and Billing Period.

Allocated Tariff 2 Charge for a Train Service Type for a Billing Period means the amount calculated in accordance with [item 3.6](#) of this [Schedule 4](#) for the Train Service Type and Billing Period.

Change in Reference Tariff Provisions means any change (including variation, repeal or replacement) of:

- (a) the Reference Tariff Provisions; or
- (b) the Reference Tariffs (including the creation of a new Reference Tariff), made or approved by the QCA from time to time.

Corresponding Train Service for a Train Service Type means a Network Train Service which has an origin and destination which is the same as the Origin and Destination for the Train Service Type and End User which is the same as the Customer for the Train Service Type and operated under an Access Agreement.

Electric Energy Charge for a Train Service Type for a Billing Period means the amount calculated in accordance with [item 3.8](#) of this [Schedule 4](#) for the Train Service Type and Billing Period.

Electric Tariff Charge for a Train Service Type for a Billing Period means the amount calculated in accordance with [item 3.7](#) of this [Schedule 4](#) for the Train Service Type and Billing Period.

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End User means in respect of Network Train Services operated in relation to an origin to destination, the person who is either the "Customer" (as defined under the Access Undertaking) for those Network Train Services or the Access Holder for those Network Train Services (but who has no "Customer" (as defined under the Access Undertaking)) under an Access Agreement.

Environment Compliance Charge for a Billing Period means the amount calculated in accordance with **item 3.12** of this **Schedule 4** for the Billing Period.

Escalation Date means each 1 July.

Gross Tonnes for a Train Service (whether loaded or empty) operated for a Train Service Type means the amount which is the sum of:

- (a) for each locomotive comprised in the Train Service, the Maximum Desirable Gross Tonnage for that locomotive;
- (b) for each loaded or partly loaded Wagon comprised in the Train Service:
 - (i) if there is a functioning Weighbridge located en route between the Origin and Destination for the Train Service Type, the mass of the Wagon as determined at such Weighbridge (provided that if there is more than one functioning Weighbridge located en route between the Origin and Destination for the Train Service Type, the mass will be determined by the Weighbridge that is located closest to the Origin for the Train Service Type); and
 - (ii) if there is no functioning Weighbridge located en route between the Origin and Destination for the Train Service Type, the Maximum Desirable Gross Tonnage for the Wagon;
- (c) for each empty Wagon comprised in the Train Service, the Tare Weight for the Wagon; and
- (d) for all other Rollingstock comprised in the Train Service, the Maximum Desirable Gross Tonnage for the Rollingstock.

Gtk for an operated Train Service (whether loaded or empty) for a Train Service Type means the amount which is the Gross Tonnes for the Train Service for the Train Service Type multiplied by:

- (a) if the Train Service was operated from the Origin to Destination for the Train Service Type, the number of kilometres of the loaded distance from Origin to Destination for the Train Service Type as specified in the Train Service Description for that Train Service Type; or
- (b) if the Train Service was operated from the Destination to Origin for the Train Service Type, the number of kilometres of the empty distance from the Destination to Origin for the Train Service Type as specified in the Train Service Description for that Train Service Type.

Incremental Capacity Charge for a Train Service Type for a Billing Period means the amount calculated in accordance with **item 3.4** of this **Schedule 4** for the Train Service Type and Billing Period.

Incremental Maintenance Charge for a Train Service Type for a Billing Period is the amount calculated in accordance with **item 3.3** of this **Schedule 4** for the Train Service Type and Billing Period.

Load Variation Table means a table published by Aurizon Network with respect to the relevant Reference Train Service or Train Service Type identifying allowable overloads for Wagons and bogies and specifying relevant Operational Constraints and additional charges, where applicable, for such overloads.

Net Tonnes for a Train Service (whether loaded or empty) operated for a Train Service Type means:

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1.3 Final Year of Agreement

In this ~~Schedule 4~~, the final Year of this Agreement will be the 12 month period commencing on the 1 July ~~immediately~~ occurring before the date of the expiration or termination of this Agreement and ending on the ~~following~~ 30 June.

[QRC drafting note: Amended to clarify position for Agreements expiring on 30 June]

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2 Access Charge Rates

Description of Access Charge Rate	Definition	Access Charge Rate (ex GST)	
		\$	Unit
Train Service Type # [insert]			
Incremental Maintenance Tariff	AT ₁	[insert]	\$ / '000 Gtk
Incremental Capacity Tariff	AT ₂	[insert]	\$ / RTP
Allocated Tariff 1	AT ₃	[insert]	\$ / '000 Ntk
Allocated Tariff 2	AT ₄	[insert]	\$ / Net Tonne
Electric Tariff	AT ₅	[insert]	\$ / '000 Gtk
Electric Energy Charge	EC	[insert]	\$ / '000 Gtk
QCA Levy	QL	[insert]	\$ / Net Tonne
Train Service Type # [insert]			
Incremental Maintenance Tariff	AT ₁	[insert]	\$ / '000 Gtk
Incremental Capacity Tariff	AT ₂	[insert]	\$ / RTP
Allocated Tariff 1	AT ₃	[insert]	\$ / '000 Ntk
Allocated Tariff 2	AT ₄	[insert]	\$ / Net Tonne
Electric Tariff	AT ₅	[insert]	\$ / '000 Gtk
Electric Energy Charge	EC	[insert]	\$ / '000 Gtk
QCA Levy	QL	[insert]	\$ / Net Tonne

3 Calculation of Access Charges

3.1 Calculation of Access Charges for Billing Period

The Access Charges for a Billing Period is the sum of each of the following for Billing Period:

- (a) the Access Charge for each Train Service Type for the Billing Period (as calculated in accordance with **item 3.2** of this ~~Schedule 4~~ for each Train Service Type for the Billing Period);
- (b) the Adjustment Charge (if any) applicable to the Billing Period; and
- (c) the Environment Compliance Charge (if any) applicable to the Billing Period.

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3.2 Calculation of Access Charges for Train Service Type and Billing Period

The Access Charges for a Train Service Type for a Billing Period is the sum of each of the following for the Train Service Type and Billing Period:

- (a) the Incremental Maintenance Charge;

- (b) the Incremental Capacity Charge;
- (c) the Allocated Tariff 1 Charge;
- (d) the Allocated Tariff 2 Charge;
- (e) the Electric Tariff Charge;
- (f) the Electric Energy Charge;
- (g) the QCA Levy Charge;
- (h) if the Billing Period is a Billing Period ending on 30 June, the TOP Charge for the Train Service Type for the Year in which that 30 June occurs; and
- (i) the Overload Charge (if any);

3.3 Calculation of Incremental Maintenance Charge

The Incremental Maintenance Charge for a Train Service Type for a Billing Period is the amount (expressed in dollars) calculated in accordance with the following formula:

$$IMC = (AT_1 \times GTK) / 1000$$

where:

- IMC = the Incremental Maintenance Charge for the relevant Train Service Type and Billing Period
- AT₁ = AT for the relevant Train Service Type
- GTK = the amount which is the sum of the GtK for all Train Services for the relevant Train Service Type operated during the relevant Billing Period

3.4 Calculation of Incremental Capacity Charge

The Incremental Capacity Charge for a Train Service Type for a Billing Period is the amount (expressed in dollars) calculated in accordance with the following formula:

$$ICC = AT_2 \times RTP$$

where:

- ICC = the Incremental Capacity Charge for the relevant Train Service Type and Billing Period
- AT₂ = AT₂ for the relevant Train Service Type
- RTP = the sum of number of Reference Train Paths used by an individual Train Service for that Train Service Type operated during the relevant Billing Period

3.5 Calculation of Allocated Tariff 1 Charge

The Allocated Tariff i Charge for a Train Service Type for a Billing Period is the amount (expressed in dollars) calculated in accordance with the following formula:

$$ALT1 = (AT_3 \times NTK) / 1000$$

where:

- ALT1 = the Allocated Tariff 1 Charge for the relevant Train Service Type and Billing Period
- AT₃ = AT₃ for the relevant Train Service Type
- NTK = the amount which is the sum of the NtK for all Train Services (loaded and empty) for the relevant Train Service Type operated during the relevant Billing Period

3.6 Calculation of Allocated Tariff 2 Charge

The Allocated Tariff 2 Charge for a Train Service Type for a Billing Period is the amount (expressed in dollars) calculated in accordance with the following formula:

$$ALT2 = AT_4 \times NT$$

where:

- ALT2 = the Allocated Tariff 2 Charge for the relevant Train Service Type and Billing Period
- AT₄ = AT₄ for the relevant Train Service Type
- NT = the amount which is the sum of the Net Tonnes for all Train Services (loaded and empty) for the relevant Train Service Type operated during the relevant Billing Period

3.7 Calculation of Electric Tariff Charge

The Electric Tariff Charge for a Train Service Type for a Billing Period is the amount (expressed in dollars) calculated in accordance with the following formula:

$$ET = (AT_5 \times eGTK) / 1000$$

where:

- ET = the Electric Tariff Charge for the relevant Train Service Type and Billing Period
- AT₅ = AT₅ for the relevant Train Service Type
- eGTK = the amount which is the sum of the Gtk for all electric locomotive hauled Train Services (loaded and empty) for the relevant Train Service Type operated during the relevant Billing Period

3.8 Calculation of the Electric Energy Charge

The Electric Energy Charge for a Train Service Type for a Billing Period is the amount (expressed in dollars) calculated in accordance with the following formula:

$$EEC = (EC \times eGTK) / 1000$$

where:

- EEC = the Electric Energy Charge for the relevant Train Service Type and Billing Period
- EC = EC for the relevant Train Service Type
- eGTK = the amount which is the sum of the Gtk for all electric locomotive hauled Train Services (loaded and empty) for the relevant Train Service Type operated during the relevant Billing Period

3.9 Calculation of QCA Levy Charge

The QCA Levy Charge for a Train Service Type for a Billing Period is the amount (expressed in dollars) calculated in accordance with the following formula:

$$QLC = QL \times NT$$

where:

- QLC = the QCA Levy Charge for the relevant Train Service Type and Billing Period
- QL = QL for the relevant Train Service Type
- NT = the amount which is the sum of the Net Tonnes for all Train Services (loaded and empty) for the relevant Train Service Type operated during the Billing Period

3.10 Calculation of Overload Charge

Overload Charges will be levied at the rate specified in the relevant Load Variation Table published by Aurizon Network from time to time. The method of calculation and required payment method for Overload Charges will be advised.

3.11 Calculation of Adjustment Charge

Adjustment Charges (if any) for a Billing Period will be calculated and approved in accordance with the Access Undertaking.

3.12 Calculation of Environment Compliance Charge

The Environment Compliance Charge (if any) for Billing Period will be any "Environment Compliance Charge" (as defined under the Access Undertaking) applicable to the Billing Period.

4 Calculation of TOP Charge

[QRC drafting note: The QRC's concerns regarding the definition of "Aurizon Network Cause" discussed in the QRC's submission are particularly relevant in the calculation of the TOP Charge]

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4.1 Variables used in formulas in this item 4

If a variable (for example, "ATPY" and "NTSY") used in a formula in this **item 4** of **Schedule 4** is defined for that formula, unless provided otherwise, that variable has the same meaning in each other formula in which it is used in this **item 4** of **Schedule 4**.

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4.2 System test

The TOP Charge for a Train Service Type for a Year will be zero if:

$$SGtky > (FGtkY - NGtkY)$$

where:

SGtkY = the System Gtk for the relevant Year

FGtkY = the System Forecast for the relevant Year

NGtkY = the "gtk" (as defined in the Access Undertaking) not achieved due to the non-operation of Network Train Services for Aurizon Network Cause on the relevant Coal System for the relevant Year

4.3 Calculation of TOP Charge

Subject to **item 4.2** of this **Schedule 4**, the TOP Charge for a Train Service Type for a Year is the amount (expressed in dollars) calculated in accordance with the following formula (provided that, if the amount calculated in accordance with the following formula is less than zero, the TOP Charge for the Train Service Type for the Year will be zero):

$$ATP = ATPY - ORA - AHRA - SXRA$$

where:

ATP = the TOP Charge for the relevant Train Service Type and Year

ATPY = ATPY for the relevant Train Service Type and Year calculated in accordance with **item 4.4** of this **Schedule 4**.

ORA = ORA for the relevant Train Service Type and Year calculated in accordance with **item 4.5** of this **Schedule 4**.

AHRA = AHRA for the relevant Train Service Type and Year calculated in accordance with **item 4.6** of this **Schedule 4**.

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SXRA = SXRA for the relevant Train Service Type and Year calculated in accordance with item 4.7 of this [Schedule 4](#)

4.4 Calculation of ATPY

ATPY for a Train Service Type for a Year is the amount calculated in accordance with the following formula:

$$ATPY = AT_2 * RTP * (CNTSY - NNTSY - NTSY) + AT_3 * (CNTKY - NNTKY - NTKY) / 1000 + AT_4 * (CNTY - NNTY - NTY)$$

where:

- AT₂ = AT₂ for the relevant Train Service Type
- RTP = the Reference Train Path for the relevant Train Service Type
- CNTSY = the number of Train Services for the relevant Train Service Type that the End User was entitled to operate during the relevant Year
- NNTSY = the number of Train Services for the relevant Train Service Type that were not able to be operated during the relevant Year solely as a result of Aurizon Network Cause
- NTSY = the number of Train Services (loaded and empty) for the relevant Train Service Type that were operated during the relevant Year
- AT₃ = AT₃ for the relevant Train Service Type
- CNTKY = the sum of the Ntk that would have been determined for the relevant Year had all of the Train Services for the relevant Train Service Type that the End User was entitled to operate during the relevant Year been operated, where Ntk is determined by multiplying the applicable System Nominal Train Payload for the relevant Train Service Type by the CNTSY for loaded Train Services for the relevant Train Service Type by the distance from Origin to Destination specified in the Train Service Description for the relevant Train Service Type
- NNTKY = the sum of the Ntk of the Train Services for the relevant Train Service Type that were not able to be operated during the relevant Year solely as a result of Aurizon Network Cause, where Ntk is determined by multiplying the applicable System Nominal Train Payload for the relevant Train Service Type by the NNTSY for loaded Train Services for the relevant Train Service Type by the distance from Origin to Destination specified in the Train Service Description for the relevant Train Service Type
- NTKY = the sum of the Ntk for all Train Services for the relevant Train Service Type operated during the relevant Year, where Ntk is determined by multiplying the applicable System Nominal Train Payload for the relevant Train Service Type by the NTSY for loaded Train Services for the relevant Train Service Type by the distance from Origin to Destination specified in the Train Service Description for the relevant Train Service Type
- AT₄ = AT₄ for the relevant Train Service Type
- CNTY = the sum of the Nt that would have been determined for the relevant Year had all of the Train Services for the relevant Train Service Type that the End User was entitled to operate during the relevant Year been operated, where Nt is determined by multiplying the applicable System Nominal Train Payload for the relevant Train Service Type by the CNTSY for loaded Train Services for the relevant Train Service Type
- NNTY = the sum of the Nt of the Train Services for the relevant Train Service Type that were not able to be operated during the relevant Year solely

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as a result of Aurizon Network Cause, where Nt is determined by multiplying the applicable System Nominal Train Payload for the relevant Train Service Type by the NNTSY for loaded Train Services for the relevant Train Service Type

NTY = the sum of the Nt for all Train Services for the relevant Train Service Type operated during the relevant Year, where Nt is determined by multiplying the applicable System Nominal Train Payload for the relevant Train Service Type by the NTSY for loaded Train Services for the relevant Train Service Type

[QRC drafting note: The use of System Nominal Train Payloads in the NTKY and NTY definitions seems inconsistent with Schedule F, Clause 2.4(d)(iii)(B)(3). Schedule F deducts from the TOP calculation the rtp, nt and ntk "railed" for the relevant year, rather than deemed amounts based on the System Nominate Train Payload. Under the current drafting contained in Schedule 4, if an Access Holder was the rail trains with an average payload significantly below the System Nominal Train Payload, the Access Holder would be:

- billed according to actual weights of the wagons (assuming that there is a functional weighbridge); and*
- deemed, for ToP purposes, to have railed wagons of the standard payload.*

The result will be that the Access Holder will not make its expected contribution to Total Actual Revenue. The reverse would apply in the less likely case of payloads exceeding the standard.

The QRC suggests that 'actual' ntk's and nts for the purpose of the ToP calculation should be as per the invoices for the relevant period. This will be actual weights where the weighbridge is in operation, and 'Maximum Desirable' weights in other cases. Schedule F, Clause 2.4(d)(iii)(B)(3) should be amended to refer to the rtp, nt and ntk "which Aurizon Network is entitled to bill" rather than "railed".]

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4.5 Calculation of ORA - the 'mine cap'

[QRC drafting note: The QRC has requested that Aurizon explain the operation of this formula. The QRC suggests that mine capping should apply in regard to a group of mines with the same ownership located in the same system. This will require substantial amendment to this formula. Please note that we have not included these amendments in the Standard agreements.]

ORA for a Train Service Type for a Year is the amount calculated in accordance with the following formula (if the amount calculated in accordance with the following formula is less than zero, the ORA for the Train Service Type for the Year will be zero):

$$ORA = XORA \frac{(ICCNTSY_m + ALT2CNTSY_m + ALT2CNTSY_m)}{\sum_0^n (ICCNTSY_0 + ALT1CNTSY_0 + ALT2CNTSY_0)}$$

Where:

XORA = for a Train Service Type for a Year is the amount which is the lesser of:

- the ATPY for the relevant Train Service Type for the relevant Year; and
- the sum of the ICC_{CTS}, ALT1_{CTS} and ALT2_{CTS} earned by Aurizon Network for Corresponding Train Services for the Train Service Type operated by, or for, a different Access Holder which exceed the number of Corresponding Train Services which that Access Holder was entitled to operate, or have operated for it, during the relevant Year (provided that such amount earned by Aurizon Network has not already

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been taken into account, or will not be taken into account, in the calculation of "ORA" under a corresponding provision of another Access Agreement)

- ALT1_{CTS} = respect of a Corresponding Train Service, that part of the access charges payable to Aurizon Network in respect of the operation of that Corresponding Train Service which is calculated by reference to the "Base Access Charge" or "Access Charge Rate" (however described) referred to as "AT₃"
- ALT2_{CTS} = in respect of a Corresponding Train Service, that part of the access charges payable to Aurizon Network in respect of the operation of that Corresponding Train Service which is calculated by reference to the "Base Access Charge" or "Access Charge Rate" (however described) referred to as "AT₄"
- ICC_{CTS} = in respect of a Corresponding Train Service, that part of the access charges payable to Aurizon Network in respect of the operation of that Corresponding Train Service which is calculated by reference to the "Base Access Charge" or "Access Charge Rate" (however described) referred to as "AT₂"
- ALT1_{CNTSY} = in respect of a Corresponding Train Service, that part of the access charges that would have been payable had the operator of the Corresponding Train Service operated all Train Services it was entitled to operate during the relevant Year which is calculated by reference to the "Base Access Charge" or "Access Charge Rate" (however described) referred to as "AT₃"
- ALT2_{CNTSY} = in respect of a Corresponding Train Service, that part of the access charges that would have been payable had the operator of the Corresponding Train Service operated all Train Services it was entitled to operate during the relevant Year which is calculated by reference to the "Base Access Charge" or "Access Charge Rate" (however described) referred to as "AT₄"
- ICCC_{CNTSY} = in respect of a Corresponding Train Service, that part of the access charges that would have been payable had the operator of the Corresponding Train Service operated all Train Services it was entitled to operate during the relevant Year which is calculated by reference to the "Base Access Charge" or "Access Charge Rate" (however described) referred to as "AT₂"
- m = the relevant Train Service Type in this Agreement in respect of a Corresponding Train Service where NTSY is less than CNTSY
- o = all Corresponding Train Services in other Access Agreements where NTSY is less than CNTSY
- CNTSY = as defined in item 4.4 of this [Schedule 4](#)
- NTSY = as defined in item 4.4 of this [Schedule 4](#)

4.6 Calculation of AHRA - the 'operator cap'

[QRC drafting note: The QRC does not support the proposed operator capping. The QRC considers that the AHRA should be removed from the system cap formula in section 4.7 below.]

AHRA for a Train Service Type for a Year is the amount calculated in accordance with the following formula (provided that:

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- (a) if the amount calculated in accordance with the following formula is less than zero, the AHRA for the Train Service Type for the Year will be zero; and
- (b) if AHRA for the Train Service Type for the Year exceeds ATPY - ORA for the Train Service Type for the Year, AHRA for the Train Service Type for the Year will equal ATPY - ORA for the Train Service Type for the Year):

$$(AHRA_j = (XRVAH_i - AHORA) \times \frac{(ATPY_j + ORA_j)}{\sum_i^n (ATPY_j - ORA_i)}$$

where:

- Relevant Network Train Services = Network Train Services that the End User is entitled to operate in the relevant Coal System during the relevant Year under an Access Holder Access Agreement executed after 1 October 2010
- XRVAH = the sum of the ICC_i, ALT1_i and ALT2_i earned by Aurizon Network for Relevant Network Train Services operated by the End User which exceeds the number of Relevant Network Train Services
- AHORA = the sum of any ORA amounts calculated under this Agreement, another Access Agreement or a Train Operations Agreement which are attributable to Corresponding Train Services
- ICC_i = the part of the access charges payable to Aurizon Network in respect of the operation of Network Train Service in grouping i which are calculated by reference to the "Base Access Charge" or "Access Charge Rate" (however described) referred to as "AT₂"
- ALT1_i = the part of the access charges payable to Aurizon Network in respect of the operation of Network Train Service in grouping i which are calculated by reference to the "Base Access Charge" or "Access Charge Rate" (however described) referred to as "AT₃"
- ALT2_i = the part of the access charges payable to Aurizon Network in respect of the operation of Network Train Service in grouping i which are calculated by reference to the "Base Access Charge" or "Access Charge Rate" (however described) referred to as "AT₄"
- i = either:
 - (a) the Relevant Network Train Services in a relevant group as nominated in writing by the End User to Aurizon Network for the purposes of this **item 4.6 of Schedule 4** by 30 May of the relevant Year; or
 - (b) the group of the remaining Relevant Network Train Services not nominated by the End User under **paragraph (a)**
- j = the relevant Train Services Type for the relevant Year in grouping i

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4.7 Calculation of SXRA - the 'system cap'

[QRC drafting note: The QRC does not support the proposed operator capping. The QRC considers that the AHRA should be removed from the system cap formula below.]

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SXRA for a Train Service Type for a Year is the amount calculated in accordance with the following formula (if the amount calculated in accordance with the following formula is less than zero, the SXRA for the Train Service Type for the Year will be zero):

$$SXRA_k = (TR - SAR) \times \frac{(ATPY_k + ORA_k + AHRA_k)}{\sum_p^n (ATPY_p + ORA_p + AHRA_p)}$$

where:

- TR = the sum of the following amounts for the relevant Coal System for the relevant Year:

- (a) the sum of the access charges Aurizon Network is entitled to earn from "AT₂₋₄" (as defined in the Access Undertaking) under this Agreement or other Access Agreements for coal carrying Network Train Services which were operated in the relevant Coal System in the relevant Year;
- (b) the sum of any "Transfer Fees" or "Relinquishment Fees" (each as defined under the Access Undertaking) applicable to the relevant Coal System that Aurizon Network is entitled to earn and which will be included in the calculation of the "Revenue Adjustment Amounts" for "AT₂₋₄" (each as defined under the Access Undertaking) for the relevant Year;
- (c) the amount for "Take or Pay charges" (as defined under the Access Undertaking) for coal carrying Network Train Services that Aurizon Network is entitled to earn under Access Agreement executed before 30 June 2006 in accordance with those Access Agreements for the relevant Year; and
- (d) ATPY (as defined in this formula below),
less
- (e) the sum of ORA and AHRA (each as defined in this formula below).

SAR = the "System Allowable Revenue" for "AT₂₋₄" (each as defined in the Access Undertaking) for the relevant Coal System for the relevant Year

ATPY = the amount of "ATPY" that Aurizon Network was entitled to earn in relation to coal carrying Network Train Services under this Agreement or other Access Agreements renewed or executed on or after 30 June 2006 for the relevant Year (where "ATPY" is calculated in accordance with the Standard Access Agreement approved as at the date this Agreement or the relevant Access Agreement was renewed or executed)

ORA = the amount of ORA that is calculated under this Agreement and other Access Agreement for coal carrying Network Train Services renewed or executed on or after 1 October 2010 for the relevant Year (where "ORA" is calculated in accordance with the Standard Access Agreement approved at the date that this Agreement or the relevant Access Agreement was renewed or executed)

AHRA = the amount of AHRA that is calculated under a this Agreement and other Access Agreements for coal carrying Network Train Services renewed or executed on or after 1 October 2010 for the relevant Year (where "AHRA" is calculated in accordance with the Standard Access Agreement approved at the date that this Agreement or the relevant Access Agreement was renewed or executed)

p = this Agreement and other Access Agreements executed or renewed after 30 June 2006

k = the relevant Train Services Type for the relevant Year

5 Review of **Schedule 4**

5.1 Acknowledgment

The Parties agree that **items 2 to 4** of this **Schedule 4** were determined by reference to the Reference Tariff Provisions as at:

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- (a) if the Train Service Type was a Train Service Type as at the Commencement Date - the Commencement Date; or
- (b) if **Schedule 2** was varied to include the Train Service Type - the date **Schedule 2** was varied to include the Train Service Type.

5.2 Review of Schedule 4

- (a) Within 20 Business Days after the Advice Date for a Change in Reference Tariff Provisions, Aurizon Network may give the End User a notice (**Schedule 4** Variation Notice) specifying variations to:
 - (i) the Access Charge Rates for any Train Service Type;
 - (ii) the TOP Methodology; and
 - (iii) any other aspect of this **Schedule 4**.
- (b) In considering any variations to this **Schedule 4** under **item 5.2(a)** of this **Schedule 4** as a result of a Change in Reference Tariff Provisions, Aurizon Network must have regard to, amongst any other relevant matters:
 - (i) any pre-existing differences between the Access Charge Rates and the Reference Tariffs;
 - (ii) any increased costs or risk to be incurred by Aurizon Network as a result of the Change in Reference Tariff Provisions;
 - (iii) any change to Reference Tariffs (including new Reference Tariffs);
 - (iv) any change to the methodology for calculating take or pay charges under the Access Undertaking;
 - (v) any change to the characteristics of the Reference Train Service;
 - (vi) any differences between the Train Service Description for a Train Service Type and the characteristics of the Reference Train Service;
 - (vii) any change to RTP for the Train Service Type or its calculation;
 - (viii) other related factors in the Reference Tariff Provisions; and
 - (ix) the Access Undertaking.

5.3 Dispute

- (a) If Aurizon Network gives the End User a **Schedule 4** Variation Notice in respect of a Change in Reference Tariff Provisions, the End User may, within **25** Business Days after Aurizon Network gives the **Schedule 4** Variation Notice to the End User, give Aurizon Network a Dispute Notice which Disputes the variations specified in the **Schedule 4** Variation Notice in accordance with **clause 36**.
- (b) If the End User gives Aurizon Network a Dispute Notice referred to in **item 5.3(a)** of this **Schedule 4**, then, at the meeting referred to in **clause 36.2**, the chief executive officers (or their nominees) must negotiate in good faith to attempt to resolve the Dispute.
- (c) If a Dispute referred to in **item 5.3(a)** of this **Schedule 4** is not resolved in accordance with **clause 36.2**, then the Parties must refer the Dispute to an Expert to determine the Dispute in accordance with **clause 36.3** and **item 5.4** of this **Schedule 4**.
- (d) If the End User does not give Aurizon Network a Dispute Notice referred to in **item 5.3(a)** of this **Schedule 4** within the time referred to in **item 5.3(a)** of this **Schedule 4**, then:

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- (i) the variations specified in the **Schedule 4** Variation Notice will take effect on the Review Date for relevant the Change in Reference Tariff Provisions;
- (ii) the End User must not give Aurizon Network a Dispute Notice Disputing the variations specified in the **Schedule 4** Variation Notice;
- (iii) any such Dispute Notice which is given by the End User will be of no effect; and
- (iv) the End User will not have, and must not make, any Claim against Aurizon Network in respect of that Dispute.

5.4 Expert determination

If a Dispute referred in **item 5.3(a)** of this **Schedule 4** is referred to an Expert, then:

- (a) promptly after the date the Dispute is referred to the Expert, Aurizon Network must provide the Expert with documentation to support the variations specified in the **Schedule 4** Variation Notice;
- (b) the Expert must:
 - (i) undertake to keep confidential all matters coming to its knowledge by reason of the Expert's appointment and performance of its duties, other than that already in the public domain; and
 - (ii) not include such information in its reasons for reaching the determination;
- (c) the Expert must review the documentation provided by Aurizon Network under **item 5.4(a)** of this **Schedule 4** and determine whether or not the variations specified in the **Schedule 4** Variation Notice are reasonable as a result of the relevant Change in Reference Tariff Provisions;
- (d) if the Expert determines that the variations specified in the **Schedule 4** Variation Notice are reasonable as a result of the relevant Change in Reference Tariff Provisions, the variations will take effect on the Review Date for the relevant Change in Reference Tariff Provisions;
- (e) if the Expert determines that the variations specified in the **Schedule 4** Variation Notice are not reasonable as a result of the relevant Change in Reference Tariff Provisions, then:
 - (i) the Expert must determine the variations to this **Schedule 4** which are reasonable as a result of the relevant Change in Reference Tariff Provisions, having regard to:
 - (A) the matters specified in **item 5.2(b)** of this **Schedule 4**; and
 - (B) any other matters which a Party submits that the Expert should have regard to in determining the Dispute.
 - (ii) the variations determined by the Expert, in accordance with **item 5.4(e)(i)** of this **Schedule 4** will take effect on the Review Date for the relevant Change in Reference Tariff Provisions.
- (f) Despite **clause 35.3(h)**, the costs of the Expert (and the costs of any advisers to the Expert) will be borne by:
 - (i) the End User if the Expert determines that the variations specified in the **Schedule 4** Variation Notice are reasonable as a result of the relevant Change in Reference Tariff Provisions;
 - (ii) Aurizon Network if the Expert determines that the variations specified in the **Schedule 4** Variation Notice are not reasonable as a result of the relevant Change in Reference Tariff Provisions; or

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- (iii) in such other proportion as the Expert may otherwise determine.

6 Escalation of Access Charge Rates

6.1 Escalation

- (a) Subject to **item 6.1(b)** of this **Schedule 4**, the Access Charge Rates (except for QL) and any other charges under this Agreement will be varied on each Escalation Date, in accordance with the following formula:

$$ACR_n = ACR_{n-1} * CPI_n / CPI_{n-1}$$

where:

- ACR_n means the varied value of the relevant Access Charge Rate or other charge;
 - ACR_{n-1} means the value of the relevant Access Charge Rate or other charge immediately prior to the relevant Escalation Date;
 - CPI_n means the Consumer Price Index Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter the midpoint of which is six months prior to the midpoint of the Quarter commencing on the relevant Escalation Date for which the variable ACR_n is being determined; and
 - CPI_{n-1} means the Consumer Price Index Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter the midpoint of which is 18 months prior to the midpoint of the Quarter commencing on the relevant Escalation Date for which the variable ACR_n is being determined.
- (b) An Access Charge Rate will not be varied on an Escalation Date under **item 6.1(a)** of this **Schedule 4**, if, within the 12 months prior to the relevant Escalation Date, the Reference Tariff(s) for the 12 months commencing on the Escalation Date which are applicable to the Access Charge Rate have been escalated to take account of the annual change in the consumer price index and/or any other applicable price index.

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6.2 Review of index

- (a) If a Party is of the reasonable opinion that the index used in the formula in **item 6.1** of this **Schedule 4** is no longer suitable because:
 - (i) it ceases to be published; or
 - (ii) it ceases to be published at sufficiently regular intervals, or is likely to cease to be published at sufficiently regular intervals, for the purpose of the formula in **item 6.1** of this **Schedule 4**; or
 - (iii) the method of calculation of the index changes in a material way from the method applicable as at the Commencement Date (or the date the index was last varied under this **item 6.2** of this **Schedule 4**),
 then that Party may notify the other Party of its opinion that the index is no longer suitable.
- (b) If a Party gives a notice to the other Party under **item 6.2** of this **Schedule 4**, the Parties must negotiate in good faith to attempt to agree to vary the application of the index or to adopt an alternative index and failing agreement within 30 Business Days of such notice being given, then the matter must be referred to an Expert to determine a variation to the application of the index or an alternative index in accordance with **clause 36.3**.

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- (c) If the dispute is resolved after the next Escalation Date, the Parties agree to retrospectively adjust any Access Charges invoiced since that date to be consistent with the outcome of the dispute resolution.

Schedule 5

Rollingstock and Rollingstock Configurations

1 Specified tonnages

Rollingstock	Owner	Maximum Allowable Gross Tonnage (tonnes)	Maximum Desirable Gross Tonnage (tonnes)	Tare Weight (tonnes)
Wagons				
[Wagon type]	[insert]	[insert]	[insert]	[insert]
Other Rollingstock				
[Rollingstock type]	[insert]	[insert]	[insert]	[insert]
Trains				
[Train configuration]	[insert]	[insert]	[insert]	[insert]

2 Relevant Rollingstock

[To be inserted as applicable]

Schedule 6

Performance Levels

1 Development of Performance Levels

1.1 The Parties must meet as soon as practicable after the Commencement Date to negotiate in good faith to endeavour to agree the Aurizon Network Performance Level (other than the Aurizon Network Performance Levels set out in **item 2.1** of this **Schedule 6** which are already agreed between the Parties) and the Operator Performance Level within twelve (12) Months (or such longer period as the Parties may agree) after the Commencement Date.

1.2 The Performance Levels may involve financially based incentives and sanctions and, unless otherwise agreed, will be applicable for the Term.

1.3 On and from the date the Performance Levels are implemented by the Parties, the Parties must monitor, record and assess the performance of their respective obligations under this Agreement against the Performance Levels. Each Party must comply with (and the End User must ensure that the Operator complies with) the reporting and assessment requirements (if any) set out in this **Schedule 6**.

2 Aurizon Network Performance Levels

2.1 Average Below Rail Transit Time Threshold

The Average Below Rail Transit Time Factor for a Train Service Type for a Year must not exceed the Average Below Rail Transit Time Threshold for that Train Service Type specified in the table below:

Train Service Type	Average Below Rail Transit Time Threshold (%)
[insert]	[insert]
[insert]	[insert]

3 Operator Performance Levels

[To be inserted when agreed]

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1.3 . A failure to agree the Performance Levels is not a Dispute for the purposes of **clause 35**.

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Appendix to Schedule 6

Calculation of Below Rail Transit Time

The **Below Rail Transit Time** for a Train Service for Train Service Type which has been operated is calculated in accordance with the following formula:

$$\text{BRTT} = \frac{\text{SRT} - \text{Non BR Start Stop Time} + \text{BR Delays}}{\text{Maximum SRT}}$$

where:

- SRT** = The lesser of Actual SRT and Standard SRT for the relevant Train Service
- Actual SRT** = The actual time it takes the relevant Train Service to traverse all relevant Sections for the relevant Train Service
- Standard SRT** = The sum of:
- (a) the Maximum SRT for all relevant Sections for the relevant Train Service Type;
 - (b) where a movement of the relevant Train Service over a relevant Section requires time to start or stop for a dwell, stop at the Destination or start at the Origin, the sum, for each relevant Section, the additional time, taken to start or stop (as specified in **appendix A of Schedule 2** for the relevant Train Service Type)
- Non BR Start Stop Time** = The time it takes the relevant Train Service to start after a non-below rail dwell or stop for a non-below rail dwell for all non-below rail delays incurred for all relevant Sections for that Train Service
- BR Delay** = Delays to the relevant Train Service from its scheduled time in the Daily Train Plan, where that delay can be attributed directly to Aurizon Network including:
- (a) the time taken in crossing other Trains (to the extent that such time is not contributed to by a Railway Operator or a Force Majeure Event and is not otherwise included in the Maximum Sectional Running Times for all relevant Section for the relevant Train Service Type); and
 - (b) delays due to Operational Constraints directly caused by the activities of Aurizon Network in maintaining the Infrastructure or due to a fault or deficiency in the Infrastructure provided such delays are not contributed to by a Railway Operator or Force Majeure Events and are not otherwise included in paragraphs (d), (e) or (f) specified below,
- but excluding:
- (c) cancellations;
 - (d) delays resulting from compliance with a Passenger Priority Obligation;
 - (e) delays due to a Possession and Major Periodic Maintenance where, the Possession Protocols have been followed;

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- (f) delays resulting from a Force Majeure Event; and
- (g) delays to the relevant Train Service from its scheduled time in the Daily Train Plan, where that delay can be attributed the End User (including delays attributable to a failure to load the Train at the Loading Facility for the relevant Train Service Type within the Maximum Time at Loading Facility, or to unload the Train at the Unloading Facility for the relevant Train Service Type within the Maximum Time at Unloading Facility, as specified in the Train Service Description for the relevant Train Service Type).

Maximum SRT

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

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Schedule 7

High visibility clothing, Emergency Procedures and Environmental Management Standards

1 High visibility clothing

1.1 High visibility clothing

- (a) The Operator may specify the form of high visibility clothing that the End User's Staff and the End User's visitors and the Operator's visitors may adopt, having regard to the requirements of Aurizon Network's safety standard for High Visibility Clothing (SAF/STD/0032/SWK/NET) as amended from time to time and provided to the End User in the manner specified in **item 5 of Schedule 10**.
- (b) The colour and materials for the high visibility clothing referred to in **item 1.1(a)** of this **Schedule 7**, must conform to the requirements of AS/NZS 1906.4:2010 *Retroreflective materials and devices for road traffic control purposes: Part 4: High-visibility material for safety garments and AS/NZS4602:2011 High Visibility Safety Garments* (as amended from time to time).

1.2 Compliance

Without limiting the End User's obligations under this Agreement, the End User must ensure that the Operator ensures that the End User's Staff, the End User's visitors and Operator's visitors are instructed in relation to, and comply with, the provisions of this **item 1** of **Schedule 7**, the Applicable Safeworking Procedures and Aurizon Network's safety management system.

2 Emergency Procedures

Aurizon Network will provide the End User with a copy of the Emergency Procedures from time to time in the manner specified in **item 5** of **Schedule 10**.

3 Environmental Management Standards

3.1 Environmental matters

(a) General

The matters identified in this **item 3.1** are the minimum environmental matters that must be addressed by the Parties and the Operator in an Interface Risk Assessment. The Parties' and the Operator's assessment of Environmental Risks in an Interface Risk Assessment should not be restricted to an assessment of the matters referred to in this **item 3.1**.

(b) Water Quality Management

- (i) The End User must comply with (and must ensure that the Operator complies with) all relevant water quality standards when out carrying Activities under or in connection with this Agreement.
- (ii) The Interface Risk Assessment must include an assessment of the impact of the End User's and the Operator's proposed Activities under or in connection with this Agreement on stormwater systems and natural waterways.

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(c) Air Pollution Management

The End User must consider (and must ensure that the Operator considers) the impact of its operations on air quality. In doing so, all relevant air quality standards and regulations should be met.

The End User must undertake (and must ensure that the Operator undertakes) an Interface Risk Assessment which must consider the impact of the proposed operations on air quality. In doing so, all relevant air quality standards and regulations (including all requirements for coal train operators in Aurizon Network's "Coal Dust Management Plan" (as defined in the Access Undertaking and as published on Aurizon Network's website from time to time) must be met.

The Interface Risk Assessment must assess the likelihood:

- (i) for dust and/or exhaust emissions from the proposed operations (including by reference to the type and chemical composition of the commodity being transported); and
- (ii) of those dust and/or exhaust emissions causing nuisance at any dwelling or home, library, childcare centre, kindergarten, school, college, university or other educational institution and hospital, surgery or other medical institution.

In accordance with **clause 28.16**, Aurizon Network and/or the End User, where applicable, will (and the End User, where applicable, will cause the Operator to) inform, investigate and respond to any complaints about dust and/or exhaust emissions within the Nominated Network.

(d) Management of land contamination

- (i) The End User must comply with (and must ensure that the Operator complies) all relevant Laws, standards and guidelines in relation to land contamination when carrying out Activities under or in connection with this Agreement.
- (ii) The Interface Risk Assessment must include an assessment of the likelihood that the End User's and/or the Operator's proposed Activities under or in connection with this Agreement (including the End User's and/or the Operator's Activities during accidents, incidents and emergencies) will cause or contribute to land contamination .
- (iii) The Interface Risk Assessment must include all practicable control measures to prevent and manage land contamination

(e) Nature conservation

The Interface Risk Assessment must include an assessment of:

- (i) the impact of the End User's and/or the Operator's proposed Activities under or in connection with this Agreement on flora and fauna including sensitive receptors in the vicinity of the End User's and/or the Operator's proposed Activities; and
- (ii) the risks and controls associated with wildfires being caused by exhaust or sparks from the End User's and/or the Operator's Rollingstock.

(f) Management of Dangerous Goods

- (i) The End User must comply with (and must ensure that the Operator complies with) Aurizon Network's requirements for the management of hazardous contaminants (as defined in the Environmental Protection Act) and Dangerous Goods.
- (ii) The Interface Risk Assessment must include an assessment of the risks associated with the management of Dangerous Goods by the End User and/or the Operator.

- (iii) The Interface Risk Assessment must address any risks associated with the management of Dangerous Goods that are not specifically addressed by the requirements of **clause 28.14**.

(g) Waste management

- (i) The End User must comply with (and must ensure that the Operator complies with) all relevant Laws and the requirements of any Authority in relation to the collection, removal, transport and disposal of any waste generated by the Activities of the Operator and/or the Activities of the End User (as applicable) under or in connection with this Agreement.
- (ii) The Interface Risk Assessment must include an assessment of the impact of any waste produced by the End User's and/or the Operator's proposed Activities under or in connection with this Agreement.

(h) Environmental noise management

The Interface Risk Assessment must include an assessment of:

- (i) the likely noise impacts attributable to the End User's and/or the Operator's proposed Activities under or in connection with this Agreement; and
- (ii) whether the End User's and/or the Operator's proposed Activities under or in connection with this Agreement will comply with the Noise Code or cause or contribute to any non-compliance with the Noise Code; and detail all measures that will be taken to ensure that the End User's and/or the Operator's proposed Activities under or in connection with this Agreement do not cause or contribute to any non-compliance with the Noise Code.

(i) Complaint Management

The Interface Risk Assessment must detail the End User's and the Operator's procedure for handling complaints that are received by the End User and/or the Operator as per the requirements of **clause 28.16**.

(j) Refuelling

The Interface Risk Assessment must include an assessment of the impacts associated with refuelling activities (including mobile refuelling) undertaken in connection with the End User's and/or the Operator's proposed Activities under or in connection with this Agreement. [for technical / commercial review](#)

3.2 Environmental Management Plan

The Environmental Management Plan must, at a minimum, include the following sections:

Introduction

- (a) Description of Operational Activities
- (b) Purpose and Objectives of the Environmental Management Plan
- (c) Description of Environmental Management Plan
- (d) End User's Environmental Policy and Operator's Environmental Policy

Environmental Management

- (e) Environmental Risks identified in the Interface Risk Assessment
- (f) Legislation and Other Requirements
- (g) Target/s

Implementation and Operation

- (h) Responsibilities, Accountabilities & Authorities
- (i) Competence, Training and Awareness

- (j) Internal and External Communication (including liaison with regulatory agencies)
- (k) Document Control and Information / Record Management
- (l) Emergency Preparedness and Management
- (m) Specific Procedures for identified environmental risks

Operational Activities Review Process

- (n) Monitoring And Measurement
- (o) Evaluation Of Compliance / Audit
- (p) Management Review

Environmental Complaints & Incidents

- (q) Managing Environmental Incidents
- (r) Notification Of Environmental Incidents
- (s) Managing Environmental Complaints

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Schedule 8

Insurance

1 Public liability insurance

The End User must effect and maintain (or cause the Operator to effect and maintain) public liability insurance:

- (a) to cover the legal liability of the insured arising out of or in connection with the activities of the End User and the Operator under this Agreement whether in respect of injury to or death of any person other than the insured or an employee of the insured or loss of or damage to any property other than property owned by the insured in a sum insured of not less than THREE HUNDRED AND FIFTY MILLION DOLLARS (\$350,000,000) for any one occurrence and with a self-insured retention not to exceed [insert] for any one loss or an aggregate deductible of not more than [insert];
- (b) to include cover in respect of personal injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water where such discharge, dispersal, release or escape is caused by a sudden, unexpected, unintended and accidental happening which occurs on a definitely identifiable date; and
- (c) to cover the End User's and/or the Operator's rail operations and associated activities on the Nominated Network.

2 Workers compensation insurance

The End User must effect and maintain (or cause the Operator to effect and maintain) insurance covering such liability as may arise at common law or by virtue of any relevant Workers Compensation legislation in respect of any End User's Staff.

3 Carrier liability insurance

The End User must effect and maintain (or cause the Operator to effect and maintain) carrier liability insurance in relation to the legal liability of the insured arising out of the transport of goods by Train Services to a sum insured of not less than TEN MILLION DOLLARS (\$10,000,000) and with a deductible not to exceed [insert] for any one loss.

4 Motor Vehicle (non-Act) insurance

The End User must effect and maintain (or cause the Operator to effect and maintain) motor vehicle (non-Act) insurance to cover the legal liability of the insured arising out of or in connection with the use of all vehicles in the performance of this Agreement by the End User, the Operator or End User's Staff and must include:

- (a) third party liability to a sum insured of not less than TWENTY MILLION DOLLARS (\$20,000,000); and
- (b) a Dangerous Goods extension with a maximum sum insured as required by statute.

5 Motor Vehicle insurance

The End User must effect and maintain (or cause the Operator to effect and maintain) motor vehicle insurance to cover the statutory liability in respect of personal injury arising

out of or in connection with the use by the End User, the Operator or the End User's Staff of all vehicles in the performance of their obligations under this Agreement.

6 Required terms

Insurances effected pursuant to **items 1 and 4** of this **Schedule 8** must:

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

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Schedule 9

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

Item	Suspension Event	Termination Event
1	The End User materially fails to demonstrate to the reasonable satisfaction of Aurizon Network a matter specific to a Train Service Type which the End User is required to demonstrate under, and within the time required by, clause 7.4(b) .	The End User fails to demonstrate to the reasonable satisfaction of Aurizon Network a matter specific to a Train Service Type which the End User is required to demonstrate under, and within two months after the time required by, clause 7.4(b) .
2	The Operator materially fails to provide, before the operation of a Train Service for a Train Service Type in a material respect , information that is required to be provided to Aurizon Network in relation to the Train Service under clause 19.6 .	
3	<p>(t) The Operator (Defaulting Operator) operates Train Services for a Train Service Type which materially do not comply with the Train Service Description for that Train Service Type; and</p> <p>(u) such default:</p> <p>(i) adversely affects, or is likely to adversely affect, the entitlements of any Access Holder (other than the End User under this Agreement) or the entitlements of other users of the Infrastructure (including Infrastructure Service Providers but not including the Defaulting Operator to the extent that the Defaulting Operator is entitled to operate Train Services utilising the End User's Access Rights) of the Infrastructure, provided that:</p> <p>(A) Aurizon Network has sought to minimise the impact of such default by applying the Network Management Principles; and</p> <p>(B) Aurizon Network is not obliged to take any such action that may cause any additional cost or risk to Aurizon Network or an adverse impact on any Access Holder (other than the End User under this Agreement); or</p> <p>(ii) has caused, or is likely to cause, an increased risk to the safety of any person or material risk to property.</p>	
4	<p>The Operator:</p> <p>(a) operates Train Services for a Train Service Type which do not comply in some material respect with the Train Service Description for that Train Service Type; and</p> <p>(b) the End User fails to demonstrate to the reasonable satisfaction of Aurizon Network</p>	<p>(a) Aurizon Network gives the End User a Suspension Notice in respect of the Corresponding suspension Event;</p> <p>(b) the suspension in respect of the Corresponding Suspension Event has not been lifted;</p> <p>(c) The End User fails to demonstrate to the reasonable satisfaction of Aurizon Network</p>

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Item	Suspension Event	Termination Event
	<p>within 20 Business Days after being requested to do so, that Train Services for that Train Service Type operated by the Operator will consistently comply with the applicable Train Service Description for the remainder of the Term.</p>	<p>within 20 Business Days after Aurizon Network gives the End User the Suspension Notice that Train Services for that Train Service Type operated by the Operator will consistently comply with the applicable Train Service Description for the remainder of the Term; and</p> <p>(d) Aurizon Network, acting reasonably, has determined not to vary the Train Service Description for the Train Service Type under clause 17.2 due to such default.</p>
5	<p>The End User fails to comply with in a material respect any obligation under this Agreement which is specific to a Train Service Type (other than any obligation which, if not complied with by the End User or the Operator, may (either of itself or if other requirements are satisfied) result in any other Suspension Event referred to in part A of this Schedule 9 occurring) and such default continues for at least 20 Business Days after Aurizon Network gives the End User notice of the default.</p>	<p>The End User fails in a material respect to comply with any obligation under this Agreement which is specific to a Train Service Type (other than any obligation which, if not complied with by the End User or the Operator, may (either of itself or if other requirements are satisfied) result in any other Termination Event referred to in part A of this Schedule 9 occurring) and such default continues for at least 40 Business Days after Aurizon Network gives the End User notice of the default.</p>

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

Item	Suspension Event	Termination Event
1	The End User fails to pay by the due date any amount payable under this Agreement, and such default continues for at least <u>20 Business Days</u> after Aurizon Network gives the End User notice of the default <u>(and always subject to clause 5.4)</u> .	The End User fails to pay by the due date any amount payable under this Agreement, and such default continues for at least <u>40 Business Days</u> after Aurizon Network gives the End User notice of the default <u>(and always subject to clause 5.4)</u> .
2	The End User fails to comply <u>in a material respect</u> with any of its obligations under clause 17, 25 or 28 (other than clauses 17.1(d), 25.5 or 28.16) and Aurizon Network is of the reasonable opinion that such failure: <ul style="list-style-type: none"> (a) adversely affects, or is likely to adversely affect, the entitlements of any Access Holder (other than the End User under this Agreement) or other users of the Infrastructure (including Infrastructure Service Providers but not including the Operator to the extent that the Operator is entitled to operate Train Services utilising the End User's Access Rights); or (b) has caused, or is likely to cause, an increased risk to the safety of any person or material risk to property. 	
3	The End User or the Operator fails to comply in any material respect with: <ul style="list-style-type: none"> (a) any obligations under clause 17, 25 or 28 (other than clause 25.5 or 28.16); (b) any Train Control Direction given to the End User and/or the Operator; or (c) any Applicable Safeworking Procedures or Applicable Safety Standard. 	The End User or the Operator fails to comply in any material respect with: <ul style="list-style-type: none"> (a) any obligations under clause 17, 25 or 28 (other than clause 25.5 or 28.16); (b) any Train Control Direction given to the End User and/or the Operator; or (c) any Applicable Safeworking Procedures or Applicable Safety Standard, and such default continues for, or the End User has failed to take reasonable action to prevent recurrence of the default, within 20 Business Days after Aurizon Network gives the End User a Suspension Notice in respect of the Corresponding Suspension Event.
4	An Insolvency Event occurs in respect of the End User or the Operator and continues for a period of at least 40 Business Days.	
5	The Operator's Accreditation is suspended, cancelled or amended so that it cannot lawfully operate the Train Services or otherwise perform its obligations generally under this Agreement.	The Operator's Accreditation is suspended, cancelled or amended so that it cannot lawfully operate the Train Services or otherwise perform its obligations generally under this Agreement, and such default continues for at least 20 Business Days after Aurizon Network gives the End User notice of the default.
6	The End User or the Operator fails to comply <u>in a material respect</u> with clause 28.18(c) .	The End User or the Operator fails to comply with clause 28.18(c) <u>which in the reasonable opinion of Aurizon Network is causing or threatening to cause</u> .

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Item	Suspension Event	Termination Event
		<p>(a) a serious or material risk to the safety of persons or property; or</p> <p>(b) serious or material harm to the Environment,</p> <p>and such failure continues for at least 10 Business Days after Aurizon Network gives the End User a Suspension Notice in respect of the Corresponding Suspension Event.</p>
7	<p>If an Environmental Regulator gives Aurizon Network or the End User or the Operator a direction, notice or order about the conduct of the End User or the Operator (as applicable) in relation to the operation of Train Services which causes or threatens to cause Serious Environmental Harm and the End User or the Operator (as applicable) fails, within the time:</p> <p>(a) specified in the relevant direction, notice or order, or in any stay or other court order made in relation to such direction, notice or order; or</p> <p>(b) otherwise agreed to by the Environmental Regulator,</p> <p>to</p> <p>(c) comply with the direction, notice or order, as modified by any court order (if applicable); or</p> <p>(d) take other measures (including, for example, agreeing to implement an environmental management program) acceptable to the Environmental Regulator in relation to the requirements of the direction, notice or order.</p>	<p>If a Environmental Regulator gives Aurizon Network or the End User or the Operator a direction, notice or order about the conduct of the End User or the Operator (as applicable) in relation to the operation of Train Services which causes or threatens to cause Serious Environmental Harm and the End User or the Operator (as applicable) fails, within the time:</p> <p>(a) specified in the relevant direction, notice or order, or in any stay or other court order made in relation to such direction, notice or order; or</p> <p>(b) otherwise agreed to by the Environmental Regulator,</p> <p>to</p> <p>(c) comply with the direction, notice or order, as modified by any court order (if applicable); or</p> <p>(d) take other measures (including, for example, agreeing to implement an environmental management program) acceptable to the Environmental Regulator in relation to the requirements of the direction, notice or order,</p> <p>and such failure continues for at least 20 Business Days after Aurizon Network gives the End User notice of the failure.</p>
8	<p>The End User fails to, or fails to cause the Operator to, comply with the requirements of a notice given by Aurizon Network (within the reasonable time specified in the notice) requiring the End User or Operator to cease an Activity of the End User or the Operator in connection with this Agreement which causes, or threatens to cause, Serious Environmental Harm.</p>	
9	<p>The End User fails to, or fails to cause the Operator to:</p> <p>(a) effect or maintain the insurances required under clause 30.2;</p> <p>(b) provide evidence of the insurances required under clause 30.2 having been effected and maintained,</p> <p>and such default continues for at least twenty Business Days after Aurizon Network gives the End User notice of the default.</p>	<p>The End User fails to, or fails to cause the Operator to:</p> <p>(a) effect or maintain the insurances required under clause 30.2; or</p> <p>(b) provide evidence of the insurances required under clause 30.2 having been effected and maintained,</p> <p>and such default continues for at least 20 Business Days after Aurizon Network gives the End User notice of the default.</p>
10	<p>The End User fails to establish, maintain or replace the Security as required under this Agreement, and</p>	<p>The End User fails to establish, maintain or replace the Security as required under this Agreement, and</p>

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Item	Suspension Event	Termination Event
	such default continues for at least twenty Business Days after Aurizon Network gives the End User notice of the default.	such default continues for at least 30 Business Days after Aurizon Network gives the End User notice of the default.
11	The End User purports to Assign any of its rights or interests in this Agreement other than as permitted in this Agreement.	The End User purports to Assign any of its rights or interests in this Agreement other than as permitted by this Agreement.
12	The End User or the Operator fails to comply with: (a) any Laws relating to rail safety relevant to the operation of Train Services; (b) Train Control Directions; (c) Applicable Safeworking Procedures; or (d) Applicable Safety Standards, and Aurizon Network is of the reasonable opinion that such default has caused an increased risk to the safety of any person or a material risk to property.	Aurizon Network gives the End User a Suspension Notice in respect of the Corresponding Suspension Event on three or more occasions in any 12 month period.
13	The End User fails to comply with any obligation under this Agreement (other than any obligation which, if not complied with by the End User, may (either of itself or if other requirements are satisfied) result in any other Suspension Event occurring), and such default continues for at least 20 Business Days after Aurizon Network gives the End User notice of the default.	The End User fails to comply with any obligation under this Agreement (other than any obligation which, if not complied with by the End User, may (either of itself or if other requirements are satisfied) result in any other Termination Event occurring), and such default continues for at least 40 Business Days after Aurizon Network gives the End User notice of the default.

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Aurizon Network anticipates, acting reasonably, that the End User or the Operator will fail to comply with:¶
(a) . any Laws relating to rail safety relevant to the operation of Train Services;¶
(b) . Train Control Directions;¶
(c) . Applicable Safeworking Procedures; or¶
(d) . Applicable Safety Standards,¶
and Aurizon Network is of the reasonable opinion that such anticipated default is likely to cause an increased risk to the safety of any person or a material risk to prop[... [59]

Schedule 10

Interface Coordination Arrangements

1 Train Control Procedures

1.1 Train Controllers' contact details

- (a) For the benefit of the End User's Staff who are responsible for the operation of Rollingstock used in the operation of a Train Service for a Train Service Type (Traincrew), contact details for the Train Controllers relevant to the Nominated Network are set out below:

Line Sections:	[insert]
Control Board:	[insert]
Phone:	[insert]
Fax:	[insert]

- (b) For the benefit of the Operator's Controller, contact details for the Train Controllers relevant to the Nominated Network are set out below:

Line Sections:	[insert]
Control Board:	[insert]
Phone:	[insert]
Fax:	[insert]

1.2 Operator's advice to Train Controller

- (a) The Operator's Controller and the Traincrew of the relevant Train must:
- (i) immediately upon becoming aware of an emergency that may affect the performance of the End User's or the Operator's Train; and
 - (ii) as soon as reasonably practicable after becoming aware of any other event or circumstances that may affect the performance of the End User's or the Operator's Train,
- provide the Train Controller with such information as the Train Controller may reasonably require, including:
- (iii) the Train number;
 - (iv) the nature of the event or circumstances; and
 - (v) the likely impact on the performance of Network Train Services (including any Train Service operated by the Operator),
- regardless of whether or not the End User's or Operator's Train has entered the Nominated Network.
- (b) At least fifteen (15) minutes before the departure of a Train Service, the Operator's Controller must provide the Train Controller with the following information in relation to that Train Service:
- (i) information with respect to the Traincrew for that Train Service including the names of the Traincrew personnel and details of any mandatory Traincrew breaks;

- (ii) if the initial Traincrew for that Train Service is rostered to be replaced by a new Traincrew before that Train Service reaches its Destination, details of the relevant rosters;
- (iii) the location of nominated depots as specified in the Operating Plan, where Activities in relation to that Train Service such as provisioning, shunting and marshalling, will be carried out;
- (iv) any en route locomotive provisioning requirements;
- (v) if the Train is in "Train Order Territory" (as defined in Aurizon Network's safety management system (as amended from time to time)) or "Direct Traffic Control Territory" (as defined in Aurizon Network's safety management system (as amended from time to time)), the number of the leading locomotive; and
- (vi) a document in the form required by Aurizon Network (**Train List**) which contains the following information in relation to that Train Service:
 - (A) the Train number;
 - (B) the Origin of the Train;
 - (C) the length of the Train in metres (including the locomotives);
 - (D) the number of vehicles in the Train;
 - (E) the gross mass of the Train;
 - (F) the gross trailing load of the Train in tonnes;
 - (G) the motive power employed by the Train;
 - (H) for each vehicle in the Train, in the order in which they will be placed, leading end first, the following information:
 - (1) vehicle classification;
 - (2) vehicle number;
 - (3) vehicle type;
 - (4) gross weight of the vehicle;
 - (5) a description of the goods carried in the vehicle (including details of all Dangerous Goods) by class and location on the Train;
 - (6) the destination of each vehicle; and
 - (7) any known defects, eg brakes cut out; and
 - (I) any other relevant information in relation to that Train Service.

- (c) Subject to the Traincrew complying with **item 1.2(b)(ii)** of this **Schedule 10**, the Train Controller must notify the Traincrew of the most probable location for the rostered change of Traincrew as soon as reasonably practicable after the Train Controller determines such location.
- (d) The Operator must enter the Train List into Aurizon Network's nominated information system in accordance with the procedures specified by Aurizon Network.
- (e) The Operator must, as soon as reasonably practicable after it becomes aware of any changes to the information it has provided to Aurizon Network in relation to the Train List, update Aurizon Network's nominated information system with respect to such changes in accordance with the procedures specified by Aurizon Network.
- (f) The Operator must, at all times, ensure that the Train List for a Train Service is accurate and includes all relevant information in relation to that Train Service.

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- (g) If the weight and/or length of a Train operated by the Operator alters during the operation of a Train Service utilising that Train, the Operator's Controller must advise the Train Controller of the new weight and/or length (as applicable) of the Train.
- (h) The Operator must provide to Aurizon Network (and keep current at all times during the Term) the contact details (including a mobile phone number and after hours contact details) for the Operator's Controller. As at the date of this Agreement, the contact details for the Operator's Controller are set out below:

Name:	[insert]
Position:	[insert]
Phone (during business hours):	[insert]
Phone (outside business hours):	[insert]
Mobile phone number:	[insert]
Fax:	[insert]

- (i) The Operator's Controller must be contactable by the Train Controller at all times while any of the Operator's Train Services are operating on the Nominated Network.
- (j) The Operator must provide to Aurizon Network (and keep current at all times during the Term):
 - (i) the hours during which the Operator's Controller will not be contactable while the Operator's Train Services are not operating on the Nominated Network; and
 - (ii) the after hours contact procedures for the Operator's Controller.
- (k) When a Train Service is operating on a section of Track which is not within "Track Circulated Territory" (as defined in Aurizon Network's safety management system (as amended from time to time)), the Traincrew must, when reasonably requested by the Train Controller, advise the Train Controller of the arrival and departure times, or the departure times if the Train did not stop, for each "Crossing Location" (as defined in Aurizon Network's safety management system (as amended from time to time)) that the Train passed through on the Nominated Network.
- (l) The Train Controller must enter the arrival and departure times referred to in **item 1.2(k)** of this **Schedule 10** into Aurizon Network's nominated information system as soon as reasonably practicable after the advice is received from the Traincrew.

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1.3 Train Controller's advice to the Operator

- (a) As soon as reasonably practicable after becoming aware of any event or circumstances that may affect the performance of the End User's or the Operator's Train, the Train Controller must provide to the Operator's Controller such information as the Operator's Controller may reasonably require, including:
 - (i) the Train number;
 - (ii) the nature of the event or circumstances; and
 - (iii) the likely impact on the performance of Network Train Services (including any Train Service operated by the Operator).
- (b) When reasonably requested by the Operator's Controller, the Train Controller will provide to the Operator's Controller an estimated time of arrival at any location on the Nominated Network for the End User's or the Operator's Train.
- (c) When reasonably requested by the Traincrew, the Train Controller will provide information to the Traincrew regarding events or circumstances that may impact on the performance of the End User's or the Operator's Train.

1.5 Radio procedures

- (a) The End User's Staff must follow the general radio procedures contained in the "Observance of Signals Manual STD/0037/SWK" (as amended from time to time) when using the Train Control radio system.
- (b) The details for access to the Train Control radio system for each of the line sections that comprise the Nominated Network are set out below:

Line Sections:	[insert]
Channel Number:	[insert]
Line Sections:	[insert]
Channel Number:	[insert]

1.6 Procedures for entering the Nominated Network

- (a) The Operator must comply with the yard procedures at the Origin for a Train Service (if any) as advised by Aurizon Network.
- (b) The Operator will only enter the Nominated Network upon receipt of the appropriate "Proceed Authority" (as defined in Aurizon Network's safety management system (as amended from time to time)) as advised by Aurizon Network.
- (c) The Operator's Controller must advise the Train Controller of the anticipated departure time of the End User's or the Operator's Train at least two (2) hours before the Scheduled Time for the departure of the Train or when reasonably requested by the Train Controller. If the anticipated departure time alter from that previously advised to the Train Controller, then the Operator's Controller must advise the Train Controller of the new anticipated departure time as soon as reasonably practicable after it becomes aware of the change.
- (d) The Traincrew for a Train Service must advise the Train Controller when the Train for that Train Service is ready to depart the Origin.
- (e) Prior to the departure of the Train, the Operator must supply the Train driver with the Scheduled Times for that particular Train Service for that particular day.

1.7 Procedures for shunting/entering and exiting yards

Aurizon Network will advise the Operator of the appropriate procedures for shunting, entering yards and leaving yards en-route.

1.8 Procedures for leaving the Nominated Network

The Operator must comply with yard procedures at the Destination for a Train Service (if any) as advised by Aurizon Network.

1.9 Contact details for party responsible for loading Trains – clause 22.4(c)

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

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

2 Train Operations Procedures

2.1 Safety Alerts and Safety Notices

(a) Safety Alerts

- (i) In this **item 2** of this ~~Schedule 10~~, Safety Alert means a document specified as a "Safety Alert" which notifies the recipient that a serious safety incident that has affected or could affect Aurizon Network, the Operator or any other user of the Infrastructure has occurred. A Safety Alert may include:
 - (A) details in relation to the serious safety incident (for information purposes); and/or
 - (B) information in relation to any immediate actions to be taken in relation to the serious safety incident.
- (ii) Aurizon Network may give the End User a Safety Alert using the End User's address for notices specified in **item 2** of ~~Schedule 1~~. Without limiting the method of delivery, Aurizon Network may give the End User a Safety Alert by electronic means.
- (iii) As soon as possible after the receipt of a Safety Alert, the End User must make the Operator and End User's Staff aware of the contents of such Safety Alert.

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(b) Safety Notices

- (i) In this **item 2** of this ~~Schedule 10~~:
 - (A) Safety Change means a temporary or permanent change to Aurizon Network's safety management system.
 - (B) Safety Notice means a document specified as a "Safety Notice" which is published by Aurizon Network on a weekly basis for distribution to Aurizon Network's employees and the End User (if it contains safety information relevant to the End User and/or the Operator) and includes safety information about a Safety Change.
- (ii) Subject to **item 2.1(b)(iii)** of this ~~Schedule 10~~, Aurizon Network will include safety information about a Safety Change in a Safety Notice published at least seven (7) days before the date that the Safety Change becomes effective.
- (iii) If:
 - (A) Aurizon Network considers it necessary to communicate certain safety information about a Safety Change; and
 - (B) that safety information has not been published in a Safety Notice at least seven (7) days before the date that the relevant Safety Change will become effective;then, Aurizon Network may:
 - (C) publish that safety information in a Train Notice or a Safety Alert; and
 - (D) as soon as reasonably practicable after publication of that Train Notice, publish that safety information in a Safety Notice.
- (iv) The End User must ensure that the Operator and members of the End User's Staff who perform Safety Related Work have access to a copy of, or are notified of, any safety information in the Safety Notices relevant to their area of work.

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- (v) Aurizon Network may give the End User a Safety Notice using the End User's address for notices specified in **item 2 of Schedule 1**. Without limiting the method of delivery, Aurizon Network may give the End User a Safety Notice by electronic means.

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(c) Train Notices

- (i) In this **item 2** of this **Schedule 10**, Train Notice means a document specified as a "Train Notice" which is published by Aurizon Network on a daily basis (or as otherwise determined by Aurizon Network) for distribution to the End User and conveys operational instructions, information and messages about Activities on the Rail Infrastructure.
- (ii) The End User must ensure that all Train Notices are given to the Operator and members of the End User's Staff who:
 - (A) are responsible for the operation of Rollingstock used in the operation of a Train Service for a Train Service Type; or
 - (B) work on or near any Track.
- (iii) Aurizon Network may give the End User a Train Notice using the End User's address for notices specified in **item 2 of Schedule 1**. Without limiting the method of delivery, Aurizon Network may give the End User a Train Notice by email.

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(d) Safeworking Forms

- (i) Aurizon Network will make available to the End User access to electronic copies of administrative forms included in Aurizon Network's safety management system which are necessary for the Operator to operate Train Services on the Nominated Network (**Safeworking Forms**).
- (ii) The End User may obtain a reasonable quantity of Safeworking Forms by submitting a request to the following contact at Aurizon Network:

Position:	[insert]
Phone:	[insert]
Email address:	[insert]
Fax:	[insert]

2.2 Operational meetings

- (a) The contact details for the End User's Representative who will attend operational meetings are set out below:

Position:	[insert]
Phone:	[insert]
Mobile phone:	[insert]
Email address:	[insert]
Fax:	[insert]

- (b) The contact details for the Aurizon Network Representative are set out below:

Position:	[insert]
Phone:	[insert]
Mobile phone:	[insert]
Email address:	[insert]

Fax:	[insert]
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- (c) The End User's Representative and the Aurizon Network Representative (or their nominees) shall meet on a monthly basis or as agreed by the Parties for the purpose of:
- (i) reviewing the achievement of Performance Levels and other matters affecting the performance of Train Services so as to identify remedial action in relation to recurring problems and to plan action to address potential or known problems;
 - (ii) reviewing requests or proposals by the End User or Aurizon Network to vary the procedures contained in this **Schedule 10**;
 - (iii) reviewing the reliability of the End User's or the Operator's Rollingstock;
 - (iv) reviewing Operational Constraints;
 - (v) investigating or reviewing breaches or suspected breaches of the Applicable Safeworking Procedures, Applicable Safety Standards or Train Control Directions by the End User's Staff; and
 - (vi) reviewing any other matters relevant to the performance of this Agreement.
- (d) The End User's Representative shall attend other operational meetings relevant to the operation of Train Movements on the Nominated Network as required by Aurizon Network from time to time.

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3 Nominated Persons

3.1 Operator's Incident Response Coordinator

The contact details for the Operator's Incident Response Coordinator are as follows:

Name:	[insert]
Position:	[insert]
Phone(during business hours):	[insert]
Phone (outside business hours):	[insert]
Mobile:	[insert]
Email:	[insert]
Fax:	[insert]

3.2 Operator's Recovery Team Leader

The contact details for the Operator's Recovery Team Leader are as follows:

Name:	[insert]
Position:	[insert]
Phone(during business hours):	[insert]
Phone (outside business hours):	[insert]
Mobile:	[insert]
Email:	[insert]
Fax:	[insert]

4 Possession Protocols

Aurizon Network will provide the End User with a copy of the Possession Protocols (as amended from time to time) which detail the rules governing the management and scheduling of Planned Possessions, Emergency Possession and Urgent Possessions on the Infrastructure.

5 Document Control Procedures

(a) The contact details for the End User's Document Controller are set out below:

Name:	[insert]
Position:	[insert]
Phone:	[insert]
Postal Address:	[insert]
Email Address:	[insert]

(b) Upon execution of this Agreement, Aurizon Network will give the End User one electronic copy of each of the Applicable Safeworking Procedures and Applicable Safety Standards.

(c) Aurizon Network will manage updates and revisions of the documents referred to in **item 5(b)** of this **Schedule 10**, the Emergency Procedures and the Investigations Procedures in accordance with the provisions of the relevant Australian Standards that apply to document control at that time.

(d) The End User is responsible for ongoing distribution of all documents in Aurizon Network's safety management system including the documents referred to in **item 5(b)** of this **Schedule 10** to the relevant members of the End User's Staff.

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Schedule 11

Ancillary Services and Ancillary Services Charges

1 Ancillary Services

[Drafting note: Arrangements for the provision of Ancillary Services (if any) by Aurizon Network to the End User will be agreed on a transaction-by-transaction basis and documented in this [Schedule 11](#).]

1.1 Provision of Wayside Equipment

In this **item 1.1** of [Schedule 11](#):

Wayside Equipment means equipment owned by Aurizon Network that is located on or adjacent to the Infrastructure which records data which, if made available to the End User or the Operator, could be used by the End User or the Operator to monitor the condition of the End User's or Operator's Rollingstock, but excludes Weighbridges and Overload Detectors.

[Drafting note: Arrangements for the provision of Wayside Equipment by Aurizon Network to the End User will be an Ancillary Service to be agreed on a transaction-by-transaction basis and documented in this [Schedule 11](#).]

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Aurizon Network, its directors and Aurizon Network's Staff will not be liable to the Operator for any loss or damage suffered or incurred by the Operator except to the extent that Aurizon Network, its directors or Aurizon Network's Staff would have been liable to the End User had the loss or damage suffered or incurred by the Operator instead been suffered or incurred by the End User, and taking into account the exclusions and limitations upon liability contained in this Agreement.

The End User indemnifies and will keep indemnified Aurizon Network, its directors and Aurizon Network's Staff against any liability which Aurizon Network, its directors and Aurizon Network's Staff have to the Operator to the extent that **clause 7.6(d)** contemplates that Aurizon Network, its directors and Aurizon Network's Staff will not be liable to the Operator for such liability.

If:

under this Agreement, the End User must ensure that the Operator does not bring a Claim against Aurizon Network, its directors and/or Aurizon Network's Staff in respect of any matter; and

the Operator brings a Claim against Aurizon Network, a director or a member of Aurizon Network's Staff in respect of that matter,

then the End User indemnifies and will keep indemnified Aurizon Network, the director or relevant member of Aurizon Network's Staff against such Claim.

; and

the End User must ensure that the Operator does not bring any Claim against Aurizon Network, its directors and/or Aurizon Network's Staff where such Claim is as a result of, or arises from, any delay to or cancellation of Train Services as a result of the operation of this **clause 22**.

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use reasonable endeavours to attempt to reach agreement with Aurizon Network as to, and failing such agreement must

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agreed between the Expert and Aurizon Network, or

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	<p>Aurizon Network anticipates, acting reasonably, that the End User or the Operator will fail to comply with:</p> <ul style="list-style-type: none">(a) any Laws relating to rail safety relevant to the operation of Train Services;(b) Train Control Directions;(c) Applicable Safeworking Procedures; or(d) Applicable Safety Standards, <p>and Aurizon Network is of the reasonable opinion that such anticipated default is likely to cause an increased risk to the safety of any person or a material risk to property.</p>	<p>Aurizon Network gives the End User a Suspension Notice in respect of the Corresponding Suspension Event on three or more occasions in any 12 month period.</p>
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