



SA YARD ACCESS AGREEMENT

PARTIES

**the party specified at Item A of Schedule 1
(Aurizon)**

**the party specified at Item B of Schedule 1
(Operator)**

**if applicable, the party specified at Item I of Schedule 1
(Guarantor)**

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DATE:

2020

PARTIES: the party specified at Item A of Schedule 1 (**Aurizon**)

AND the party specified at Item B of Schedule 1 (**Operator**)

AND if any, the party specified at Item I of Schedule 1 (**Guarantor**)

INTRODUCTION:

- A.** At the Operator's request, Aurizon has agreed to grant to the Operator access rights to the Yard Access Areas on the terms and conditions in this Agreement.
- B.** If applicable, Aurizon may provide Yard Services to the Operator on the terms and conditions in this Agreement.
- C.** The Operator has agreed to enter into this Agreement with Aurizon to confirm the terms and conditions that apply to the Operator's access rights and, if applicable, the Yard Services.
- D.** If applicable, the Guarantor has agreed to guarantee the performance by the Operator of the Operator's obligations under this Agreement.

AGREEMENT:

1. Interpretation

1.1 Definitions

In this Agreement unless the context otherwise requires:

Acceptable Credit Rating means a long-term issuer credit rating of not less than A by Standard & Poor's (Australia) Pty Limited or of not less than A2 by Moody's Investor Services, Inc.

Access Form means the template form in Schedule 9 or any other form as may be approved in writing by Aurizon from time to time.

Access Management Requirements means the documents set out in Item M of Schedule 1.

Accreditation means accreditation obtained by an Accredited Person under the *Rail Safety Act* (and **Accredited** and **Accrediting** bear a corresponding meaning).

Accredited Person has the meaning given to it in the *Rail Safety Act*.

Additional Infrastructure means any rail infrastructure, terminal, other yard or siding that is either owned or operated by Aurizon, Aurizon Bulk Central Network Pty Ltd (ABN 92 144 081 774) or either of their respective related entities (including their Related Bodies Corporate), but that is not part of the Yard Access Areas.

Agreement means this agreement.

Aggrieved Party has the meaning given to it in clause 12.1(a).

Applicable Law means all legislation, statutes, laws, decrees and regulations of South Australia or the Commonwealth of Australia concerning the matters referred to in this Agreement whether enacted before or after the date of this Agreement and all regulations, orders, codes of practice or delegated or subordinate legislation made under them and the regulations, requirements and by-laws of any Government Authority.

Approved Additional Infrastructure means Additional Infrastructure that the Operator requests access to in accordance with Schedule 5 of this Agreement, and to which Aurizon has given prior written consent to the Operator permitting it to access such Additional Infrastructure pursuant to clause 5.7.

Approved Issuer means Commonwealth Bank of Australia, Westpac Banking Corporation, Australia and New Zealand Banking Group, National Australia Bank or such other bank that holds an Acceptable Credit Rating and a licence issued by the Australian Prudential Regulation Authority and that is approved by Aurizon (in its sole discretion).

Associated Yard Facility Infrastructure means, with respect to each Yard Facility:

- (a) any infrastructure, plant, machinery, equipment or any other thing related to or connected with the relevant Yard Facility, including any:
 - (i) track structure;
 - (ii) over and under structure;
 - (iii) support (including support for equipment or items associated with the use of the relevant Yard Facility);
 - (iv) tunnel;
 - (v) bridge;
 - (vi) Train Control system;
 - (vii) signalling system;
 - (viii) communication system;
 - (ix) Monitoring Equipment; and
 - (x) access road,in each case, to the extent that the same is related to or connected with the relevant the Yard Facility; or
- (b) any other route providing access to, egress from, or access within the Yard Facility whether pedestrian, vehicular or otherwise.

Aurizon Indemnified Persons has the meaning given to it in clause 13.1(a).

Aurizon Upgrade has the meaning given to it in clause 4.4(b)(i)(A).

Business Day means any day other than a Saturday, Sunday or public holiday in South Australia.

Change in Control means:

- (a) a change in the Control of an entity;
- (b) any direct or indirect change in an entity's shareholding which results in a change in more than fifty percent (50%) of the direct or indirect shareholding of the entity; or
- (c) any direct or indirect change in an entity's shareholding, which results in a change of more than fifty percent (50%) of the voting rights in the entity.

Change in Law means:

- (a) any amendment, repeal, modification or enactment of any Applicable Law;
- (b) any change in the interpretation or application, including by the exercise of delegated authority, of any Applicable Law resulting from a decision of a court or Government Authority;
- (c) the making of any new directive, or any change in an existing directive, of any Government Authority;
- (d) the imposition of a requirement for authorisations not required as at the date of this Agreement;
- (e) after the date of grant of any authorisation, a change in the terms and conditions attaching to that authorisation or the attachment of any new terms or conditions;
- (f) any authorisation that has been granted ceasing to remain in full force and effect, or being renewed on conditions different to those attached to the original authorisation; or
- (g) the imposition of a new tax, an increase in the rate of a tax or a change in the basis of calculation of a tax.

Charges means:

- (a) the Fixed Charges;
- (b) the Other Charges;
- (c) the Storage Charges; and
- (d) any other charges and fees required to be paid by the Operator to Aurizon under this Agreement including any applicable Yard Services Charges.

Claim means any claim, action, demand, suit, proceeding, including the costs and expenses of defending or settling any claim, action, demand, suit or proceeding, and including by way of contribution or indemnity.

Code of Practice means the *AustralAsia Railway (Third Party Access) Code* as set out in the schedule of the *AustralAsia Railway (Third Party Access) Act 1999* of South Australia.

Commencement Date means the date set out in Item C of Schedule 1.

Conditions Precedent means each of the conditions precedent set out in Item F of Schedule 1.

Confidential Information means:

- (a) all information provided by one party to the other under and for the purpose of this Agreement, whether provided prior to or after the date of this Agreement;
- (b) the terms of this Agreement; and
- (c) any information in any form that is by its nature confidential, stated to be confidential or designated by a party in writing as being confidential.

Control has the meaning given to it in the *Corporations Act*.

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

Dangerous Goods has the meaning given to it in the Dangerous Goods Code.

Dangerous Goods Code means the *Australian Code for the Transport of Dangerous Goods by Road & Rail* prepared by the National Transport Commission (or successor body) from time to time.

Defaulting Party has the meaning given to it in clause 12.1(a).

Environment includes all aspects of the surroundings of human beings including:

- (a) the physical characteristics of those surroundings such as the land, the waters and the atmosphere;
- (b) the biological characteristics of those surroundings such as the animals, plants and other forms of life; and
- (c) the aesthetic characteristics of those surroundings such as their appearance, sound, smells, tastes and textures,

whether affecting human beings as individuals or in social groups.

Environmental Condition means any Environmental Damage or any event, circumstance, condition, operation or activity in respect of which it is reasonably foreseeable is likely to result in Environmental Damage or which in Aurizon's reasonable opinion may result in Aurizon (or any of its Related Bodies Corporate) or any other person incurring any material liability or being subjected to a direction of any Government Authority.

Environmental Damage means any material injury or damage to persons, living organisms or property or any material pollution or impairment of the Environment resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration.

Expiry Date means the date specified in Item D of Schedule 1.

Financial Sum means an amount of money that is in dispute between the Operator and Aurizon that is determined by an expert in accordance with clause 15.4 and that does not include any amount payable as an access charge or a component of an access charge.

Fixed Charges means the fixed charge as set out in Schedule 2 and as adjusted from time to time in accordance with Schedule 3.

First Party has the meaning given to it in clause 9.1(a).

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

- (a) is beyond the reasonable control of the affected party;
- (b) occurs without the negligence of the affected party; and
- (c) the affected party was not able to prevent or is not reasonably able to overcome by the exercise of due diligence and care,

and includes the following causes, events or circumstances subject to them meeting the criteria set out in paragraphs (a) to (c) above:

- (d) hostile conduct using computer or related networks or systems, intended to disrupt or destroy a party's critical IT systems, assets or functions;
- (e) inevitable accident, derailment, breakdown or damage to or confiscation of property;
- (f) storm, flood, fire, earthquake, explosion, washaway, landslide or other catastrophe;
- (g) peril of navigation, act of foreign enemies, hostility, war (declared or undeclared), invasion, civil war, rebellion, revolution, insurrection, riot, blockade, civil commotion, national emergency (whether in fact or law), malicious damage or sabotage, act of terrorism or security-related matters;
- (h) nuclear ionisation or radioactivity;
- (i) executive or administrative order or act of either general or particular application of any government, prohibition or restriction by domestic or foreign laws, regulations or policies (other than laws specifically for that purpose passed by the Commonwealth of Australia); or
- (j) quarantine or customs restrictions, strike, lockout, stoppage, go-slow, labour disturbance or other such industrial dispute or action,

but does not include any:

- (k) breakdown or delay of any Trains or Rolling Stock operated by the Operator;
- (l) event affecting any loading or unloading facility, required by the Operator to use its rights as contemplated by this Agreement; or
- (m) lack of funds or other financial cause.

Government Authority means, as the context requires, the relevant and competent government or any governmental, semi-governmental or administrative department, entity, agency, authority, commission, corporation or body (including those constituted or formed under any statute), regardless of whether that department, entity, agency, authority, commission, corporation or body is established by the Commonwealth, a State, a Territory or local government.

Guaranteed Obligations has the meaning given to it in clause 16.2(a).

Guarantor means, if applicable, the party specified at Item I of Schedule 1.

Incident means a breakdown, collision, derailment, accident, emergency or other event or circumstance on or affecting any Yard Facility, Approved Additional Infrastructure, the Mainline or (if applicable) the provision of any Yard Service that causes, or may reasonably be expected to pose a serious risk of causing:

- (a) material damage or destruction to, or interference with, any Yard Facility or any Approved Additional Infrastructure managed by Aurizon or a Related Body Corporate of Aurizon (or any authorised delegate of either of them);
- (b) the safety of a Train or any person to be jeopardised;
- (c) material damage or destruction to the property of any person;
- (d) serious injury to or death of any person;
- (e) an Environmental Condition;
- (f) delay or obstruction to the use of a Yard Facility, any Approved Additional Infrastructure or the Mainline;
- (g) notifiable occurrences as defined in the *Rail Safety Act*;
- (h) an incident that requires notification under the Standards; or
- (i) an incident requiring notification under the Dangerous Goods Code.

Indirect or Consequential Loss means any indirect or consequential loss; loss of opportunity; loss of contract; loss of revenue, loss of profit or loss of anticipated profit (in each case, other than to the extent embedded in the calculation of Charges payable under this Agreement); loss of business reputation; loss of goodwill; loss of use; loss of production; loss of savings or anticipated savings; loss of rent income or occupation; loss of or damage to credit rating; wasted overheads or demurrage; loss of freight haulage tonnage; loss concerning supply of a product to a third party or concerning making a product available to transport; or payment of liquidated sums, penalties or damages under any agreement (other than this Agreement), but does not include:

- (a) property damage or any Loss arising from third party claims for property loss, property damage, personal injury, nervous shock or death;
- (b) any clean up costs or remediation costs resulting from toxic or hazardous substances; or
- (c) any fine or penalty imposed by a Government Authority for failure by a party to comply with Applicable Law as a result of the other party's failure to comply with the requirements of this Agreement, and any cost or expense incurred by the first party in dealing with any actions, investigations, inquiries or proceedings by a governmental or regulatory body in respect of such failures or breaches.

Initial Determination has the meaning given to it in clause 13.7(b)(ii).

Insolvent has the meaning given by the *Corporations Act* (and **Insolvency** has a corresponding meaning).

Instructions means all instructions and directions issued by Aurizon to the Operator from time to time (including the instructions and directions referred to, and contained in, the documents set out in Schedule 6).

Loss means any damage, loss, cost, liability, expense (including legal expenses on an indemnity basis), charge, fee, payment (including payment under any indemnity) or any other amount of any nature or description, whether direct, indirect or consequential (including financial or pure economic loss), present or future, fixed, ascertained or unascertained, actual or contingent howsoever sustained, and whether in contract, tort, statute or otherwise.

Mainline means the railway network in South Australia to the extent that such network physically connects to any Yard Facility or any Approved Additional Infrastructure.

Material Change means:

- (a) a Change in Law; or
- (b) a change in the costs incurred by Aurizon due to the requirements of the landowner who owns or controls the land on which any Yard Facility exists.

Monitoring Equipment means any equipment (including hot box detectors and electronic wagon tags) either permanently or temporarily placed or positioned on or beside or within any Yard Facility to detect, measure, record, collect data or, if required, report on all or any aspects of the Rolling Stock (including those matters set out in clause 8.4(a)).

Net Financial Effect means the net effect in financial terms of a Change in Law on the costs of Aurizon performing its obligations or exercising its rights under this Agreement, including any offsetting benefits or adverse effects directly or indirectly connected to the Change in Law.

Network Operating Protocols means:

- (a) the Code of Practice for the Defined Interstate Rail Network;
- (b) the One Rail Australia Addendum to the Code of Practice for the Defined Interstate Rail Network; and
- (c) the rail safety management plan and all policies, rules, procedures, Instructions, notices issued by Aurizon to the Operator from time to time based on that plan,

as notified by Aurizon to the Operator, and in each case as amended, modified or updated by Aurizon from time to time.

Operator Nominated Location has the meaning given to it in Item K of Schedule 1.

Operator Proposal has the meaning given to it in clause 4.4(a)(i)(A).

Operator Upgrade has the meaning given to it in clause 4.4(a)(i)(A).

Other Charges means the other charges as calculated in accordance with Schedule 2 and as adjusted from time to time in accordance with Schedule 3.

Permitted Activities means, with respect to a Yard Facility, the activities that the Operator is entitled to undertake within the relevant Yard Access Area of the relevant Yard Facility during the corresponding Yard Access Times, as specified in Item C of the relevant Yard Schedule, and which may be adjusted from time to time subject to the prior written agreement of Aurizon and the Operator.

Prohibited Activities means, with respect to a Yard Facility, the activities that the Operator is prohibited from undertaking within the relevant Yard Facility (including the relevant Yard Access Area), as specified in Item D of the relevant Yard Schedule, and which may be adjusted from time to time subject to the prior written agreement of Aurizon and the Operator.

Proposed Charges Adjustment has the meaning given to it in clause 4.4(b)(i)(B).

Rail Safety Act means the *Rail Safety National Law (South Australia) Act 2012* (or such equivalent legislation or legislation enacted in substitution from time to time).

Rectification Notice has the meaning given to it in clause 12.1(a).

Rectification Response has the meaning given to it in clause 12.1(a)(ii)(B).

Related Body Corporate has the meaning given to it in the *Corporations Act*.

Rolling Stock means a locomotive, carriage, wagon or other vehicle that operates on or is suitable for use on a railway.

Security means an on demand, irrevocable bank guarantee from an Approved Issuer in a form approved in writing by Aurizon and for the amount specified in Item H of Schedule 1, or such other form or amount as may be approved by Aurizon.

Solvent has the meaning given to it in the *Corporations Act*.

Standards means the relevant Australian standards and international standards that a diligent and prudent track and rolling stock operator would apply to the provision of the Management Services and Train Operation Services, including the Rail Industry Safety and Standards Board suite of standards, code of practice and guidelines.

Storage Charge means the storage charge as set out in Schedule 2 and as adjusted from time to time in accordance with Schedule 3.

Term means the period from the Commencement Date to the Expiry Date unless terminated pursuant to this Agreement or extended in accordance with clause 3.2 or otherwise by written agreement of Aurizon and the Operator.

Third Party Monitoring Contractor has the meaning given to it clause 8.4(a)(ii).

Train means a single unit or multiple units of Rolling Stock coupled together, at least one of which is either a locomotive or other self-propelled unit.

Train Consist means a written notice (which written notice may be given in electronic form) prepared by the Operator in relation to a Train Service and containing the following details in relation to that Train Service:

- (a) the designated train number for the Train Service and its origin and destination;

- (b) the date and time the Train Service will:
 - (i) depart from; or
 - (ii) arrive at:
 - a Yard Facility;
- (c) the motive power to be used by the Train;
- (d) the number of vehicles in the Train;
- (e) the gross mass of the Train;
- (f) the length of the Train; and
- (g) for each vehicle in the Train in the order in which they will be placed, leading end first, the following information:
 - (i) vehicle number;
 - (ii) vehicle classification;
 - (iii) vehicle type;
 - (iv) gross weight of vehicle; and
 - (v) the class of any Dangerous Goods carried on the vehicle.

Train Control means the control of Trains by Aurizon in any Yard Facility or on any Approved Additional Infrastructure.

Train Control Centre means the function maintained and operated by Aurizon for the purposes of Train Control and includes Aurizon's shift coordinator for the relevant Yard Facility.

Train Control Directions means all:

- (a) Instructions relating to management, continuity or safe operation of Train movements in any Yard Facility, including Instructions concerning the actual movement, deployment or placement of Trains;
- (b) instructions issued by Aurizon's shift coordinator;
- (c) directions of the Train controller; or
- (d) instructions issued by a third party pursuant to clause 8.4(d).

Train Crew means a Train driver or any other person with the skills, training and authorisation to operate, or support the operation of, a Train.

Train Management Policy means the train management policy set out at www.aurizon.com.au as amended by Aurizon or its Related Bodies Corporate from time to time.

Train Service means, as relevant in the context of this Agreement, a Train run by the Operator including in connection with the provision of railway freight services, passenger services or services to move empty Trains.

Variable Rate means the rate as specified in Schedule 2 and as adjusted from time to time in accordance with Schedule 3.

Wilful Default means a wanton or reckless act, omission or breach of this Agreement by Aurizon or the Operator that reasonably evidences that the perpetrator wilfully and utterly disregarded the harmful and avoidable consequences to the other arising from the relevant act, omission or breach of this Agreement.

Yard Access Areas means, with respect to each Yard Facility, those areas of the relevant Yard Facility, as specified in Item A of the relevant Yard Schedule, to which the Operator is granted access during the corresponding Yard Access Times, subject to and in accordance with the terms and conditions of this Agreement.

Yard Access Authority means the paper based process (being form RS FRM 035 Aurizon Yard Access Authority) which entitles the Operator to access the Yard Access Areas.

Yard Access Times means, with respect to each Yard Access Area, the times during which the Operator is entitled to access the relevant Yard Access Area, as specified in Item B of the relevant Yard Schedule, and which may be adjusted from time to time subject to the prior written agreement of Aurizon and the Operator.

Yard Facility means:

- (a) each yard facility specified in Item L of Schedule 1, in each case, as further described in the Appendix to the relevant Yard Schedule applicable to such facility; and
- (b) with respect to each such Yard Facility, the Associated Yard Facility Infrastructure associated with that facility.

Yard Schedule means, with respect to the:

- (a) Port Augusta Yard Facility, Schedule 7;
- (b) Whyalla Yard Facility, Schedule 8;
- (c) Port Pirie Yard Facility, Schedule 9;
- (d) Tailem Bend Yard Facility, Schedule 10;
- (e) Mainline Yard Facility, Schedule 11;
- (f) Dry Creek Yard Facility, Schedule 12; and
- (g) Port Adelaide Yard Facility, Schedule 13.

Yard Services means, with respect to a Yard Facility, the services to be provided by Aurizon to the Operator at a Yard Facility, as specified in Item E of the Yard Schedule applicable to the relevant Yard Facility.

Yard Services Charge means, in relation to a Yard Service, the charges set out in Schedule 2 as may be:

- (a) updated from time to time in writing by agreement between the parties in relation to any Yard Services agreed between the parties; or
- (b) adjusted from time to time in accordance with Schedule 3.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) singular words will also have their plural meaning and vice versa;
- (b) a reference to one gender includes all genders;
- (c) a reference to a 'person' includes companies and associations;
- (d) a reference to a 'party' is to a party to this Agreement and includes their respective executors, administrators, successors, agents, permitted assigns and substitutes;
- (e) a reference to the consent of a party means the prior written consent of that party;
- (f) a reference to a 'statute', 'ordinance', 'code' or other law includes regulations and other instruments under it and consolidations, amendments, successors, re-enactments or replacements of any of them;
- (g) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (h) a reference to time is to Adelaide, Australia time, or if the context so requires, is to Darwin, Australia time;
- (i) a reference to 'A\$', '\$A', 'dollar' or '\$' is to Australian currency;
- (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it;
- (k) headings are for convenient reference only and do not affect the interpretation of this Agreement;
- (l) a reference to the word 'include' and 'including' means 'including, but not limited to';
- (m) a reference to 'or' will be that of the inclusive, being one, some or all of a number of possibilities; and
- (n) without limiting clause 16, a promise on the part of two or more persons binds them jointly and severally.

1.3 Payment and administrative obligations due on Business Day

- (a) If any amount becomes payable under this Agreement on a day that is not a Business Day, then that amount is payable on the prior Business Day.
- (b) If Aurizon is due to perform an administrative obligation on a day that is not a Business Day, then that obligation must be performed no later than the next Business Day.

2. Yard access rights

2.1 Grant to Operator of access to the Yard Access Areas

Aurizon grants to the Operator, during the Term of this Agreement, a non-exclusive right to enter a Yard Facility and access the Yard Access Areas during the applicable Yard Access Times for the purpose of undertaking Permitted Activities, on the terms and conditions set out in this Agreement.

2.2 Restrictions on access

The Operator agrees at all times during the Term of this Agreement not to access or attempt to access any Yard Facility (or any part thereof) or any Associated Yard Facility Infrastructure (or any part thereof) that is within the battery limits of any Yard Facility in any way other than as is authorised by this Agreement.

2.3 Use of a Yard Facility

- (a) The Operator agrees and acknowledges that its rights with respect to each Yard Facility pursuant to this Agreement:
 - (i) are limited to those rights expressly set out in this Agreement; and
 - (ii) do not give the Operator an exclusive right to access any Yard Facility (or any part thereof).
- (b) The Operator must use best endeavours to coordinate and cooperate with other operators and users of the Yard Facility in order to mitigate any potential congestion and ensure all Train Services stay on schedule. If a conflict exists between the Operator and any other operator or user of the Yard Facility relating to the movement of Rolling Stock within the Yard Facility, and such conflict is unable to be resolved through good faith discussions, then the Operator must promptly contact the Train Control Centre to resolve the issue in accordance with safe working rules. The decision of the Train Control Centre will be final and the Operator must comply with any Instructions received from the Train Control Centre in this regard.

2.4 No obligation to provide access or Yard Services

Notwithstanding anything to the contrary in this Agreement, the Operator acknowledges that Aurizon is not required to provide access to any Yard Facility (including any Yard Access Areas), any Approved Additional Infrastructure or, if applicable, provide any Yard Services at any Yard Facility, if:

- (a) the Operator has failed to satisfy all of the Conditions Precedent;
- (b) the Operator has failed to:
 - (i) in relation to a Yard Facility, contact the Train Control Centre to request an access authority for access to the Yard Access Areas for the Operator's Train in a manner that complies with the applicable Yard Access Times and otherwise complies fully with this Agreement (including Schedule 5); and

- (ii) in respect of Yard Services, submit an Access Form and Train Consist specifying the relevant Yard Services or has otherwise failed to comply fully with this Agreement (including Schedule 5);
- (c) the Operator attempts to access the Yard Facility outside of the Yard Access Times in a manner that does not comply with Schedule 5;
- (d) an emergency occurs;
- (e) Aurizon has a reasonable concern that providing such access or the provision of Yard Services may give rise to a material health or safety risk;
- (f) in Aurizon's view, it is necessary to delay, hinder or prevent:
 - (i) access by the Operator to a Yard Facility, any Yard Access Area or Approved Additional Infrastructure; or
 - (ii) the provision of Yard Services by Aurizon to the Operator,
 in an effort to prevent or address any actual or potential:
 - (iii) breach of safety requirements in relation to any Yard Facility (including any Yard Access Areas), any Approved Additional Infrastructure or the Mainline (or in respect of each, any part thereof);
 - (iv) breach by another Train operator of the terms and conditions of that operator's access to and use of any Yard Facility;
 - (v) death or injury to any person;
 - (vi) loss or damage to any property including any Yard Facility (including any Yard Access Areas), any Approved Additional Infrastructure or the Mainline (or in respect of each, any part thereof); or
 - (vii) delay to the progress of Trains that have priority over the Operator's Trains; or
- (g) any event outside of the reasonable control of Aurizon (including the occurrence of Force Majeure affecting Aurizon or its Related Bodies Corporate).

2.5 Exclusion of liability

Notwithstanding any other clause in this Agreement, Aurizon excludes, and the Operator must release Aurizon and Aurizon's Related Bodies Corporate from, liability for all Loss suffered or incurred by the Operator in the event that the Operator's access to a Yard Facility (including any Yard Access Areas) or the provision of any Yard Services is delayed, hindered or prevented, or that the Operator's Train is not or will not be delivered on time to its ultimate or intermediate destination, if that delay, hindrance, prevention or failure to deliver is as a result of:

- (a) failure by Aurizon to provide access to any Yard Facility (including any Yard Access Areas), Approved Additional Infrastructure or provide any Yard Services for any of the reasons pursuant to clause 2.4;

- (b) failure of the Operator's Train Service; or
- (c) genuine and material safety considerations.

3. Term of Agreement

3.1 Term of Agreement

- (a) This Agreement commences on the date of this Agreement and, unless terminated earlier pursuant to this Agreement or extended in accordance with clause 3.2 or otherwise by agreement of Aurizon and the Operator, will continue until 23:59 hours on the Expiry Date.
- (b) Notwithstanding clause 3.1(a), access rights under this Agreement to a Yard Facility or any Approved Additional Infrastructure or the provision of Yard Services will automatically terminate on the date Aurizon ceases to be entitled to provide the access or the services as a direct result of the withdrawal of its entitlement to do so by any Government Authority or pursuant to any access agreement to which Aurizon is a party.

3.2 Extension of Term

- (a) No earlier than twelve (12) months prior to the expiry of the then current Term and no later than six (6) months prior to the expiry of the then current Term, the Operator may request in writing to Aurizon that the Term of this Agreement be extended for the period specified in Item E of Schedule 1.
- (b) Within sixty (60) days of receipt of a request given by the Operator under clause 3.2(a), Aurizon must give notice to the Operator as to whether it agrees to (or declines, which it may do so in its absolute discretion) the requested extension of the Term.

3.3 Conditions Precedent to commencement of right to access and provision of Yard Services

- (a) Notwithstanding anything to the contrary in this Agreement, the Operator's entitlement to access any Yard Facility (including the Yard Access Areas) and any Approved Additional Infrastructure, and (if applicable) to the provision of Yard Services under this Agreement is subject to satisfaction of the Conditions Precedent (to Aurizon's satisfaction) prior to the Commencement Date.
- (b) The Operator must provide evidence in writing to Aurizon of the satisfaction of each Condition Precedent as soon as reasonably practicable.
- (c) Following receipt of the evidence from the Operator under clause 3.3**Error! Reference source not found.**, Aurizon must confirm in writing to the Operator that the Conditions Precedent have been satisfied to Aurizon's satisfaction or if they have not been satisfied, details of why this is the case.
- (d) If the Conditions Precedent are not satisfied on or before the Commencement Date, this document will terminate and cease to have any effect as between the Parties.

4. Charges and payment

4.1 Charges

The Operator must pay the Charges to Aurizon in accordance with the terms of this clause 3.3(a).

4.2 Invoices

- (a) Aurizon may:
 - (i) on or after the last day of each calendar month during the Term issue an invoice to the Operator for Charges due to be paid by the Operator to Aurizon with respect to that calendar month and any other amounts payable by the Operator under this Agreement as at the date of the invoice; and
 - (ii) issue an invoice to the Operator for any amounts payable by the Operator under this Agreement on or after the expiry or termination of this Agreement (as applicable).
- (b) Each invoice will itemise the Charges and other amounts payable by the Operator under this Agreement.
- (c) Aurizon reserves the right to adjust an invoice sent to the Operator if an invoice contains any inaccuracy or error, provided Aurizon notifies the Operator of the inaccuracy or error. If Aurizon makes such adjustment, it will provide the Operator with evidence reasonably required by the Operator to verify the adjustment.

4.3 Payment

- (a) Subject to clause 4.3(b), the Operator must pay the amount of an invoice issued by Aurizon under clause 4.2(a) (or if applicable, as adjusted pursuant to clause 4.2(c)) to Aurizon by the time specified in Item G of Schedule 1.
- (b) If the Operator disputes any invoiced amount, the Operator must notify Aurizon of any disputed amounts within twenty-one (21) days from the date of the invoice. Notwithstanding any dispute in respect of the invoiced amount, the Operator must pay the invoiced amount in accordance with clause 4.3(a).
- (c) Where a payment dispute is resolved in the Operator's favour, Aurizon must pay the determined amount to the Operator and will also be liable to pay interest on the determined amount at the rate calculated under clause 4.5, from the date that such monies were originally paid until (and including) the date of re-payment of such monies.

4.4 Yard Upgrades

- (a) The Operator may, from time to time, request Aurizon to undertake one or more upgrades to any Yard Facility. The Operator acknowledges and agrees that:
 - (i) if it wishes to do so:
 - (A) the Operator must give Aurizon prior written notification (the **Operator Proposal**) of the works that it proposes Aurizon to procure

at a Yard Facility (the **Operator Upgrade**) and must provide Aurizon with the terms on which the Operator proposes Aurizon procures such Operator Upgrade and any other information required by Aurizon in order for Aurizon to assess the Operator Proposal; and

- (B) any Operator Upgrade will only be procured by Aurizon, or if Aurizon agrees acting in its absolute discretion, by the Operator, in the event that Aurizon has approved (in writing) the terms on which any such Operator Upgrade will be undertaken;
- (ii) if Aurizon procures the completion of the Operator Upgrade approved by it pursuant to clause 4.4(i)(B) above, Aurizon may increase the Charges, as a contribution to the costs incurred in procuring the completion of the Operator Upgrade (including investment charges), by:
 - (A) the amount agreed by Aurizon with the Operator when approving the terms of the Operator Upgrade pursuant to clause 4.4(i)(B) or such other amount agreed in writing with the Operator during the course of undertaking the Operator Upgrade; or
 - (B) if no such amount is agreed pursuant to clause 4.4(a)(ii)(A), an amount determined by Aurizon taking into account the costs incurred in connection with procuring the completion of the Operator Upgrade and the investment charges that Aurizon will be entitled to recover at the then current Aurizon rate of return; and
 - (iii) if Aurizon procures the completion of the Operator Upgrade approved by it pursuant to clause 4.4(i)(B) above and such Operator Upgrade is reasonably likely to benefit other users of the relevant Yard Facility:
 - (A) Aurizon will use reasonable endeavours to negotiate contributions to the costs incurred by Aurizon in connection with the Operator Upgrade from those other users of the Yard Facilities (either by way of capital contribution or increased access charges); and
 - (B) if Aurizon secures an agreement with such other users of the Yard Facilities, then Aurizon must take account any contribution or increased access charges in determining the increased Charges under clause 4.4(a)(ii) above.
- (b) If Aurizon proposes to procure one or more upgrades to any Yard Facility other than in response to an Operator Proposal, Aurizon and the Operator acknowledge and agree that:
 - (i) Aurizon will issue a written notice to the Operator specifying:
 - (A) the work that Aurizon proposes to be undertaken in connection with the relevant upgrade (the Aurizon **Upgrade**); and
 - (B) the increased Charges it proposes levying on the Operator as a contribution to the costs incurred by Aurizon in connection with procuring the completion of the Aurizon Upgrade, which will be an amount determined (acting reasonably) by Aurizon taking account of the reasonable costs incurred in connection with procuring the

completion of the Aurizon Upgrade and the reasonable investment charges that Aurizon will be entitled to recover at the then current Aurizon rate of return (the **Proposed Charges Adjustment**); and

- (ii) if Aurizon procures the completion of the Aurizon Upgrade then:
 - (A) if the Operator consents to the Aurizon Upgrade, Aurizon may increase the Charges by the Proposed Charges Adjustment or such other amount agreed in writing by Aurizon and the Operator; or
 - (B) if the Operator refuses to consent to the Aurizon Upgrade, Aurizon may only increase the Charges by the Proposed Charges Adjustment to the extent that:
 - I. in Aurizon's opinion, the Aurizon Upgrade is necessary: (i) for Aurizon to comply with its legal safety obligations; or (ii) to prevent material degradation of the Yard Facility (or any part of it); and
 - II. the increase to the Charges and the contribution sought from other users of the Yard Facility who will benefit from the Aurizon Upgrade (either by way of capital contribution or increased access charges) is: (i) derived using an access model calculated in accordance with the provisions of the *Railways (Operations and Access) Act 1997 (SA)* and guidelines of the regulator; and (ii) such model does not include costs previously included, or that ought to have been included (for example routine or foreseeable maintenance), in the model originally used to calculate the Charges.
- (c) The Operator acknowledges and agrees that clause 15 will not apply to a determination made by Aurizon under this clause 4.4.

4.5 Interest

If the Operator fails to pay any amount due and payable to Aurizon under this Agreement (including all amounts in an invoice), the Operator must pay interest on that amount, or any outstanding balance, until such amount is paid in full. The interest rate will be four percentage (4%) points above the prime lending rate charged by Australia and New Zealand Banking Group Limited at that time on overdrafts of \$100,000.00 or more. The interest will accrue and be recoverable from day to day.

4.6 GST

- (a) For the purposes of this clause 4.6:
 - (i) **GST** means any tax calculated by reference to the value of goods or services provided, calculated and levied at the point of sale or supply of the goods or services and includes GST as that term is used in the *GST Act*;
 - (ii) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and includes other GST related legislation, as amended from time to time;

- (iii) **Payment** includes all amounts (other than GST) payable by one party to the other under this Agreement, whether as fees, charges, costs, expenses, damages or as any other kind of payment; and
 - (iv) except for terms defined in this Agreement, capitalised terms used in this clause 4.6 have the same meaning as in the *GST Act*.
- (b) Except when this Agreement provides otherwise (including in Schedule 3), all Payments are exclusive of GST.
 - (c) If a party makes a Taxable Supply under or in connection with this Agreement to the other party, then the other party must pay the amount of any GST applying in respect of that Taxable Supply at the same time and in the same manner as the Payment relating to the Taxable Supply is to be paid.
 - (d) Aurizon will provide a Tax Invoice for each Taxable Supply made to the Operator as part of the billing cycle under this Agreement.
 - (e) A party making any other Taxable Supply under this Agreement must provide a Tax Invoice for any Payment relating to that Taxable Supply.

4.7 Obligation to provide Security

- (a) The Operator must:
 - (i) if Item H indicates that Security is required to be provided as at the date of this Agreement, deliver such Security to Aurizon within seven (7) days of the date of this Agreement; and
 - (ii) if at any time during the Term, Aurizon gives notice to the Operator requiring the Operator to provide Security, deliver such Security to Aurizon from an Approved Issuer in the form required by Aurizon within seven (7) days of such notice. Aurizon may only serve such a notice on the Operator under this clause 4.7(a)(ii) if:
 - (A) the Operator has defaulted in the payment of any monies owed by it to Aurizon under this Agreement and has not rectified the default within seven (7) days of receiving written notice from Aurizon requesting that such default be rectified; or
 - (B) Aurizon has formed the view (acting reasonably) that there has been an increase in the credit risk of the Operator that justifies the provision of Security.
- (b) If the Operator fails to provide Security in accordance with clauses 4.7(a), 4.7(d) or 4.7(e) or otherwise in accordance with its obligations under this Agreement, then Aurizon may immediately suspend the Operator's right to access any Yard Facility or any Approved Additional Infrastructure (and, if applicable, to be provided any Yard Services) until that Security has been provided.
- (c) The term of the Security must have an expiry date that is no earlier than the earlier of:
 - (i) three (3) years after the date of issue of the Security; and

- (ii) the later of the date that is three (3) months after the expiry of the then current Term and the date that is forecast (acting reasonably) to be the date on which the Security is to be released by Aurizon pursuant to clause 4.9.
- (d) If the Security provided by the Operator has an expiry date that is earlier than the date on which the Security is to be released by Aurizon pursuant to clause 4.9, then at least thirty (30) days before the expiry date of the Security the Operator must provide Aurizon with a replacement Security:
 - (i) for the same amount as the Security being replaced; and
 - (ii) that otherwise complies with the requirements of this Agreement.
- (e) If the provider of the Security provided by the Operator ceases to hold a licence issued by the Australian Prudential Regulation Authority or ceases to hold an Acceptance Credit Rating, then the Operator must:
 - (i) immediately upon becoming aware of such fact, give notice to Aurizon; and
 - (ii) within seven (7) days of becoming aware of such fact, provide Aurizon a replacement Security that complies with the requirements of this Agreement.
- (f) The provision and continuance of Security in accordance with clauses 4.7(a), 4.7(d) and 4.7(e) and otherwise in accordance with its obligations under this Agreement is a condition of the performance by Aurizon of its obligations under this Agreement.
- (g) If, after Security has been provided in accordance with this clause 4.7, Aurizon in its absolute discretion considers that the Security is no longer required, then Aurizon may notify the Operator that the Security is no longer required and promptly following such notice release any remaining Security to the Operator. Nothing in this clause 4.7(g) precludes Aurizon (acting reasonably) from exercising its rights under clause 4.7(a) to require further Security from the Operator during the Term.
- (h) The decision of Aurizon to require Security under clause 4.7(a) or to no longer require Security under clause 4.7(g) is not subject to the dispute provisions in clause 15.

4.8 Exercise of Security

- (a) The Security will be held by Aurizon as security for the performance of the obligations of the Operator under this Agreement and for the payment by the Operator for all amounts due from the Operator to Aurizon under or in connection with this Agreement.
- (b) Aurizon may immediately exercise or call on any Security provided by the Operator:
 - (i) in any circumstances in which Aurizon suffers or incurs Loss as a result of the Operator's (or any of its employee's, agent's or contractor's) fraud, default, negligence, or wrongful or wilful act or omission;
 - (ii) upon any failure by the Operator to pay Aurizon where Aurizon has suffered or incurred any Loss in respect of which the Operator is required to indemnify Aurizon in accordance with this Agreement;

- (iii) upon the occurrence of any failure by the Operator to pay Aurizon an amount owing from the Operator to Aurizon pursuant to the terms of this Agreement on or before the due date for such payment; or
- (iv) in the event that the Operator fails to replace any Security in accordance with the terms of this Agreement, in which case the proceeds will be held as cash security,

in each case, regardless of whether Aurizon has incurred any Loss or made any payment in connection with the same.

- (c) If Aurizon exercises or calls on the Security, then:
 - (i) the Operator must promptly (and in any event within seven (7) days after such exercise or call) do all things necessary to restore the value of the Security held by Aurizon so that Aurizon holds Security that complies with the requirements of this Agreement which is equal to an aggregate amount of not less than the Security amount set out in Item H; and
 - (ii) in the case of an exercise or call made in the circumstances described in clause 4.8(b)(iv), subject to Aurizon's right to have recourse to such cash security, the amount held as cash security will be refunded to the Operator upon the Operator providing a replacement Security that complies with the requirements of this Agreement which is equal to an aggregate amount of not less than the Security amount set out in Item H.
- (d) Any call or draw on the Security by Aurizon is in addition to and without derogation from any other rights Aurizon may exercise against the Operator by reason of a breach of this Agreement.
- (e) Nothing in clause 4.8 limits Aurizon's entitlement to recover from the Operator the full amount of any amount owing from the Operator to Aurizon under this Agreement or under any other agreement between the Aurizon and the Operator (including any agreement that may have expired) or Aurizon's Loss as a result of the Operator's default or otherwise.

4.9 Return of Security

Upon expiry or termination of this Agreement, Aurizon must release the Security to the Operator provided that at such time:

- (a) the Operator has no outstanding liabilities which are due and payable under or in connection with this Agreement or liability which have accrued but have either not been quantified or fallen due for payment; and
- (b) there is no unresolved dispute under this Agreement.

5. Control and management of Yard Facility

5.1 Aurizon to control

As between Aurizon and the Operator:

- (a) control of each Yard Facility and all Approved Additional Infrastructure; and

- (b) the management of access to each Yard Facility and all Approved Additional Infrastructure,

remains with Aurizon at all times.

5.2 Aurizon's obligations

Aurizon agrees during the Term:

- (a) to undertake or procure the function of Train Control;
- (b) to comply with the Network Operating Protocols and the Access Management Requirements;
- (c) subject to this Agreement, to use reasonable endeavours to safely and efficiently operate each Yard Access Area so that any permitted access to any Yard Access Areas by the Operator is facilitated in a manner which complies with this Agreement;
- (d) to use its reasonable endeavours to provide the Operator with details, as soon as reasonably practicable, of all operating incidents (including an Incident) that have affected or that are reasonably likely to affect:
 - (i) the ability of any Operator's Train to access a Yard Access Area when permitted to do so under this Agreement;
 - (ii) the Operator's Train's security or safety while the Operator's Train is in a Yard Access Area; or
 - (iii) the security and safety of the freight or passengers on an Operator's Train Service while the Operator's Train is in a Yard Access Area; and
- (e) to comply with all Applicable Law and other laws in any way applicable to Aurizon's management, control and ownership of any Yard Facility or any Approved Additional Infrastructure.

5.3 Operator's obligations in relation to Rolling Stock standards

- (a) The Operator must, as at the Commencement Date and at all times during the Term, maintain each Train operated by it at each Yard Facility in a good and safe operational condition, in a condition which is fit for use at the Yard Facility, and so that it is equipped with rail industry-approved electronic tags.
- (b) Notwithstanding that the Operator is in compliance with clause 5.3(a) and without limiting any other clause of this Agreement, the Operator is fully responsible for, and must release, indemnify and keep indemnified on demand Aurizon and the Aurizon Indemnified Persons from and against, any Claim or Loss suffered or incurred by Aurizon or any Aurizon Indemnified Person in connection with any injury to, illness or death of, any person or damage or destruction, arising from or related to any spontaneous failure of or damage to the Operator's Rolling Stock.

5.4 Operator's obligations in relation to Train Crew

At all times during the Term, the Operator must ensure that each Train operated by the Operator at a Yard Facility will be operated by a Train Crew that:

- (a) is qualified under the Network Operating Protocols (and evidence of any qualifications, permits, licences or insurances required to be held in accordance with the terms of this Agreement, Network Operating Protocols or at law must be provided to Aurizon upon request);
- (b) is familiar with any operational obligations under the Network Operating Protocols;
- (c) is trained and qualified (and evidence of such qualification must be provided to Aurizon upon request) in relation to the track, undertaking the Permitted Activities and any other relevant matters relevant to the Yard Facility; and
- (d) is qualified (and evidence of such qualification must be provided to Aurizon upon request) in the operation of the Rolling Stock used to operate the Train.

5.5 Operator's other obligations

The Operator must at all times during the Term:

- (a) comply with the Network Operating Protocols and the Access Management Requirements;
- (b) access the Yard Access Areas in accordance with this Agreement and only at the corresponding Yard Access Times;
- (c) comply with all Train Control Directions within the time period set out in such directions, but if no time period is specified, as soon as reasonably practicable after the receipt of the same;
- (d) comply with, and must use best endeavours to procure that all contractors and sub-contractors of the Operator and any other person authorised by the Operator to access a Yard Facility comply, with all Instructions when accessing a Yard Facility;
- (e) if required by Aurizon, procure that all contractors and sub-contractors of the Operator and any other person authorised by the Operator to access a Yard Facility comply with this Agreement and the *Rail Safety Act*, including requirements in respect of any Accreditation, documentation, training and site induction;
- (f) only access Yard Access Areas during the Yard Access Times for the purpose of undertaking the Permitted Activities in the Yard Access Areas unless otherwise permitted pursuant to this Agreement;
- (g) notify the Train Control Centre immediately if it becomes aware of any non-compliance in relation to the (or any reasonably likely non-compliance with) permitted Yard Access Areas, Permitted Activities or with the Yard Access Times;
- (h) ensure that:
 - (i) its access to a Yard Facility (including to the extent any Train remains partially on the Mainline whilst accessing a Yard Facility);
 - (ii) its access to the Yard Access Areas within a Yard Facility;
 - (iii) its access to any Approved Additional Infrastructure; and

- (iv) its use of the Yard Access Areas for the provision and undertaking of the Permitted Activities;

is carried out in such a way:

- (v) as to minimise obstruction of any part of the Yard Facility, Yard Access Areas, any Approved Additional Infrastructure and the Mainline; and
 - (vi) so that use of the Yard Facility, Yard Access Areas, any Approved Additional Infrastructure and the Mainline by any other user authorised by Aurizon is not prevented or delayed (other than through use of the Yard Access Areas or any Approved Additional Infrastructure in accordance with this Agreement or through proper compliance with an Instruction);
- (i) comply with:
 - (i) all Applicable Law and other laws in any way applicable to any Yard Facility, or any operation of a Train Service, or the Operator's use of any Yard Access Areas or any Approved Additional Infrastructure; and
 - (ii) all lawful notices, orders and directions issued or given by, or agreements with, a Government Authority that relate to the use of any Yard Facility, any Yard Access Areas or any Approved Additional Infrastructure;
 - (j) obtain, comply with and maintain all approvals, licences or permits that may be necessary or appropriate (from time to time) for the use of, and operation of Rolling Stock on, any Yard Facility, any Approved Additional Infrastructure and the Mainline by the Operator (including obtaining Aurizon's prior written approval to all Rolling Stock that will enter a Yard Facility or any Approved Additional Infrastructure);
 - (k) not change, alter, repair, deface, damage or otherwise affect any part of any Yard Facility or any Approved Additional Infrastructure, Aurizon's property or the property of Aurizon's Related Bodies Corporate or other third parties. For the avoidance of doubt, this clause 5.5(k) does not preclude normal and fair wear and tear of the Yard Access Areas or any Approved Additional Infrastructure caused by the Operator's access to the Yard Access Areas or any Approved Additional Infrastructure in compliance with this Agreement;
 - (l) at its own cost, provide and maintain communications equipment that is compatible with the equipment used in the Train Control Centre as at the Commencement Date and use such equipment to communicate with the Train Control Centre, and if Aurizon proposes to change communications equipment in the Train Control Centre and that proposal will result in the Operator having to replace or upgrade its communications equipment:
 - (i) the Operator must in good faith co-operate with Aurizon, including by providing such information as may reasonably be requested, to ensure that each party is able to comply with their respective obligations under clauses 5.2, 5.3, 5.4 and this clause 5.5; and
 - (ii) Aurizon will consult with the Operator and the Operator must, after such consultation and agreement with such proposal and after reasonable notice from Aurizon to the Operator, at the Operator's cost, replace or upgrade the

communications equipment to be compatible with the equipment used in the Train Control Centre;

- (m) subject to clause 17, provide to Aurizon any information related to the operation of the Train Service (excluding commercial information) as Aurizon requires to enable it to properly perform its functions and discharge its obligations to the Operator, other operators, its owner, government authorities or other competent authorities, the public and otherwise in accordance with this Agreement, Applicable Law or any other laws in any way applicable to Aurizon's management, control and ownership of any Yard Facility or any Approved Additional Infrastructure;
- (n) use best endeavours to coordinate and cooperate with other operators and users of the Yard Facility so as to mitigate any potential congestion and ensure all Train Services stay on schedule;
- (o) comply with the access and service request procedure set out in Schedule 5;
- (p) ensure that any item of freight or material, including minerals, bulk goods or commodities (in any form), being hauled on or in a Train operated by the Operator does not fall, leak, spill, escape from, or become deposited on or adjacent to, a Yard Facility, any Approved Additional Infrastructure or the Mainline, and in such event the Operator must at its cost, immediately remediate any fall, leak, spill or any escaped or deposited matter, to Aurizon's reasonable satisfaction; and
- (q) provide and maintain any Security required in accordance with clause 4.7 and Item H of Schedule 1.

5.6 Removal of Rolling Stock from a Yard Facility

- (a) If:
 - (i) Aurizon reasonably considers that a Train operated by the Operator is obstructing a Yard Facility (or access to any road within the Yard Facility) or any part of the Mainline;
 - (ii) Aurizon reasonably considers that it is necessary to move a Train operated by the Operator to relieve yard congestion or a Mainline obstruction; or
 - (iii) Aurizon reasonably considers that:
 - (A) any one or more of the Rolling Stock used by the Operator is loaded in excess of its rated carrying capacity or loaded in an unsafe or potentially unsafe manner;
 - (B) any one or more of the Rolling Stock used by the Operator is not being properly maintained, safely stored or operated in any Yard Facility;
 - (C) there are faults or defects in any one or more of the Rolling Stock used by the Operator; or
 - (D) there are potential faults or defects in any one or more of the Rolling Stock used by the Operator which give rise to a concern for the safe

operation of the Yard Facility, the safe storage or the operation of the Rolling Stock at the Yard Facility,

then upon notification to this effect by or on behalf of Aurizon, the Operator must arrange, at its own cost and expense, for the Train, and any freight being transported by the Train, to be moved by or at the time specified in the notice to:

- (iv) another part or parts of the Yard Facility nominated by Aurizon;
 - (v) a location owned by, or under the control of, the Operator; or
 - (vi) the Operator Nominated Location set out in Item K of Schedule 1.
- (b) Subject to clause 5.6(c), if the Operator fails to comply with the notice referred to in clause 5.6(a), then:
- (a) the Operator consents to Aurizon arranging for the Train, and any freight being transported by the Train, to be moved to any (or a combination) of the locations set out in clauses 5.6(a)(iv) to 5.6(a)(vi), at the Operator's cost and expense; and
 - (b) the Operator will be liable to pay to Aurizon a Storage Charge for each day that the Train (or any part thereof) remains in the Yard Facility, such fee to commence accruing from the time that the Train first enters the Yard Facility.
- (c) Notwithstanding any other provision of this Agreement, the Operator must release, indemnify and keep indemnified Aurizon and the Aurizon Indemnified Persons from and against any Claim or Loss suffered or incurred by Aurizon or any Aurizon Indemnified Person in connection with all injury to, illness or death of, any person and arising from or related to the removal of the Train, and any freight being transported by the Train, including where such injury, illness, death, Claim or Loss is caused by Aurizon's negligence.

5.7 Access to Additional Infrastructure

The Operator must not access any Additional Infrastructure, without the prior written consent of Aurizon (which may be given or withheld in Aurizon's absolute discretion). The Operator must comply with the consent requirements set out in Schedule 5 of this Agreement.

5.8 General obligations relating to Yard Services

- (a) The Operator may request Aurizon to provide Yard Services with respect to an Operator's Train in connection with access to a Yard Access Area at a Yard Facility. If the Operator wishes to request Aurizon to provide Yard Services, the Operator must submit an Access Form corresponding to that Operator's Train in accordance with Schedule 5.
- (b) If Aurizon confirms to the Operator in writing that it will provide the requested Yard Services, Aurizon and the Operator acknowledge and agree that:
 - (i) the scope of Yard Services to be provided will be limited to the narrower of those confirmed in writing by Aurizon and those specified in (or agreed in accordance with) the Yard Schedule with respect to the relevant Yard Facility;

- (ii) notwithstanding Aurizon's confirmation pursuant to this clause 5.8(b), Aurizon will not be obliged to provide any Yard Services to the extent such provision is not in compliance with the *Rail Safety Act*; and
- (iii) Aurizon will schedule the provision of such Yard Services at the relevant Yard Access Area so that the rights of the following entities in relation to the Yard Facility have the following order of priority:
 - (A) first, Aurizon and its Related Bodies Corporate; and
 - (B) second, the Operator and other operators.
- (c) Without limiting the generality of clause 2.5, the parties acknowledge and agree that Aurizon is not responsible for any Loss suffered by the Operator if Aurizon is unable to provide the Yard Services at any time during the Term of this Agreement (including due to a failure by the Operator to provide sufficient and adequately qualified personnel as required under clauses 5.9(d) and 5.9(e) or an event under clause 5.8(b)).

5.9 Operator obligations in respect of Permitted Activities

The Operator must:

- (a) comply with all rules and regulations applying to the Permitted Activities notified to the Operator by Aurizon from time to time, including all safety protocols and any speed and weight restrictions;
- (b) comply with all:
 - (i) applicable safety standards and Applicable Law;
 - (ii) policies and notices issued by Aurizon, for the purpose of ensuring the safe provision of the Permitted Activities at the Yard Access Areas, provided such policies and notices reflect usual and standard practices in the rail industry;
- (c) obtain and maintain such Accreditation, licences and approvals as required by Applicable Law in connection with the Permitted Activities;
- (d) ensure that its personnel engaged in, or in connection with, the provision of the Permitted Activities are:
 - (i) competent and appropriately qualified (including under the Network Operating Protocols);
 - (ii) obtain and maintain any applicable Accreditation and training; and
 - (iii) familiar with any operational obligations under the Network Operating Protocols,

and the Operator must provide Aurizon with evidence of any such qualification, Accreditation or training (as applicable) upon request; and

- (e) provide sufficient personnel, who are appropriately qualified in accordance with clause 5.9(d), to undertake each of the Permitted Activities as identified in each Yard Schedule in relation to each Yard Facility.

6. Compliance with Instructions

- (a) The Operator must comply with all Instructions and must promptly inform all relevant Train Crew of those Instructions and any changes to them.
- (b) If an Instruction:
 - (i) is a Train Control Direction, the Operator must comply with such direction immediately; or
 - (ii) is not a Train Control Direction, the Operator must comply with the Instruction within the time required in the Instruction, or if no time for compliance is specified within the Instruction, within a reasonable time.
- (c) The Operator must comply with an Instruction in such a way as to reasonably minimise disruption to any other operator's use of any Yard Facility, any Approved Additional Infrastructure or the Mainline.
- (d) Aurizon is not responsible for any delay suffered or cost incurred by the Operator in complying with an Instruction of Aurizon and, without limiting the generality of clauses 2.5 or 13, the Operator releases Aurizon and Aurizon's Related Bodies Corporate from any Claim arising from such compliance.

7. Accreditation

- (a) Each party warrants for the benefit of the other party that, during the Term, each such party:
 - (i) has obtained and holds all relevant Accreditation, including, in the case of the Operator, all Accreditation required by Applicable Law in relation to Rolling Stock used by the Operator at a Yard Facility;
 - (ii) is an Accredited Person;
 - (iii) will maintain such Accreditation and ensure such Accreditation remains current at all times during the Term; and
 - (iv) will comply with its respective obligations under Applicable Law and in relation to rail safety to the extent that the Accredited Person's Accreditation or rail safety obligations are affected by:
 - (A) access to and operation within any Yard Facility, Approved Additional Infrastructure or the Mainline; or
 - (B) the provision of Yard Services or Permitted Activities.
- (b) The Operator must not:
 - (i) operate Rolling Stock at a Yard Facility without being in strict compliance with clause 7(a); and

- (ii) do anything, or omit to do anything, that may cause the Operator to breach any term of its Accreditation.
- (c) The Operator must notify Aurizon immediately upon receiving any notice from any Government Authority that materially or adversely affects its Accreditation.
- (d) If a third party audit of equipment or maintenance practices is requested by the relevant Accrediting authority with respect to the Operator's Accreditation, then the Operator must provide a copy of that audit to Aurizon at the same time such audit report is given to that relevant Accrediting authority.
- (e) The Operator must, on or before the Commencement Date, provide to Aurizon evidence of its Accreditation. A copy of all documents evidencing renewal or amendment of Accreditation must be provided by the Operator to Aurizon upon receiving a written request from Aurizon.
- (f) If at any time the Operator's Accreditation is cancelled, suspended or withdrawn, the Operator must immediately notify Aurizon and cease all Train movements until:
 - (i) the Accreditation is reinstated; or
 - (ii) if Accreditation is conditionally reinstated, the conditions are either complied with or apply only to the extent that they have no material effect or relevance to the Operator's obligations under this Agreement.
- (g) If a party fails to maintain all or part of its Accreditation, or has all or part of its Accreditation suspended, cancelled or withdrawn, then:
 - (i) that party must use all best endeavours to obtain, or have restored, its full Accreditation as soon as reasonably practicable; and
 - (ii) if that party is Aurizon, Aurizon's obligations under this Agreement will be suspended until its Accreditation is reinstated.
- (h) Clauses 7(f) and 7(g) are without prejudice to the parties' rights under clause 12.3 in respect of termination of this Agreement.

8. Inspection and audit by Aurizon

8.1 Audit obligation

- (a) Subject to clause 8.2, Aurizon may at any time, upon giving the Operator at least two (2) Business Days' advance notice, require a particular Train Service of the Operator to undergo an audit to assess:
 - (i) the Operator's compliance with the terms and conditions of this Agreement, including whether the Train Consist provided by the Operator under clause 5.5(n) is correct;
 - (ii) in respect of freight Train Services only, whether any one or more of the individual wagons used by the Operator in the provision of a Train Service is loaded in:
 - (A) excess of its rated carrying capacity; or

- (B) an unsafe or potentially unsafe manner; or
 - (iii) whether in Aurizon's opinion Rolling Stock has been, or is being, sufficiently maintained in a state that enables it (or any part of it) to be safely operated at a Yard Facility, in accordance with the Network Operating Protocols, all Applicable Law and any other laws (including the Rail Safety Act) in any way applicable to Aurizon's management, control and ownership of any Yard Facility or any Approved Additional Infrastructure, and in material compliance with this Agreement.
- (b) If the Operator is found to have breached this Agreement as described in any of clauses 8.1(a)(i) to 8.1(a)(iii) following an audit carried out pursuant to clause 8.1(a), the Operator will be liable for the costs of that audit, an invoice for which will be issued by Aurizon to the Operator in accordance with clause 4.2(a).
 - (c) If the Operator is not found to have breached this Agreement as described in any of clauses 8.1(a)(i) to 8.1(a)(iii) following an audit carried out pursuant to clause 8.1(a), Aurizon will be liable for the costs of that audit.
 - (d) Aurizon's rights under this clause 8.1 are in addition to and are without prejudice to any other rights Aurizon has under this Agreement for breach of this Agreement by the Operator.

8.2 Limitations on audit

Aurizon must use its reasonable endeavours in the conduct of such audits to minimise the disruption to the Operator's Train Service. The Operator must fully cooperate with Aurizon in the conduct of such audits.

8.3 Instructions

In conducting an audit under clause 8.1, Aurizon may give an Instruction to the Operator, including an Instruction to divert or delay a Train Service or make any part of a Train engaged in providing a Train Service available for inspection or weighing.

8.4 Monitoring Equipment

- (a) The Operator:
 - (i) acknowledges and agrees that Aurizon may utilise or place, or procure that a third party utilises or places, Monitoring Equipment on or about a Yard Facility to take readings, measurements or to collect data, including for the purpose of:
 - (A) monitoring the presence or operation of Rolling Stock;
 - (B) assessing whether any one or more of the Rolling Stock used by the Operator is loaded in excess of its rated carrying capacity or loaded in an unsafe or potentially unsafe manner;
 - (C) assessing the safety and performance of the Rolling Stock, including whether the Rolling Stock is compliant with, and has been, or is being, properly maintained and safely operated at the Yard Facility in accordance with this Agreement, the Network Operating Protocols,

all Applicable Law and any other laws in any way applicable to Aurizon's management, control and ownership of any Yard Facility; and

- (D) identifying any fault or defect or potential fault or defect in the Rolling Stock;
 - (ii) authorises and consents to Aurizon appointing a third party (a **Third Party Monitoring Contractor**) to use such Monitoring Equipment, collect data from such Monitoring Equipment and analyse such data;
 - (iii) authorises and consents to Aurizon or such Third Party Monitoring Contractor:
 - (A) undertaking the monitoring referred to in clause 8.4(a)(i); and
 - (B) using such Monitoring Equipment, collecting data from such Monitoring Equipment and analysing such data; and
 - (iv) acknowledges and agrees that the Monitoring Equipment may or may not interact directly with the presence of the Operator's Rolling Stock or operation of the Rolling Stock by the Operator.
- (b) The Operator acknowledges and agrees that:
- (i) data collected by Aurizon, the Third Party Monitoring Contractor or the Monitoring Equipment belongs to Aurizon, will constitute Confidential Information of Aurizon and may be used by Aurizon at its sole discretion;
 - (ii) Aurizon is not required or obliged to provide access to the Operator to the data collected by Aurizon, the Third Party Monitoring Contractor or the Monitoring Equipment and the Operator has no rights to access such data, systems or information;
 - (iii) if the Operator wishes to obtain access to the data collected by Aurizon, the Third Party Monitoring Contractor or the Monitoring Equipment which relates to the purposes described in clauses 8.4(a)(i)(C) or 8.4(a)(i)(D), Aurizon may grant such access at its sole discretion on the terms and conditions required by Aurizon; and
 - (iv) Aurizon or the Third Party Monitoring Contractor may share data collected or analysed from any Monitoring Equipment with each other and with the Operator as provided for under clause 8.4(b)(iii) above or any other third party having an interest in the Rolling Stock (including the owners of the Rolling Stock).
- (c) Aurizon makes no representation or warranty as to the accuracy of any data collected by Aurizon, the Third Party Monitoring Contractor or the Monitoring Equipment and the Operator acknowledges and agrees that it uses any such data which is provided to it under this Agreement or any other agreement at its own risk.
- (d) In addition to Aurizon's other rights to issue Train Control Directions set out in this Agreement, Aurizon or the Third Party Monitoring Contractor may issue Train Control Directions if the data reviewed by it indicates that:

- (i) there is a potential safety risk;
 - (ii) there are one or more faults or defects (or potential faults or defects) in the Rolling Stock; or
 - (iii) there are circumstances that are likely to be detrimental to the performance of any Yard Facility or the Rolling Stock at a Yard Facility, or its employees, contractors or agents or the public.
- (e) The Operator must comply with Train Control Directions issued under clause 8.4(d) and take all appropriate action to mitigate the risk or circumstance.
- (f) Notwithstanding any other clause of this Agreement, Aurizon, the Third Party Monitoring Contractor and any of their Related Bodies Corporate will have no liability to the Operator or any other person, and the Operator must release, discharge and waive any Claim it may have against Aurizon, the Third Party Monitoring Contractor and any of their Related Bodies Corporate (including, for the avoidance of doubt, any Claim to reduce its liability on the basis of Aurizon's conduct) in respect of:
- (i) the existence or use of any Monitoring Equipment on or about a Yard Facility or the data collected by Aurizon, the Third Party Monitoring Contractor or the Monitoring Equipment (including the false detection of any issues in respect of Rolling Stock and any Instructions or other conduct of Aurizon or the Third Party Monitoring Contractor in response to the same);
 - (ii) the failure of such Monitoring Equipment to detect any issues in respect of the Operator's Rolling Stock, or the failure of Aurizon or the Third Party Monitoring Contractor to detect any issues in respect of the Operator's Rolling Stock from analysing such data;
 - (iii) any failure by Aurizon, the Third Party Monitoring Contractor or the owner of the Rolling Stock to transmit any data collected by such Monitoring Equipment to the Operator or analyse such data; and
 - (iv) any information or data provided or which could have been provided to the Operator (including from the owner of the Rolling Stock) in connection with the use of the Monitoring Equipment.
- (g) Notwithstanding any other clause of this Agreement, the Operator must indemnify and keep indemnified on demand Aurizon, the Third Party Monitoring Contractor and their Related Bodies Corporate from and against any Claims or Loss suffered or incurred by Aurizon, the Third Party Monitoring Contractor or any other Aurizon Indemnified Person in connection with the items described at clauses 8.4(f)(i) to 8.4(f)(iv) (including any claims in negligence or otherwise that may be brought by the Operator or any other person, including any Rolling Stock owner against Aurizon, the Third Party Monitoring Contractor or any other Aurizon Indemnified Person).

9. Safety

9.1 Compliance

- (a) Each party (**First Party**) must:

- (i) comply with the *Rail Safety Act* and all other Applicable Law dealing with safety issues;
 - (ii) comply with the Network Operating Protocols and all Instructions relating to safety issues;
 - (iii) comply with the Dangerous Goods Code;
 - (iv) comply with all Standards (including any safety-related codes of practice developed or implemented under the Standards); and
 - (v) in addition to the First Party's Accreditation, obtain such additional accreditation as is required by Applicable Law and ensure that such accreditation remains current at all times during the Term.
- (b) The Operator must, except as otherwise required by its Accreditation:
- (i) ensure that its employees, agents and subcontractors that are engaged in relation to the Train Services (and if applicable, the Yard Services), and otherwise in relation or connection to this Agreement are appropriately qualified and competent, receive any applicable or appropriate training, and hold any applicable accreditation, and provide such evidence of the matters referred to in this clause 9.1(b)(i) as Aurizon may request; and
 - (ii) procure that its employees, agents and subcontractors that access and use a Yard Facility or any Approved Additional Infrastructure or undertake any Permitted Activities submit to drug and alcohol testing or to such other testing as Aurizon requires of its own employees, agents and subcontractors. The Operator must have in place procedures to facilitate this requirement.

9.2 Breach notification

- (a) As soon as the Operator becomes aware of any failure to comply with any provision within clause 9.1 in connection with its use of any Yard Facility or any Approved Additional Infrastructure under this Agreement, the Operator must give written notice to Aurizon detailing:
- (i) the time, location and nature of the breach;
 - (ii) the cause of the breach and the identity or affiliation of persons considered to be responsible for the breach; and
 - (iii) the consequences of the breach, including its impact on the operation of the Train Services (and, if applicable, the Yard Services) or the ability of other operators to access and use any Yard Facility, Approved Additional Infrastructure or the Mainline.
- (b) Following receipt of the Operator's notice under clause 9.2(a), without limiting Aurizon's rights under clause 12.1 in respect of such breach, Aurizon may issue a notice to the Operator detailing:
- (i) any action which Aurizon intends to take, including remedial action in respect of the breach, modification to existing policies, procedures or the Network Operating Protocol or the introduction of new policies or procedures; and

- (ii) any Instruction requiring modification of the Operator's policies or procedures which in Aurizon's opinion is required in relation to or as a result of the breach.

9.3 Network Operating Protocols

Amendments, modifications or updates to the Network Operating Protocols will be made available via an Aurizon website to be advised to the Operator, and Aurizon will advise the Operator as and when such amendments, variations or updates are posted to that website.

10. Emergencies and Incidents

10.1 Plans for dealing with Incidents

- (a) Aurizon will formulate and periodically review and update plans which are consistent with Aurizon's Accreditation requirements for dealing with Incidents, and make such plans available to the Operator.
- (b) Within seven (7) days after the Commencement Date, the Operator must prepare and submit to Aurizon a plan for dealing with Incidents. The Operator must ensure that such plan is at all times consistent with any plan prepared or updated by Aurizon under clause 10.1(a). The Operator's plan is subject to the approval of Aurizon (such approval not to be unreasonably withheld).

10.2 Compliance with plans and with the *Rail Safety Act*

The Operator and Aurizon will comply with:

- (a) the plans referred to in clause 10.1(a); and
- (b) the plan referred to in clause 10.1(b) once such plan has been approved by Aurizon in accordance with clause 10.1(b); and
- (c) their respective obligations under the *Rail Safety Act*.

10.3 Notification of Incidents

- (a) The Operator must notify Aurizon of any Incident as soon as possible after it comes to its attention.
- (b) Aurizon may from time to time notify the Operator of any Incidents.

10.4 Investigation of Incidents

- (a) Incidents will be investigated as required by Applicable Law including in accordance with the *Rail Safety Act*.
- (b) Aurizon and the Operator must:
 - (i) co-operate with an investigation under this clause 10.4 and make available records and personnel relevant to the Incident; and
 - (ii) consult with each other to determine any action to be taken as a result of any investigation.

10.5 Operator's report

Without limiting clause 10.3, if an Incident occurs which involves the Operator and in relation to which Aurizon has given written notice to the Operator that a report is required pursuant to the plans referred to in clauses 10.1(a) or 10.1(b) or the *Rail Safety Act*, then the Operator must promptly prepare and submit to Aurizon a written report that must include the following (to the extent relevant to the Incident and reasonably possible for the Operator to ascertain):

- (a) the time and location of the Incident;
- (b) available details of all Loss to the Operator's Train, to any Yard Facility, any Approved Additional Infrastructure or the Mainline and any other Loss suffered or incurred as a result of the Incident;
- (c) the Operator's view on what may have contributed to the cause of the Loss to the Operator's Train, any Yard Facility, any Approved Additional Infrastructure or the Mainline (the parties acknowledging that such statement will not be binding on the Operator and will not be taken to be an admission by the Operator for any purpose, including insurance and indemnification purposes) and any expert opinions obtained in respect of the Incident;
- (d) names of, and statements from, the Operator's staff (including agents, contractors and volunteers) in any way involved in the Incident either as principals or witnesses;
- (e) an electronic download from the train data recorder for the Operator's Train;
- (f) such other information which is required to be disclosed in a report to the administering authority under the *Rail Safety Act*;
- (g) any other information required to be disclosed in a report under the Dangerous Goods Code; and
- (h) such other information as Aurizon requests (acting reasonably).

10.6 No disposal of equipment

Subject to any conduct that Aurizon considers appropriate in order to ensure the safe and efficient operation of any Yard Facility or the safety of its users or any contrary requirement under Applicable Law or conduct required of Aurizon in connection with a pre-existing contract to which Aurizon is a party, the Operator and Aurizon must:

- (a) not engage in conduct which would prejudice an investigation into an Incident, including the disposal of any equipment (including Monitoring Equipment) involved in such Incident (but only to the extent that such non-disposal is necessary to such investigation);
- (b) take reasonable steps to preserve any property or thing which may be required as evidence as to the cause or any contributing cause of any Incident; and
- (c) on reasonable notice, give access to the other, at the other's cost, to such property or thing for the purposes of inspecting or testing such property or thing, to the extent reasonably required.

10.7 Responsibility for recovery activities and interim responsibility for recovery costs

- (a) The parties acknowledge and agree that:
 - (i) the Operator is responsible for any recovery activities required in respect of above rail matters (including any such activities as may be required following an Incident); and
 - (ii) Aurizon is responsible for any recovery activities required in respect of below rail matters (including any such activities as may be required following an Incident).
- (b) Until an Initial Determination or fault has been determined or agreed in relation to an Incident or any other event which results or may result in a Claim by or against the Operator or Aurizon (in each case, in accordance with clause 13.7), the parties acknowledge and agree that (as between Aurizon and the Operator):
 - (i) the Operator is responsible for the costs of any recovery activities required in respect of above rail matters; and
 - (ii) Aurizon is responsible for the costs of any recovery activities required in respect of below rail matters.
- (c) Notwithstanding the contents of any plan for dealing with Incidents approved by Aurizon under clause 10.1 above, if an Incident occurs or any other event which results or may result in a Claim by or against the Operator or Aurizon, then the Operator must immediately at its own cost and expense comply with all instructions of Aurizon in relation to the recovery in respect of all above rail matters (including the Operator's Train and any freight being transported on such Train), including instructions to move such Train by or at the time specified in the instructions to:
 - (i) another part or parts of a Yard Facility nominated by Aurizon;
 - (ii) a location owned by, or under the control of, the Operator or a third party; or
 - (iii) the Operator Nominated Location set out in Item K of Schedule 1.
- (d) If the Operator fails to comply with its obligations in relation to recovery in respect of all above rail matters (including the Operator's Train and any freight being transported on such Train) in accordance with this clause 10.7, then Aurizon may arrange for such Train (and any freight being transported on such Train) to be moved to any (or a combination) of the locations set out in clause 10.7(a), at the Operator's cost and expense.
- (e) Notwithstanding any other provision of this Agreement, the Operator must release and indemnify Aurizon and the Aurizon Indemnified Persons from and against any Claim or Loss suffered or incurred by Aurizon or any Aurizon Indemnified Person in connection with Aurizon's exercise of any of its rights and powers under clause 10.7(c) and/or clause 10.7(d), including any injury to, illness or death of, any person and/or any Loss arising from or related to the removal of the Train, and any freight being transported by the Train, including where such injury, illness, death or Loss is caused by Aurizon's negligence.

11. Environmental requirements: Dangerous Goods

11.1 Compliance with requirements in relation to the Environment

- (a) Each party must comply with all laws and policies (to the extent that such policies do not conflict with Applicable Law) relating to the Environment, including all Applicable Law dealing with Dangerous Goods.
- (b) The Operator must:
 - (i) provide a copy of its Environment policy to Aurizon upon request by Aurizon; and
 - (ii) comply with Aurizon's Environment policy (as may be amended by Aurizon from time to time) to the extent such policy (and any amendments to such policy) has been provided to the Operator by Aurizon or is otherwise publicly available.

11.2 Management plan

- (a) As soon as practicable after the date of this Agreement, and promptly following each request from Aurizon during the Term, the Operator must prepare and submit to Aurizon a management plan that describes how it will manage the effect on the Environment of carrying out the Permitted Activities and its general operations at each Yard Facility.
- (b) The Operator's policy referred to in clause 11.2(a) must not be inconsistent with any equivalent policy maintained by Aurizon, as advised to the Operator.

11.3 Notification of carriage of certain materials

Other than in the case of a Train which is a wholly passenger Train, the Operator must include in all Train Consists such detail in relation to the identification of Dangerous Goods as is required by the Dangerous Goods Code and as is otherwise reasonably required by Aurizon (on terms not inconsistent with the Dangerous Goods Code).

11.4 Notification of Incident involving Dangerous Goods

Other than in the case of a Train which is a wholly passenger Train, the Operator will provide to Aurizon details, at the earliest practicable time after the Operator becomes aware, of all incidents (including non-compliance with any Applicable Law and irrespective of whether the same is an Incident), involving Dangerous Goods including any spillage, leakage or container or package damage associated with the movement of any Train within any Yard Facility or Approved Additional Infrastructure or the Mainline.

11.5 Notification of Environmental Condition

- (a) Where:
 - (i) Aurizon becomes aware that, as a result of the activities of the Operator under this Agreement, an Environmental Condition has occurred or is likely to occur and Aurizon reasonably considers that action or intervention is required to prevent, mitigate or remedy that Environmental Condition; or

- (ii) Aurizon is given a direction by a Government Authority that some action or intervention is required to prevent, mitigate or remedy an Environmental Condition that has occurred, or that may occur, as a result of the activities of the Operator under this Agreement,

then Aurizon must inform the Operator, where practicable, of any actions or steps which Aurizon reasonably considers will be necessary to prevent, mitigate or remedy the situation, and the Operator must immediately implement such actions or steps (and if applicable, undertake any other necessary action to comply with the requirements of a direction by a Government Authority) so that the Environmental Condition is no longer present (or has been prevented) or any associated Environmental Damage is rectified.

- (b) Without prejudice to Aurizon's other rights and remedies in respect of such default, if the Operator fails to comply with clause 11.5(a) at any time and does not immediately implement such actions or steps (and if applicable, undertake any other necessary action to comply with the requirements of a direction by a Government Authority) so that the Environmental Condition is no longer present (or has been prevented) or any associated Environmental Damage, then Aurizon may implement such actions or steps and any amount so paid to implement such actions or steps will be a debt due from the Operator to Aurizon.

11.6 Pollution and contamination

Notwithstanding that the Operator is in compliance with clauses 11.1 to 11.5 and without limiting any other clause of this Agreement, the Operator must release, indemnify and must keep indemnified on demand Aurizon and the Aurizon Indemnified Persons from and against any Claim or Loss which Aurizon or an Aurizon Indemnified Person suffers or incurs resulting from any act done, practice engaged in or the provision of the Permitted Activities by the Operator (or a third party for and on behalf of the Operator) that causes any pollution or contamination on or in any Yard Facility (including the Yard Access Areas), any Approved Additional Infrastructure or the Mainline.

12. Termination

12.1 Termination for breach

- (a) If either Aurizon or the Operator (**Defaulting Party**) materially defaults in the performance of any of its obligations under this Agreement, the non-defaulting party (**Aggrieved Party**) may give notice in writing (**Rectification Notice**) to the Defaulting Party requiring the Defaulting Party to:
 - (i) rectify the default within a reasonable time specified by the Aggrieved Party having regard to all of the relevant circumstances; and
 - (ii) respond in writing to the Aggrieved Party within 48 hours of the receipt of the Rectification Notice:
 - (A) indicating to the Aggrieved Party the steps to be taken to rectify the default within such reasonable time and a reasonable timetable for the completion of such steps; and
 - (B) confirming that the performance of the steps has commenced (**Rectification Response**).

- (b) If the Defaulting Party does not:
 - (i) rectify the default within a reasonable time;
 - (ii) provide a Rectification Response within the time specified in clause 12.1(a)(ii);
 - (iii) provide a satisfactory Rectification Response meeting the requirements of clauses 12.1(a)(ii)(A) and 12.1(a)(ii)(B); or
 - (iv) comply with the timetable set out in the Rectification Response,

then the Aggrieved Party may, at any time prior to the default being rectified, terminate this Agreement by giving not less than three (3) days' written notice to the Defaulting Party.

- (c) Notwithstanding that Aurizon may be the Defaulting Party, nothing in clause 12.1(b) derogates from or affects Aurizon's rights and powers to manage a Yard Facility and any of its other rights or powers under this Agreement or any other agreement with any other person, including any access agreement with any other operator.

12.2 Immediate termination

Each of Aurizon and the Operator has the right to immediately terminate this Agreement by notice in writing to the other if any of the following events occurs:

- (a) in the case of the Operator, Aurizon breaches its obligations under clause 18.1;
- (b) in the case of Aurizon, the Operator or, if applicable, the Guarantor breaches its obligations under clause 18.2;
- (c) if any execution is levied against the assets of the other party which are necessary or material for the conduct of the Operator's business of running the Train Services, or if any such assets of the other party are taken or sold by an encumbrancer, or if the other party ceases to carry on business, stops payment or fails to maintain normal and continuous operation of its business for a period of in excess of fourteen (14) continuous days except for reasons wholly beyond its control; and
- (d) if the other (and in the case of Aurizon, if the Guarantor (if applicable)):
 - (i) becomes Insolvent;
 - (ii) has had court proceedings commenced against it in order to appoint a provisional liquidator or liquidator or receiver or other controller to it or any of its property (otherwise than for the purpose of reconstruction or amalgamation whilst Solvent);
 - (iii) goes into provisional liquidation or liquidation or a meeting was called for the purpose of considering provisional liquidation or liquidation (otherwise than for the purpose of reconstruction or amalgamation whilst Solvent);
 - (iv) has a receiver or a receiver and a manager or other controller appointed over any of its property;

- (v) proposes or enters into any scheme of arrangement or assignment or composition or like with its creditors or any class of them (otherwise than for the purpose of reconstruction or amalgamation whilst Solvent); or
- (vi) has an administrator appointed pursuant to the provisions of the *Corporations Act*.

12.3 Termination of this Agreement by reason of suspension or cancellation of Accreditation

If Aurizon's or the Operator's Accreditation is suspended for a continuous period of six (6) months or cancelled for a continuous period of one (1) month, then the other may terminate this Agreement by notice in writing to the party that has had its Accreditation suspended or cancelled.

12.4 Suspension

- (a) Without in any way limiting the rights of a party to terminate this Agreement under clauses 12.1, 12.2 or 12.3, if:
 - (i) Aurizon or the Operator is entitled to terminate this Agreement under any of those clauses, then it may elect instead to suspend the rights of the other party under this Agreement (subject to clause 12.4(c)) by giving not less than three (3) days' written notice, until such time as the cause giving rise to the right to terminate is remedied; or
 - (ii) any Incident occurs or the Operator defaults in the performance of any of its obligations under this Agreement and such default gives rise to any safety concerns or congestion at a Yard Facility, then Aurizon may immediately suspend the rights of the Operator under this Agreement until such time as the cause giving rise to the right to suspend is remedied (and any compensation reasonably satisfactory to Aurizon has been paid).
- (b) The Operator acknowledges and agrees that any suspension of the Operator's rights under clauses 4.7(b), 12.4(a)(i) or 19.2 does not suspend the Operator's obligation to pay the Fixed Charges applicable to such period of suspension.
- (c) An election referred to in clause 12.4(a) is revocable at any time by the party making it and has no effect upon rights (including the right to terminate this Agreement), obligations, debts or liabilities that have accrued before the election to suspend this Agreement.

12.5 Effect of termination, expiration and suspension

- (a) Upon termination, expiration or any suspension of the Operator's rights under this Agreement, all rights of the Operator to access and use any Yard Facility or any Approved Additional Infrastructure will cease immediately.
- (b) Termination, expiration or suspension of this Agreement under any circumstances will not abrogate, impair, release or extinguish any debt, obligation or liability of one party to the other which may have accrued under this Agreement, including any such debt, obligation or liability which was the cause of termination or suspension (as applicable) or arose out of such cause.

- (c) Upon termination, expiration or suspension of this Agreement, all covenants and agreements of Aurizon and the Operator which by their terms or reasonable implication are to be performed in whole or in part after the termination, expiration or suspension of this Agreement will survive such termination, expiration or suspension.

13. Indemnities

13.1 Indemnity by Operator

- (a) Subject to the other provisions of this clause 13, the Operator must indemnify and keep indemnified Aurizon and its Related Bodies Corporate and each of their employees, agents, officers, consultants, representatives, contractors and volunteers (**Aurizon Indemnified Persons**) from and against any Claim or Loss of any nature suffered or incurred by, or made or brought against, an Aurizon Indemnified Person in respect of or arising out of:
 - (i) the death or illness of, or injury to, any person; or
 - (ii) any loss of, damage to or destruction of any property of any person, to the extent caused by or contributed to by:
 - (iii) any negligent, wrongful or Wilful Default or omission of the Operator (or any of its employees, agents, contractors or invitees);
 - (iv) any material breach of this Agreement by the Operator (or any of its employees, agents, contractors or invitees), provided that this clause 13.1(a)(iv) will only apply to Aurizon and not any other Aurizon Indemnified Persons;
 - (v) the provision of any Yard Services; or
 - (vi) the access or use of any Yard Facility or any Approved Additional Infrastructure by the Operator (or any of its employees, agents, contractors or invitees) or their presence, or the presence of their property, on a Yard Facility, at any Approved Additional Infrastructure or on the Mainline, in each case other than as contemplated by this Agreement.
- (b) Aurizon receives the benefit, and is agent of the Aurizon Indemnified Persons for the purposes of receiving on their behalf the benefits, of the indemnity given by the Operator in clause 13.1(a).
- (c) Without prejudice to clauses 13.1(a) and 13.1(b), and notwithstanding clause 13.2(a), the Operator is solely liable for and must release, indemnify and must keep indemnified the Aurizon Indemnified Persons against all Claims and Loss of any nature in respect of or arising out of this Agreement made or brought by a third party against an Aurizon Indemnified Person in respect of:
 - (i) the death or illness of, or injury to, any person; or
 - (ii) any loss of, damage to or destruction of any property of any person,

except to the extent that such loss, damage, destruction injury or death is caused by or contributed to (but only to the extent of the contribution) by the Wilful Default or negligence of Aurizon.

13.2 Indemnity by Aurizon

- (a) Subject to the other provisions of clause 13, Aurizon must indemnify and keep indemnified the Operator from and against any Claim and Loss of any nature suffered /or incurred by, or made or brought against, the Operator in respect of or arising out of:
- (i) the death of or injury to any person; or
 - (ii) any loss of, damage to or destruction of any property of any person,
- to the extent caused by or contributed to by:
- (iii) any negligent, wrongful or Wilful Default of Aurizon (or any of its employees, agents, contractors or invitees); or
 - (iv) any material breach by Aurizon of its obligations under this Agreement.
- (b) Unless otherwise agreed in writing by Aurizon, the Operator must ensure that any exclusion or limitation offered by the Operator's conditions of carriage with its customers extends to Aurizon and must, upon request by Aurizon, provide details of the Operator's conditions of carriage relevant to the Train Services.

13.3 Limitation of Claims

Notwithstanding any other provision of this Agreement, neither Aurizon nor the Operator will make any Claim against the other under or in connection with this Agreement, including in relation to the indemnities in clauses 13.1(a), 13.1(c) and 13.2(a), unless notice of a Claim has been given to the other within:

- (a) twelve (12) months from the date on which the relevant party becomes aware of, or ought reasonably to have become aware of the occurrence of, the event out of which such Claim arises; or
- (b) three (3) months of receiving a third party claim.

13.4 Continuance of indemnities

The releases and indemnities contained in this clause 13 for the benefit of either Aurizon or the Operator continue in full force and effect as to any Claims in relation to any event, act, omission or default occurring during the Term notwithstanding the termination of this Agreement whether by expiration of time or otherwise.

13.5 Duty to mitigate

Each party must use reasonable endeavours to mitigate the Losses the subject of an indemnity under this Agreement.

13.6 Defence of Claims

Each of Aurizon and the Operator must render to the other party all reasonable assistance in the defence of any claim made against a party by a third party arising out any Incident or other event or events giving rise to a Claim.

13.7 Determination of liability

- (a) In the event of an Incident involving the Operator or any other event which results or may result in a Claim by or against the Operator or Aurizon, liability as between the Operator and Aurizon will be determined as follows:
 - (i) Aurizon may make an Initial Determination pursuant to clauses 13.7(b) and 13.7(c) below following such an Incident or other event and such determination applies between the parties unless and until a final determination has been agreed or made pursuant to clause 13.7(a)(ii) or 13.7(a)(iii);
 - (ii) as agreed in writing between Aurizon and the Operator in which case:
 - (A) such agreed determination shall be considered to be the final determination with respect to such Incident or other event; and
 - (B) if such agreed determination is different to an Initial Determination that has been made with respect to such Incident or other event then such agreed determination will also include any payments required between the parties in order to account for such discrepancy; or
 - (iii) pursuant to the dispute resolution procedure in clause 15 if the Operator has notified Aurizon that it is dissatisfied with an Initial Determination made by Aurizon pursuant to clauses 13.7(b) and 13.7(c) within [10 Business Days] of being notified of such determination in which case:
 - (A) the final determination resulting from that process shall be considered the final determination with respect to such Incident or other event; and
 - (B) if such determination is different to an Initial Determination that has been made with respect to such Incident or other event then such determination will also include any payments required between the parties in order to account for such discrepancy.
- (b) Following the occurrence of an Incident or any other event which results or may result in a Claim by or against the Operator or Aurizon, a representative of Aurizon may attend the site of the Incident and, acting reasonably, either:
 - (i) make an initial determination as to:
 - (A) the cause of the Incident or such other event;
 - (B) the party at fault in respect of the Incident or such other event; and
 - (C) the share of liability that each of Aurizon and the Operator is responsible for in respect of the Incident or other event (including the

manner in which any recovery costs or other Loss associated with the Incident or other event is to be allocated as between Aurizon and the Operator); or

- (ii) if Aurizon considers, acting reasonably, that the outcome of the matters to be determined under clause 13.7(b)(i) is inconclusive, then make an initial determination that the Operator and Aurizon will each be responsible for fifty percent (50%) of the total Loss arising from such Incident or other event.
- (c) If Aurizon makes an initial determination pursuant to clause 13.7(b)(i) or 13.7(b)(ii), it will provide a written account of such determination to the Operator setting out reasonable detail in respect of that determination (**Initial Determination**).
- (d) Aurizon will have no liability to the Operator in relation to an Initial Determination except to the extent provided for pursuant to clause 13.7(a)(i).
- (e) The parties acknowledge and agree that if an Initial Determination has been made by Aurizon pursuant to clauses 13.7(b) and 13.7(c) then, subject to clause 13.7(a):
 - (i) the Operator will be responsible for the proportion of the liability associated with the Incident or other event which is reasonably incurred or suffered (including any associated recovery cost or other Loss, in each case, to the extent reasonably incurred) which is specified in the Initial Determination as being the responsibility of the Operator; and
 - (ii) Aurizon will be responsible for the proportion of the liability associated with the Incident or other event which is reasonably incurred or suffered (including any associated recovery cost or other Loss, in each case, to the extent reasonably incurred) which is specified in the Initial Determination as being the responsibility of Aurizon.
- (f) Promptly following the date of the Initial Determination, and at such other times as agreed between Aurizon and the Operator, both Aurizon and the Operator must provide to the other details of the liability associated with the Incident or other event which is reasonably incurred or suffered (including any associated recovery cost or other Loss, in each case, to the extent reasonably incurred) together with written evidence supporting the claim for such Loss. If additional evidence or information is required in order to assess the liability associated with the Incident or other event in accordance with this clause 13.7, then Aurizon and the Operator must promptly upon request provide such additional reasonable evidence and information.
- (g) To the extent that Aurizon reasonably incurs or suffers any Loss in connection with an Incident or other event which is the responsibility of the Operator pursuant to an Initial Determination, then the Operator will reimburse Aurizon for all such Loss within [●] Business Days of receipt of a written demand from Aurizon (together with reasonable supporting evidence). If the Operator disputes any amount demanded by Aurizon, the Operator must notify Aurizon of any disputed amounts within 14 days of the relevant demand. Notwithstanding any dispute in respect of the amount demanded, the Operator must pay the amount demanded in accordance with this clause 13.7(g). Where a payment dispute is resolved in the Operator's favour, Aurizon must pay the determined amount to the Operator and will also be liable to pay interest on the determined amount at the rate calculated under clause 4.5, from the date that such monies were originally paid until (and including) the date of re-payment of such monies.

- (h) To the extent that the Operator reasonably incurs or suffers any Loss in connection with an Incident or other event which is the responsibility of Aurizon pursuant to an Initial Determination, then Aurizon will reimburse the Operator for all such Loss within [●] Business Days of receipt of a written demand from the Operator (together with reasonable supporting evidence). If Aurizon disputes any amount demanded by the Operator, Aurizon must notify the Operator of any disputed amounts within 14 days of the relevant demand. Notwithstanding any dispute in respect of the amount demanded, Aurizon must pay the amount demanded in accordance with this clause 13.7(h). Where a payment dispute is resolved in Aurizon's favour, the Operator must pay the determined amount to Aurizon and will also be liable to pay interest on the determined amount at the rate calculated under clause 4.5, from the date that such monies were originally paid until (and including) the date of re-payment of such monies.
- (i) The parties acknowledge and agree that the process described in clauses 13.7(f), 13.7(g) and 13.7(h) is intended to be applied on an on-going basis from time to time.
- (j) With the exception of clause 13.7(a)(iii), clause 15 does not apply to any dispute concerning the determination of liability under this clause 13.7.

13.8 Limited liability

- (a) Subject to clause 13.8(b), neither party is liable in relation to any act or omission relating to this Agreement (in tort, contract or otherwise) for any Indirect or Consequential Loss suffered or incurred by the other party.
- (b) The exclusion of liability under clause 13.8(a) does not apply to:
 - (i) liability for Loss for which the Operator indemnifies Aurizon, the Third Party Monitoring Contractor and any Aurizon Indemnified Person under clause 8.4(g);
 - (ii) liability for Loss for which the Operator indemnifies Aurizon and the Aurizon Indemnified Persons under clauses 5.3(b), 5.6(c), 10.7(e), 11.6 and/or 13.1;
 - (iii) liability for Loss suffered by Aurizon as a result of another operator being unable to use a Yard Facility or being delayed in using a Yard Facility where that inability or delay is caused by the Operator's negligence or breach of its obligations under this Agreement; and
 - (iv) liability for Loss for which the Operator is paid or indemnified, or is entitled to be paid or indemnified, under any insurances or would have been so entitled but for a breach of this Agreement or the insurance policy which means the insurance fails to respond.

13.9 Exclusion to limitation

The limitation on Claims provided for in clause 13.3 will not apply to a Claim against a party to the extent that the Claim has arisen from any fraud or Wilful Default of that party.

13.10 Liability – Yard Facility standard

- (a) Notwithstanding any other provisions of this Agreement but without limiting clause 8.4(f), Aurizon will not be liable to the Operator and the Operator will not have

or make any Claim against Aurizon or the Aurizon Indemnified Persons in respect of any Loss whatsoever arising out of or in connection with:

- (i) the standard of any Yard Facility, any Approved Additional Infrastructure or any infrastructure related to any Yard Facility; or
- (ii) any failure or defect in any Yard Facility, any Approved Additional Infrastructure or any infrastructure related to any Yard Facility,

except to the extent that such Loss results directly from Aurizon's breach of its obligation to maintain any Yard Facility in accordance with this Agreement.

- (b) Aurizon receives the benefit, and is agent of the Aurizon Indemnified Persons for the purpose of receiving on their behalf the benefits, of clause 13.10(a).
- (c) The benefits contained in this clause 13.10 will continue in full force and effect as to any Claims relating to any event, act, omission or default occurring during the Term notwithstanding the termination of this Agreement whether by expiration of time or otherwise.

14. Insurance

14.1 Required insurance policies

- (a) The Operator must, at its expense, take out and maintain current at all times during the Term the policies of insurance required by clause 14.1(b) from a reputable and solvent insurer that:
 - (i) is licensed to conduct insurance business in Australia; and
 - (ii) has a Standard & Poor's (Australia) Pty Limited's long term credit rating of at least A-minus.
- (b) The Operator must effect and maintain throughout the Term the following insurance policies:
 - (i) Public Liability Insurance: a policy of insurance:
 - (A) to cover the legal liability of the insureds arising out of or in connection with their respective rights, interests and obligations, and covering all matters referred to, in 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) or otherwise, in an amount no less than that specified in Item J of Schedule 1 for any one occurrence;
 - (B) to include cover in respect of personal injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, diesel, 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 definitively identifiable date; and

- (C) to cover the Operator's access and use of any Yard Facility and any Approved Additional Infrastructure;
- (ii) a policy of insurance with respect to the Operator's liability to Aurizon Indemnified Persons pursuant to the indemnity provisions contained in this Agreement, to the extent coverable by insurance;
- (iii) Carrier Liability Insurance: a policy of insurance covering any liability arising from:
 - (A) damage caused to goods transported by the Operator in a sum insured of not less than \$[●]; and
 - (B) damage caused by goods transported by the Operator in a sum of not less than \$[●], provided that the Operator must give Aurizon prompt and timely advance written notice detailing at a high level any Dangerous Goods to be transported by the Operator in which case Aurizon will be entitled to require a higher level of such insurance not exceeding \$[●] as a condition of the transport of such Dangerous Goods;
- (iv) Workers Compensation: a policy of insurance against liability for death of, or injury to, persons employed (or deemed to be employed) by the Operator in relation to its rail operations, including liability ensuring under any statute or at common law, to at least the minimum cover prescribed by any Applicable Law and the Operator will ensure that its contractors have the same type of insurances in place in relation to their employees (including deemed employees); and
- (v) any other insurance required by Applicable Law.
- (c) The Operator acknowledges and agrees that:
 - (i) in respect of each policy of insurance referred to in clause 14.1(b), the Operator is not exempted from any liability in excess of the sum insured nor from any liability to which such insurance does not apply; and
 - (ii) nothing in this clause 14.1 imposes a liability on Aurizon or an Aurizon Indemnified Person.

14.2 Disclosure of insurance policies

- (a) The Operator must provide to Aurizon evidence of the insurance policies effected and maintained pursuant to clause 14.1(b) (including evidence that the cover provided under those insurance policies complies with this clause 14 and of the currency of those insurance policies) to Aurizon's reasonable satisfaction:
 - (i) within ten (10) Business Days after renewal of each insurance policy during the Term; and

- (ii) within ten (10) Business Days after being requested to do so in writing by Aurizon.
- (b) Without prejudice to Aurizon's other rights and remedies in respect of such default, if the Operator fails to comply with clause 14.2(a) at any time and does not remedy that default within ten (10) Business Days after Aurizon gives notice to the Operator requiring that default to be remedied, then Aurizon may effect and maintain such insurance and pay the premiums and any amount so paid will be a debt due from the Operator to Aurizon.

14.3 Minimum terms of policies

Each policy of insurance effected in accordance with this Agreement must, to the extent not restricted by Applicable Law:

- (a) note the interests of the Operator and any contractor, sub-contractor or other party of the Operator engaged by the Operator in relation to, or in connection with, this Agreement, including in respect of all fuelling activities;
- (b) include a principal's indemnity endorsement specifically noting Aurizon and any Related Body Corporate of Aurizon notified to the Operator by Aurizon from time to time as an interested party in respect of its rights, interests and obligations, and covering all matters referred to, in this Agreement;
- (c) include a cross liability clause;
- (d) not contain any exclusions, endorsements or alterations to the accepted policy wording that adversely affects the cover provided without the prior written consent of Aurizon (not to be unreasonably withheld or delayed);
- (e) contain provisions which are standard industry terms for railway operators;
- (f) 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;
- (g) 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; and
- (h) contain provisions that require the insurer to give reasonable notice to the Operator (with a copy of such notice to Aurizon) of any proposed cancellation or material change to the terms of the insurance cover or any settlement of any insurance claim made. Notwithstanding any copy of a notice issued by the insurer to Aurizon, the Operator must communicate such notice promptly to Aurizon.

14.4 Operator not to render policy void

The Operator must not render any of the insurances effected in accordance with clause 14.1(b) void or voidable or liable to refusal of any claim.

14.5 Compliance

The Operator must at all times comply with the terms and conditions of all insurance policies effected pursuant to clause 14.1(b).

14.6 Notice of potential claims

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

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

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

14.7 Operator to pay all excesses and deductibles

- (a) The Operator must, in respect of any Claims by it or any other insured for which it is responsible, pay and bear all excesses and deductibles provided for in any insurances effected in accordance with clause 14.1(b), and promptly provide evidence to Aurizon of such payment.
- (b) If the Operator fails to pay any excess or deductible provided for in any insurances effected in accordance with clause 14.1(b), Aurizon may pay the relevant excess/deductible and any amount so paid will be a debt due from the Operator to Aurizon.

14.8 Settlement of Claims

- (a) If:
 - (i) Aurizon makes a Claim against the Operator in accordance with its rights under this Agreement;
 - (ii) the Claim is in respect of the same matter as the Operator claims under an insurance policy required by this Agreement; and
 - (iii) the Operator has not disputed Aurizon's Claim,

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

- (b) Neither the effecting or non-effecting of insurance, nor any delay or inability by the Operator to obtain funds under an insurance policy, will limit any liability or obligation of a party under this Agreement (including to make payment).

15. Resolution of disputes

15.1 Procedure to settle disputes

- (a) If there is a dispute between Aurizon on the one hand and the Operator or the Guarantor on the other relating to or arising out of this Agreement, then the disputing parties must use reasonable endeavours acting in good faith to settle the dispute as soon as practicable.

- (b) The procedure that is to be followed to settle a dispute arising under this Agreement is as follows:
 - (i) first, negotiation of the dispute under clause 15.2;
 - (ii) second, mediation of the dispute under clause 15.3; and
 - (iii) third, determination of the dispute under clause 15.5.
- (c) Notwithstanding anything to the contrary in this Agreement, the parties acknowledge and agree that any claims or proceedings to be brought by the Operator or the Guarantor against Aurizon under or in connection with the terms of this Agreement must be instigated and pursued by the Operator. For the avoidance of doubt, this extends to any Claims being sought by the Guarantor against Aurizon.

15.2 Negotiation

- (a) If a dispute arises between Aurizon on the one hand and the Operator or Guarantor on the other relating to or arising out of this Agreement, within seven (7) days of a party notifying the other of a dispute, senior representatives from each party must meet and use reasonable endeavours acting in good faith to attempt to resolve the dispute by joint discussions.
- (b) Any agreement reached between the senior representatives must be reflected in writing, signed by or on behalf of each of Aurizon and the Operator and (if applicable) the Guarantor and will be contractually binding on them.

15.3 Mediation

- (a) If a dispute arising under this Agreement is not resolved within twenty-one (21) days of notification of the dispute under clause 15.2(a), either party may refer the dispute:
 - (i) in the first instance, to the chief executive officers or chairpersons of the disputing parties who will attempt to resolve the dispute including by informal mediation; and
 - (ii) thereafter, if the dispute is not resolved by the chief executive officers or chairpersons of the disputing parties within forty (40) days of notification of the dispute under clause 15.2, to formal mediation in South Australia by a single mediator appointed by agreement of the disputing parties, or if they fail to agree, appointed by the President of the Institute of Arbitrators and Mediators Australia acting on the request of either of the disputing parties.
- (b) Unless the disputing parties otherwise agree:
 - (i) each disputing party may appoint a person, including a legally qualified person, to represent it or assist it in any mediation;
 - (ii) each disputing party will bear its own costs relating to the preparation for and attendance at the mediation;
 - (iii) the costs of the mediator will be borne equally by the disputing parties; and

- (iv) the mediation must be conducted by a mediator in accordance with any guidelines for mediation issued by the President of the Institute of Arbitrators and Mediators Australia.
- (c) Nothing in this clause 15.3 prohibits a disputing party from seeking and obtaining appropriate injunctive relief.

15.4 Appointment of expert

- (a) The parties agree to appoint an expert for the purpose of calculating any Financial Sum, provided that the relevant dispute was not resolved by negotiation between the chief executive officers or chairpersons of the disputing parties within forty (40) days of notification of the dispute under clause 15.2.
- (b) An expert must be selected jointly by the disputing parties, but in the absence of an agreement, must be appointed by the president for the time being for the Institute of Chartered Accountants in South Australia acting on the request of a party to the dispute.
- (c) The determination of the expert must be in writing.
- (d) The costs of the expert will be met in the proportions determined by the expert.
- (e) The parties agree that decisions of the expert concerning the calculation of any Financial Sum are final and binding upon the parties in the absence of fraud or manifest error, and cannot be referred to arbitration.

15.5 Arbitration

- (a) If a dispute relating to or arising out of this Agreement is unresolved (in whole or in part) by mediation under clause 15.3 within one (1) month of the appointment of the mediator, then either party to the dispute may terminate the mediation proceedings by written notice to the other party and the mediator.
- (b) Upon receipt by Aurizon or the Operator (as the case may be) of a notice under clause 15.5(a), the dispute will be referred to arbitration under this clause 15.5.
- (c) Aurizon and the Operator must seek to agree on the person to be appointed as arbitrator, but if no such agreement is reached by Aurizon and the Operator within seven (7) days of the notice referring the matter to arbitration, the arbitrator must be appointed by the President of the Institute of Arbitrators and Mediators Australia acting on the request of either party to the dispute.
- (d) The arbitration will be conducted in accordance with the *Commercial Arbitration Act 2011* (SA) except that:
 - (i) it must be carried out with the provision relating to arbitration set out in the *Australasia Railway (Third Party Access) Act 1999* (Cth);
 - (ii) the arbitrator must observe the rules of natural justice but is not required to observe the rules of evidence;
 - (iii) the arbitrator's decision will be final and binding on the disputing parties in the absence of fraud or manifest error;

- (iv) a disputing party may appoint any person, including a legal practitioner, to represent it or assist it in the arbitration;
- (v) the arbitrator does not have the power conferred by section 27C of the *Commercial Arbitration Act 2011* (SA);
- (vi) the arbitrator must include in the arbitration award the findings on material questions of law and fact, including references to evidence on which the findings of fact were based; and
- (vii) the parties consent to an appeal to the Supreme Court of South Australia on any questions of law arising in the court of arbitration or out of the arbitration award.

16. Guarantee

16.1 Consideration

The Guarantor acknowledges that:

- (a) it has requested Aurizon and the Operator to enter into this Agreement; and
- (b) execution by Aurizon and the Operator of this Agreement is good and valuable consideration for the obligations and liabilities of the Guarantor under this Agreement.

16.2 Guarantee and indemnity

The Guarantor unconditionally and irrevocably:

- (a) guarantees to Aurizon the due and punctual performance and observance by the Operator of all of the obligations (including all financial obligations) contained in or implied under this Agreement that must be performed and observed by the Operator (**Guaranteed Obligations**);
- (b) undertakes with Aurizon that, whenever the Operator does not pay any amount when due under or in connection with this Agreement (or anything which would have been due if this Agreement or the amount was enforceable, valid and not illegal), immediately on demand by Aurizon the Guarantor must pay that amount as if it was the principal obligor; and
- (c) indemnifies Aurizon and will keep Aurizon indemnified, against all Claims and Losses that Aurizon or any Aurizon Indemnified Persons may now or in the future suffer or incur (and any such amounts which would, but for such unenforceability, invalidity or illegality, have been payable by the Operator) consequent on or arising directly or indirectly out of any breach or non-observance by the Operator of a Guaranteed Obligation.

16.3 Extent of guarantee and indemnity

The obligations of the Guarantor under this clause 16 will not be affected by an act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of its

obligations under this Agreement (without limitation and whether or not known to it or any party) including:

- (a) any amendment (however fundamental and whether or not more onerous), novation, supplement, extension, restatement or replacement of this Agreement, whether with or without the Guarantor's knowledge or consent;
- (b) a rule of law or equity to the contrary;
- (c) an Insolvency event affecting a person or the death of a person;
- (d) a change in the constitution, membership, or partnership of a person;
- (e) the partial performance of the Guaranteed Obligations;
- (f) the exercise of a right by Aurizon or the Operator without the Guarantor's knowledge;
- (g) the Guaranteed Obligations not being enforceable at any time (whether by reason of a legal limitation, disability or incapacity on the part of the Operator and whether this Agreement is void *ab initio* or is subsequently avoided) against the Operator;
- (h) Aurizon granting any time or other indulgence or concession to, compounding or compromising with, or wholly or partially releasing the Operator or the Guarantor from an obligation; or
- (i) another thing happening that might otherwise release, discharge or affect the obligations of the Guarantor under this Agreement.

16.4 Principal and independent obligation

Clause 16 is:

- (a) a principal obligation and is not to be treated as ancillary or collateral to another right or obligation; and
- (b) independent of and not in substitution for or affected by another security interest (including, for the avoidance of all doubt, the Security) or guarantee or other document or agreement which Aurizon or another person may hold concerning the Guaranteed Obligations.

16.5 Enforcement against Guarantor

Aurizon may enforce clause 16 against the Guarantor without first having to resort to another guarantee or security interest or other agreement relating to the Guaranteed Obligations.

16.6 Warranties

- (a) The Guarantor represents and warrants that:
 - (i) it has obtained all necessary approvals or consents for its participation as a guarantor in accordance with the terms and conditions of this clause 16;
 - (ii) by executing this Agreement it will not be in breach of any approval, its constituent documents or any other agreement to which it is a party; and

- (iii) it has available to it the financial resources to meet its obligations under this Agreement, the guarantee referred to in clause 16.2(a) and indemnity referred to in clause 16.2(c).
- (b) The Guarantor indemnifies Aurizon and will keep Aurizon indemnified against all Claims and Losses that Aurizon or any Aurizon Indemnified Persons may now or in the future suffer or incur consequent on or arising directly or indirectly out the breach by the Guarantor of any of the warranties in this clause 16.6.

16.7 Reinstatement

If any payment to or any discharge, release or arrangement given or entered into by Aurizon (whether in respect of the obligations of the Operator or any security for those obligations or otherwise) is avoided or reduced for any reason (including as a result of Insolvency, breach of fiduciary or statutory duties or any similar event) in whole or in part, then the liability of the Guarantor under this clause 16 will continue or be reinstated as if the discharge, release or arrangement had not occurred and any relevant security will be reinstated.

17. Confidentiality

17.1 Use and disclosure

Each party:

- (a) acknowledges the commercial sensitivity of the Confidential Information;
- (b) must use the Confidential Information of another party only for the purposes of this Agreement;
- (c) must keep confidential all Confidential Information of another party except for disclosure permitted under clause 17.2; and
- (d) must use best endeavours to ensure that the Confidential Information of a party is secure from theft, loss, damage or unauthorised access or alteration.

17.2 Permitted disclosure

- (a) Notwithstanding clause 17.1, a party may only disclose the Confidential Information of another party:
 - (i) to its employees, legal advisers, financial advisers, auditors and its Related Bodies Corporate to the extent such persons require the Confidential Information and provided such persons are under an obligation to keep the Confidential Information confidential on terms consistent with this clause 17;
 - (ii) with the prior written consent of the other party;
 - (iii) if the Confidential Information is, at the date of this Agreement, lawfully in the possession of the recipient of the Confidential Information through sources other than the party who supplied the Confidential Information;
 - (iv) to the extent required by Applicable Law;
 - (v) for the enforcement of any criminal law;

- (vi) if strictly and necessarily required in connection with legal proceedings or any court order relating to this Agreement; or
 - (vii) if the Confidential Information is publicly available other than as a result of breach of confidence or breach of this Agreement by the party receiving the Confidential Information.
- (b) Subject to clause 17.2(c) below, if a party discloses any Confidential Information under clauses 17.2(a)(i) to 17.2(a)(vii), then the disclosing party must promptly notify the other parties to this Agreement as to the disclosure advising to whom such Confidential Information has been made available and the purpose for which the Confidential Information has been disclosed.
- (c) If a party is required by Applicable Law to disclose any Confidential Information or disclose Confidential Information to a Government Authority, then the disclosing party must before doing so:
- (i) notify the other parties to this Agreement; and
 - (ii) to the extent reasonably possible, give any affected party a reasonable opportunity to take any steps necessary to protect the confidentiality of that information.
- (d) If a party discloses information under any of clauses 17.2(a)(i) to 17.2(a)(vi), that party must use best endeavours to ensure that the persons receiving such Confidential Information do not disclose the Confidential Information except in the circumstances permitted at clauses 17.2(a)(i) to 17.2(a)(vi).

17.3 Media

The Operator and, if applicable, the Guarantor must not release to the public any images, video or other media of any nature whatsoever depicting:

- (a) any Yard Facility, any Approved Additional Infrastructure or any part of the Mainline; or
- (b) any of Aurizon's, or any other operator's, operations, staff or other activities on or in connection with any Yard Facility, any Approved Additional Infrastructure (or if applicable, the Yard Services) or any part of the Mainline,

without the prior written consent of Aurizon and then must only do so to the extent approved by Aurizon and in accordance with any conditions imposed on such release by Aurizon.

17.4 Delivery of materials

Following termination or expiry of this Agreement, the Operator must on the request of Aurizon immediately deliver to Aurizon all documents or other materials containing or referring to Confidential Information that is in the:

- (a) Operator's possession, power or control (or the possession, power or control of the Guarantor); or
- (b) possession, power or control of persons who have received Confidential Information from the Operator.

18. Assignment or novation

18.1 By Aurizon

- (a) Subject to clauses 18.1(b) to 18.1(f), Aurizon may not assign or novate this Agreement, its interest in the subject matter of this Agreement or any right under this Agreement, without the prior written consent of the Operator, such consent not to be unreasonably withheld or delayed.
- (b) Without obtaining consent under clause 18.1(a), but subject to clause 18.1(c), Aurizon may:
 - (i) assign or novate this Agreement, their interest in the subject matter of this Agreement or any right under this Agreement to a successor of Aurizon or to any other person which takes over responsibility for the management of a Yard Facility or any relevant part of it; or
 - (ii) assign or novate this Agreement, their interest in the subject matter of this Agreement or any right under this Agreement, to a Related Body Corporate of Aurizon.
- (c) If Aurizon assigns or novates this Agreement, its interest in the subject matter of this Agreement or any right under this Agreement under clauses 18.1(a) or 18.1(b), Aurizon must ensure that the assignee or novatee first enters into a deed under which the assignee agrees to be bound by the terms of this Agreement.
- (d) Without obtaining consent under clause 18.1(a), Aurizon may assign by way of security, mortgage, charge or otherwise create security in favour of any of its lenders, financiers or other debt, equity or credit providers (or any agent or trustee for any of the same) over its right, title and interest in, under or derived from this Agreement.
- (e) The Operator undertakes to enter into any further documentation that may be reasonably required by Aurizon in order to give effect to the transactions permitted by this clause 18.1.
- (f) The Operator and Guarantor acknowledge and agree that:
 - (i) Aurizon may in its sole and absolute discretion enter into any sub-contracting or agency agreements or arrangements in relation to any of its functions or obligations under or in connection with this Agreement and any performance by a third party of such functions or obligations will constitute performance by Aurizon of the same; and
 - (ii) nothing in this clause 18.1 prevents Aurizon from doing so.

18.2 By the Operator and the Guarantor

- (a) The Operator and, if applicable, the Guarantor may not assign or novate this Agreement, each of its respective interest in the subject matter of this Agreement or any right under this Agreement:
 - (i) without the prior written consent of Aurizon, which consent is not to be unreasonably withheld; and

- (ii) unless on or before such assignment or novation, the Operator or the Guarantor (as applicable) notifies Aurizon of the proposed assignment or novation and the assignee or novatee enters into a deed under which the assignee or novatee agrees to:
 - (A) be bound by the terms of this Agreement; and
 - (B) in the case of the Operator, if required by Aurizon, provide (or replace the then current) Security in accordance with clause 4.7 and Item H of Schedule 1.
- (b) In the case of an assignment or novation by the Operator, Aurizon agrees that it will not withhold its consent to an assignment or novation under clause 18.2(a) if it is satisfied (acting reasonably) that:
 - (i) the assignee or novatee is able to meet the Operator's obligations under this Agreement (including financial obligations, obligations relating to safety and obligation to hold the necessary Accreditation) and that the assignee or novatee has procured the replacement of the Guarantor if so required by Aurizon;
 - (ii) the assignee or novatee is commercially viable;
 - (iii) the assignee or novatee has a good current and historical safety record; and
 - (iv) the Operator is not in breach of any of its obligations under this Agreement.

18.3 The effect of assignment or novation

Assignment or novation of this Agreement under clauses 18.1 or 18.2 will not abrogate, impair, release or extinguish any debt, obligation or liability of Aurizon to the Operator, and of the Operator (or Guarantor as applicable) to Aurizon, that may have accrued under this Agreement prior to the date of such an assignment or novation.

19. Force Majeure

19.1 Notice of Force Majeure

If, by reason of an event of Force Majeure, Aurizon or the Operator is prevented from or delayed (or likely to be prevented or delayed) in performing its obligations under this Agreement, whether wholly or in part, then the affected party must, as soon as reasonably practicable after it becomes aware of the Force Majeure (and in any event, within 5 Business Days after it becomes aware of the Force Majeure), give the other party notice of the Force Majeure including:

- (a) details of the Force Majeure and (if applicable) the part of the Yard Access Areas or Approved Additional Infrastructure affected or likely to be affected; and
- (b) the details of the obligations affected or likely to be affected.

19.2 Suspension of obligations

- (a) Subject to compliance with clause 19.1, the obligations of an affected party under this Agreement are suspended during the time and to the extent that such party is

prevented from or delayed in performing such obligations by reason of the event of Force Majeure.

- (b) If notice is not provided in accordance with clause 19.1, then the obligations of the affected party under this Agreement will be suspended on and from the date on which the notice requirements of clause 19.1 are satisfied.
- (c) A party's obligation to make payment under or in connection with this Agreement will not be suspended or otherwise relieved due to the occurrence of an event of Force Majeure.

19.3 Obligations of a party

If a party is prevented from or delayed in performing its obligations due to an event of Force Majeure, it must promptly and diligently take all reasonable endeavours to:

- (a) remedy or overcome the effect of the Force Majeure affecting its obligations under this Agreement, provided that such affected party is not obliged to settle any strike, lockout or other labour dispute; and
- (b) attempt to mitigate the effect of the Force Majeure.

19.4 Termination after prolonged Force Majeure

As a result of Force Majeure, if a party is prevented or hindered from complying with its obligations under this Agreement for a continuous period of three (3) months, then:

- (a) Aurizon and the Operator must negotiate in good faith and seek to agree a mutually satisfactory resolution to the issues arising from that Force Majeure; and
- (b) if after a further period of one (1) month the Aurizon and the Operator are unable to agree a resolution, then either Aurizon or the Operator may terminate this Agreement on giving ten (10) Business Days' notice. The Agreement will terminate on expiry of that notice.

20. Governing law

20.1 Law of this Agreement

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by the laws of South Australia.

20.2 Jurisdiction

Each party submits to the exclusive jurisdiction of the Courts of South Australia for all proceedings arising out of or in connection with this Agreement.

21. Change in Law

- (a) If a Change in Law occurs which affects the ability of Aurizon or the Operator to comply with its obligations under this Agreement, then the affected party must as soon as reasonably practicable notify the other giving details of that Change in Law.

- (b) Within seven (7) days after a notice under clause 21(a) is given, the Operator and Aurizon must meet and negotiate in good faith amendments to this Agreement required to comply with the Change in Law.
- (c) If the Operator and Aurizon do not reach agreement within thirty (30) days after the notice under clause 21(a), then the Operator or Aurizon may refer the matter for resolution in accordance with clauses 15.3, 15.4 and 15.5 (as applicable).
- (d) If at any time after the date of this Agreement a Material Change occurs which affects the financial position of Aurizon or the cost to Aurizon of performing its obligations or exercising its rights under this Agreement or under Applicable Law, then Aurizon must notify the Operator giving details of the Net Financial Effect on Aurizon of the Material Change. Within seven (7) days after receipt of a notice under this clause 21(d), Aurizon and the Operator 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 of the Material Change and return Aurizon to the position it would have been in had it not been for the Material Change. If Aurizon and the Operator have not agreed on the relevant adjustments within thirty (30) days after Aurizon's notice, then either Aurizon or the Operator may refer the matter to an expert for determination in accordance with clause 15.4.
- (e) Each party's obligations under this Agreement will continue despite the existence of a Change in Law or Material Change.

22. Variation

- (a) Variation or amendment of a provision of this Agreement will be ineffective unless in writing, signed by all parties.
- (b) A waiver of a provision of this Agreement by a party, or a party's consent to a departure from a provision by another party, is only effective if it is given in writing by:
 - (i) in the case of Aurizon, the Access and Property Manager or the Company Secretary; and
 - (ii) in the case of the Operator, the person identified in Item B of Schedule 1.
- (c) No failure to exercise and no delay in exercising any right, power or remedy under this Agreement will operate as a waiver. A single or partial exercise of any right, power or remedy relating to this Agreement will not preclude any other or further exercise of that or any other right, power or remedy relating to this Agreement.
- (d) No waiver of a provision or a breach of a term of this Agreement or consent to a departure from a provision operates as a waiver of another provision, breach of a term or departure from that provision or any other provision.

23. Severability

If at any time, a provision of this Agreement is or becomes invalid, voidable, illegal, or unenforceable, or if this Agreement would, if a particular provision were not omitted, be invalid, void, voidable, illegal or unenforceable, that provision must (without in any way affecting the validity, legality and enforceability of the remainder of this Agreement) be severed from this Agreement and this Agreement must be read and construed and take effect for all purposes as if that provision were not contained in this Agreement.

24. Notices

24.1 Notice

A notice, notification or other communication required or permitted to be given by a party to another party under this Agreement (other than Train Control Directions which may be delivered verbally or in any manner which is appropriate) must be in English, in writing and:

- (a) delivered personally to the relevant address referred to in clause 24.3;
- (b) sent to the relevant address referred to in clause 24.3 certified by mail; or
- (c) sent by email to the relevant address referred to in clause 24.3.

24.2 Deemed notice

A notice, notification or other communication is deemed to be received:

- (a) if personally delivered, upon delivery;
- (b) if mailed to an address in Australia, five (5) Business Days after the date it was mailed;
- (c) if sent by email, at the time sent (as recorded on the device from which the sender sent the message), unless the sender's information system receives a message that the email has not been delivered to the recipient or the recipient is out of office.

24.3 Addresses for service

Each party's address for service is:

- (a) in the case of Aurizon:

Name: Access Manager

Address: Aurizon Bulk Central Pty Ltd (ABN 17 079 444 296)
Level 4, 33 Richmond Road
KESWICK SA 5035

PO Box 309
MARLESTON DC SA 5033

Email: bulkcentralaccess@aurizon.com.au

- (b) in the case of the Operator:
the details specified at Item B of Schedule 1; and
- (c) in the case of the Guarantor (if any):
the details specified at Item I of Schedule 1.

24.4 Change of address

A party may change its address for service by giving at least fourteen (14) days' written notice of that change to the other parties.

24.5 Twenty-four hour contact details

Each party must provide to the other parties, and maintain as current, the name and full details of one or more persons who, together, are available at any time on any day for emergency contact by the other parties.

24.6 Email notices

Notwithstanding anything to the contrary in this clause 24, notices issued pursuant to clauses 12, 14 or 15 may be sent by email but must also be personally delivered or sent by mail. The parties agree that any notice issued pursuant to clauses 12, 14 or 15 which is sent by email only, will not be effective for the purposes of this Agreement.

25. Risk and cost of performing obligations

25.1 Risk and expense

Subject to this Agreement:

- (a) whenever the Operator is obliged or required under this Agreement to do or procure any act, matter or thing, then the doing or procurement of such act, matter or thing will, unless this Agreement otherwise provides, be at the sole risk and expense of the Operator; and
- (b) whenever Aurizon is obliged or required under this Agreement to do or procure any act, matter or thing, then the doing or procurement of such act, matter or thing will unless this Agreement otherwise provides, be at the sole risk and expense of Aurizon.

25.2 Legal Costs

Notwithstanding clause 25.1(b), the Operator agrees to pay any legal costs associated with the execution and stamping of this Agreement (and any document contemplated by the Agreement to which the Operator is a party), excluding Aurizon's legal costs of preparing and executing this Agreement. The Operator will be responsible for all fees, fines and any penalties that may be imposed by any Government Authority for a failure by the Operator to ensure the stamping of this Agreement and any document contemplated by this Agreement to which the Operator is a party (where stamping is required by Applicable Law).

26. No partnership or agency

Nothing in this Agreement will constitute or be deemed to constitute a partnership between the parties or be deemed to constitute the Operator as agent, joint venturer, employee or contractor of Aurizon for any purpose whatever, and the Operator has no authority or power to bind Aurizon or to contract in its name or to create a liability against it in any way or for any purpose.

27. Entire agreement

- (a) This Agreement and the documents referred to in it constitute the entire understanding and agreement between the parties relating to the transactions contemplated by this Agreement and supersede all previous agreements, whether oral or in writing, between the parties in relation to these transactions.
- (b) Each party acknowledges that in agreeing to enter into this Agreement it has not relied on any express or implied representation, warranty, collateral contract or other assurance relating to the subject matter of this Agreement or otherwise. Each party waives all rights and remedies which, but for this sub-clause, might be available to it in respect of any such express or implied representation, warranty, collateral contract or other assurance.

28. Counterparts

This Agreement may be signed in any number of separate counterparts, and by the parties on separate counterparts, which taken together are deemed to comprise one instrument. This Agreement may be circulated for signature through electronic transmission, including email, and all signatures so obtained and transmitted will be deemed for all purposes under this Agreement to be original signatures until such time, if ever, as original counterparts are exchanged by the parties.

SCHEDULE 1

KEY DETAILS

Ref	Item	Details
A	Aurizon	Company Name: Aurizon Bulk Central Pty Ltd ABN: 17 079 444 296 Address: Level 4, 33 Richmond Road, Keswick SA 5035
B	Operator	Company Name: [●] ABN: [●] Contact name: [●] Address: [●]
C	Commencement Date	[●]
D	Expiry Date	[●]
E	Extension Period (<i>clause 3.2</i>)	[●]
F	Conditions Precedent (<i>clause 3.3</i>)	(a) The Operator has provided Aurizon with the Security as required under clause 4.7. (b) In respect of the insurances which the Operator is required to effect and maintain under clause 14, the Operator has provided Aurizon with evidence that it has effected the insurances required, and they are current and maintained (including evidence that the cover provided under those insurance policies complies with the requirements of clause 14). (c) The Operator has provided Aurizon with evidence that it holds the required Accreditation. (d) The Operator has provided Aurizon with a plan for dealing with Incidents as required under clause 10.1(b), and such plan has been approved by Aurizon under clause 10.1(b). (e) The Operator has provided Aurizon with a copy of its environmental policy (see clause 11.1(b)(i)). (f) The Operator has provided Aurizon with a management plan for dealing with the environmental effect of its operations as required under clause 11.2(a).

Ref	Item	Details
		(g) The Operator delivering to Aurizon any other opinion, certificate or document that Aurizon reasonably requests.
G	Time for payment of Invoices	No later than [thirty (30)] days following the end of the relevant calendar month. In the event that the Operator fails to pay an invoice on or before the due date for payment, then Aurizon may (in its absolute discretion) by notice to the Operator require payment in advance for future invoices.
H	Security <i>(clause 4.7)</i>	[\$●]
I	Guarantor	Company Name: [●] ACN: [●] ABN: [●] Contact name: [●] Address: [●]
J	Operator's Insurance <i>(clause 14)</i>	\$250,000,000.00
K	Operator Nominated Location <i>(clause 5.6(a)(vi))</i>	[●]
L	Yard Facilities	Port Augusta Yard Facility Whyalla Yard Facility Port Pirie Yard Facility Tailern Bend Yard Facility Mainline Yard Facility Dry Creek Yard Facility Port Adelaide Yard Facility
M	Access Management Requirements	means the Interface Coordination Plan between Aurizon and [Pacific National / the Operator] for the Management of Railway Operations in Facilities Owned by Aurizon Bulk Central Pty Ltd

SCHEDULE 2

CHARGES

The Operator will be charged the following Charges:

Yard Facility	Fixed Charges*	Other Charges & Variable Rate	Storage Charges **	Yard Services Charges
Port Augusta	A\$[●] per month	A\$[●] for each occasion on which a train accesses No 14 Road	A\$[●] per twenty (20) metre wagon equivalent or part thereof per day	A\$[●]
Whyalla				
Port Pirie				
Tailem Bend				
Mainline				
Dry Creek				
Port Adelaide				

* All Fixed Charges, Other Charges and Variable Rates, Storage Charges and Yard Services Charges will be adjusted in accordance with clause 4.4 or Schedule 3 (as applicable).

** All Storage Charges and Other Charges must be calculated on the basis that the charge set out in the table above is payable per twenty (20) metre wagon equivalent (or part thereof) per day (or part thereof). The Operator will be liable to pay to Aurizon a Storage Charge for each day that the Train (or any part thereof) remains in the Yard Facility for a period longer than forty-eight (48) hours from the time that the Train first entered the Yard Facility. In such circumstances, the Storage Charge will commence accruing from the time that the Train first entered the Yard Facility.

SCHEDULE 3

REVIEW AND VARIATION OF CHARGES

Variation of Charges

(a) CPI Escalation

Unless otherwise agreed between Aurizon and the Operator, the Charges will, on each 1 July after the Commencement Date during the Term, be varied in accordance with the following formula (provided that it may not, in any case, be decreased):

$$A_n = A_{n-1} \times \text{CPI Multiplier}$$

where:

A_n = The relevant element of the Charge to apply from 1 July of the year 'n'.

A_{n-1} = The relevant element of the Charge that applied from 1 July of the Financial Year 'n-1'.

$$\text{CPI Multiplier} = [\bullet] \text{ [Note: TBC.]}$$

If CPI is not published for any reason the parties will endeavour to agree on a substitute index. If the parties fail to agree by 31 December in any given year, either party may refer the question of an appropriate substitute index to an independent expert for resolution under clause 15.4.

The Charges will be reviewed by 31 March in each year subsequent to 1 July or such later time as may be mutually agreed.

(b) Train Lengths / Tonnages Review

The Operator must notify Aurizon if the length or weight of a particular Train alters by more than 15% (compared to the respective length or weight of that Train specified in the relevant Yard Facility schedule), for a period greater than one month. Upon receipt of such notice, Aurizon may elect to review the Charges and may in its discretion, adjust the Charges to take into account the change in relevant Train's length or weight.

[Note: Parties to discuss manner in which information is obtained regarding train lengths and weight.]

SCHEDULE 4
INSTRUCTIONS

Code of Practice for the Defined Interstate Rail Network.

One Rail Australia Addendum to the Code of Practice for the Defined Interstate Rail Network.

Network Operating Guide:

- Part A - Route Operating Protocols; and
- Part B - Facilities En-Route.

Advices for train running information, including speed restrictions and train notices of the following types:

- Daily, standing and temporary standing;
- Safeworking circulars; and
- Weekly operational notices.

Train Control Directions.

Safety directions or instructions.

Response Plan for 'On Rail' Emergencies (RS-PRC-006).

Procedure for Incident Investigation and Reporting (RS-PRC-008).

Safety Interface Agreement.

SCHEDULE 5

ACCESS AND SERVICE REQUEST PROCEDURE

Request	Description	Deadline for Notice
Access		
Access during Yard Access Times	Operator to request a Yard Access Authority in accordance with the Network Operating Protocols, Access Management Requirements and Safety Interface Agreement. A Yard Access Authority is valid for a maximum of 23 hours and 59 minutes between 12:01am to 12:00am on the day such Yard Access Authority is granted.	Prior to the Operator engaging in any activity within the relevant Yard Facility on the day of such proposed access.
All Train Services	Operator to provide to Aurizon a Train Consist in a format acceptable to Aurizon for each Train Service.	Forty-eight (48) hours prior to each Train Service.
Delayed Train Service	Operator to notify Aurizon and Train Control Centre in writing of any cancellation or intended cancellation by the Operator of any Train Service.	As soon as possible after becoming aware of such cancellation or intended cancellation.
Access to Yard Access Areas outside of Yard Access Times	If the Operator requires access to a Yard Access Area outside of the Yard Access Times, then the Operator must submit to the Train Control Centre an Access Form not less than fourteen (14) days prior to such proposed access. The Operator must then confirm such access in writing to the Train Control Centre no later than forty-eight (48) hours prior to the proposed access. Access will not be permitted until the Operator has obtained the written consent of Aurizon.	Access Form: fourteen (14) days prior to requested access
Access to areas outside of Yard Access Areas (including Additional Infrastructure)	In respect of any access to areas outside of the Yard Access Area (including Additional Infrastructure), the Operator must submit to the Train Control Centre an Access Form not less than fourteen (14) days prior to such proposed access. The Operator must then confirm such access in writing to the Train Control Centre no later than forty-eight (48) hours prior to the proposed access. Access will not be permitted until the Operator has obtained the written consent of Aurizon.	Confirmation: forty-eight (48) hours prior to requested access
Yard Services		
Additional Yard Services	Operator must submit to the Train Control Centre an Access Form not less than fourteen (14) days prior to the proposed receipt of such Yard Services. The Operator must then confirm the need for such Yard Services in writing to the Train Control Centre no later than forty-eight	Access Form: fourteen (14) days prior to requested access Confirmation: forty-eight (48) hours prior to requested access

	(48) hours prior to the proposed receipt of such Yard Services. Yard Services will not be provided until the Operator has obtained the written agreement of Aurizon.	
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SCHEDULE 6
ACCESS FORM

To: **Access Manager**

Aurizon Bulk Central Pty Ltd
Level 4, 33 Richmond Road
KESWICK SA 5035

PO Box 309
MARLESTON DC SA 5033

Email:
bulkcentralaccess@aurizon.com.au

From: *[insert details]*

Date: *[insert details]*

Re: Requirement for access to a Yard
Access Area, Additional Infrastructure
or Yard Services

Please provide:

1. access to a Yard Access Area or Additional Infrastructure; or

2. Yard Services,

as follows:

A. Date Required *[insert details]*

B. Yard Access Area / Additional
Infrastructure / Yard Services *[insert details]*

C. Access by *[insert details]*

D. Reason for Access / Yard Services *[insert details]*

E. Special Instructions *[insert details]*

F. Access / Yard Services Requested by *[insert details]*

G. Contact Phone Number *[insert details]*

Please see Train Consist attached to this Access Form. *[NB: Operator to attach Train Consist.]*

SCHEDULE 7

PORT AUGUSTA YARD FACILITY SCHEDULE

Ref	Item	Details
A	Port Augusta Yard Access Areas	<p>means those areas of the Port Augusta Yard Facility specified in column 3 of the Port Augusta Yard Access Table below, which the Operator is entitled to access during the corresponding Port Augusta Yard Access Times.</p> <p>Access to any areas not specified in column 3 of the Port Augusta Yard Access Table, must be requested in writing using an Access Form to be submitted in accordance with the terms of this Agreement and by:</p> <ul style="list-style-type: none">• email to drycreek-shiftcoordinators@aurizon.com.au with copies to mark.sims@aurizon.com.au; and• fax to (08 8343 7780) with a copy to (08 8343 5456).
B	Port Augusta Yard Access Times	<p>means the times, as specified in column 2 of the Port Augusta Yard Access Table below, during which the Operator is entitled to access the relevant Port Augusta Yard Access Areas. During the Port Augusta Yard Access Times, the Operator is permitted to:</p> <p>(a) access the Port Augusta Yard Access Area, as specified in column 3 of the Port Augusta Yard Access Table below; and</p> <p>(b) undertake the Permitted Activities, as specified in column 4 of the Port Augusta Yard Access Table below.</p>
C	Permitted Activities	<p>means those activities, as specified in column 4 of the Port Augusta Yard Access Table below, that the Operator is entitled to undertake within the relevant Port Augusta Yard Access Areas during the corresponding Port Augusta Yard Access Times, and which may be adjusted from time to time subject to the prior written agreement of Aurizon and the Operator.</p>
D	Prohibited Activities	<p>means those activities, as specified in column 5 of the Port Augusta Yard Access Table below, that the Operator is prohibited from undertaking within the Port Augusta Yard Facility (including the relevant Port Augusta Yard Access Area), and which may be adjusted from time to time subject to the prior written agreement of Aurizon and the Operator.</p>
E	Yard Services	<p>nil, unless such other services (and associated Yard Services Charges) are agreed in writing by Aurizon and the Operator.</p>
F	Train Length and Weight	<p>means the length and weight of a Train that will access a Port Augusta Yard Access Area, as specified in column 6 of the Port Augusta Yard Access Table below.</p>

Ref	Item	Details
G	Train Name	means the name of the Train that will access a Port Augusta Yard Access Area, as specified in column 7 of the Port Augusta Yard Access Table below.

PORT AUGUSTA YARD ACCESS TABLE

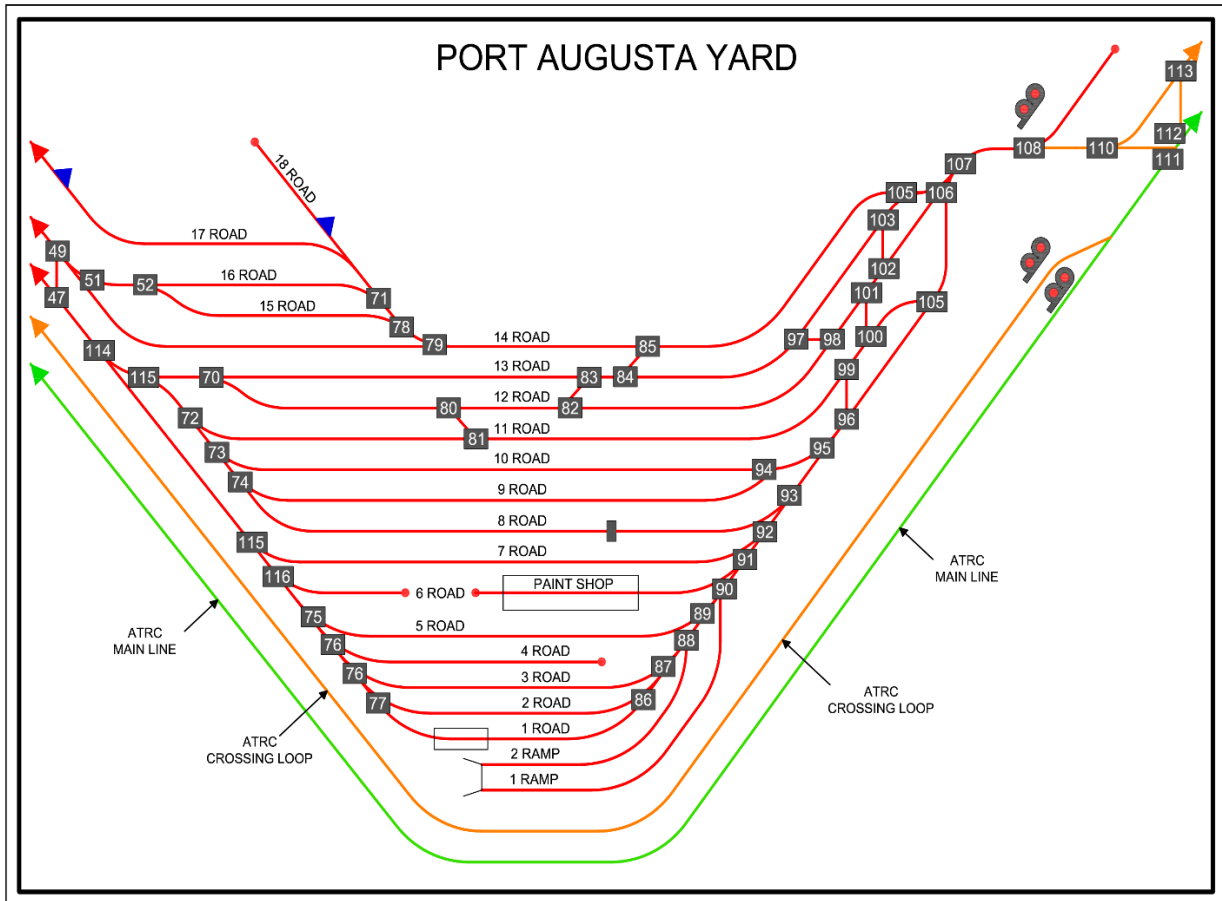
1. Day	2. Port Augusta Yard Access Times		3. Port Augusta Yard Access Area	4. Permitted Activities	5. Prohibited Activities	6. Train Length & Train Weight	7. Train Name
	Arrive	Depart					
Monday			O/S Water Road No 13 Road No 12 Road No 11 Road No 10 Road No 9 Road North End No 6 Road South End No 6 Road No 2 Road Whyalla Dead End	<ul style="list-style-type: none"> • Train stabling and marshalling on the Port Augusta Yard Access Area during the Port Augusta Yard Access Times • Train shunting • Operation of Rolling Stock to enter and exit the relevant Port Augusta Yard Access Area • Locomotive fuelling on No 6 Road only • Provision of crew vans • Rolling Stock inspections. 	<ul style="list-style-type: none"> • Fuelling except for locomotive fuelling on No 6 Road • Maintenance of Rolling Stock • Loading and unloading • Anything that is not a Permitted Activity as set out in Item 4 of this Port Augusta Yard Access Table. 		
Tuesday							
Wednesday							
Thursday							
Friday							
Saturday							
Sunday							

APPENDIX: PORT AUGUSTA YARD FACILITY

The Port Augusta Yard Facility is comprised of:

- (a) the Port Augusta Yard (Standard Gauge) described below; and
- (b) the Port Augusta Roundhouse Area described below.

Port Augusta Yard (Standard Gauge)

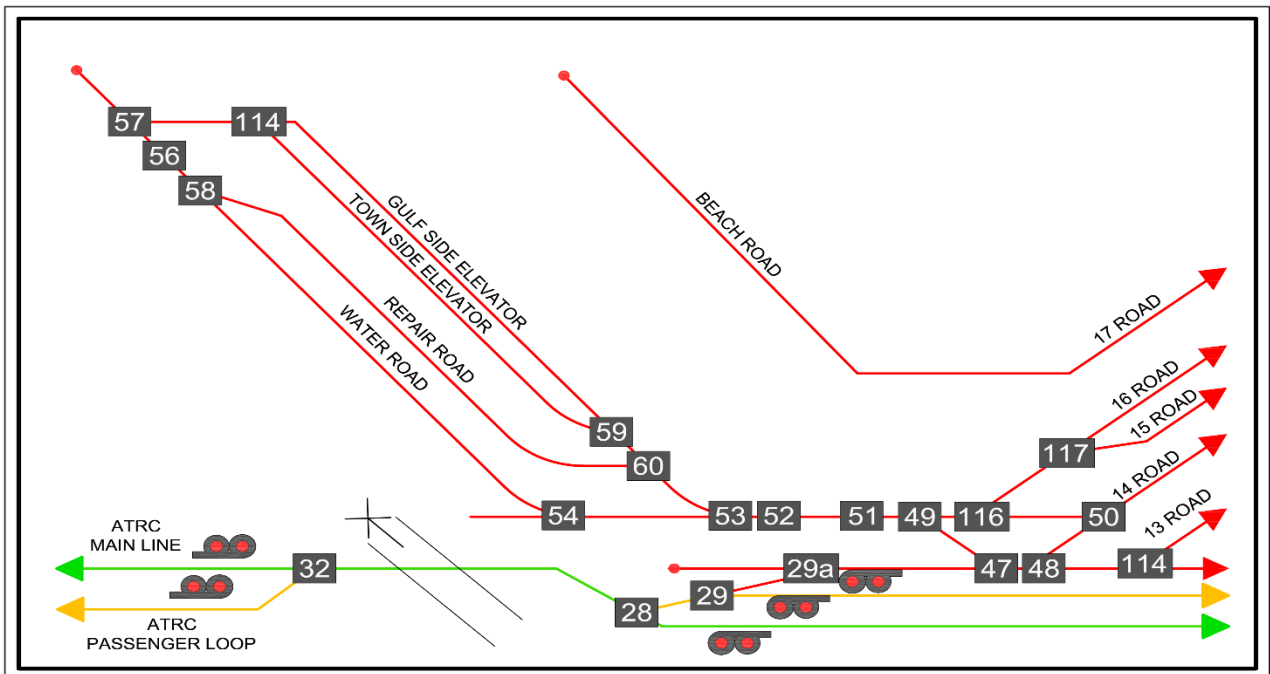


Clear standing room is available as follows:

Infrastructure	Length	Infrastructure	Length
No 1 Ramp	340 metres	No 2 Ramp	290 metres
No 1 Road	530 metres	No 2 Road	530 metres
No 3 Road	550 metres	No 4 Road	630 metres
No 5 Road	735 metres	No 6 Road	840 metres
No 7 Road	840 metres	No 8 Road	840 metres
No 9 Road	839 metres	No 10 Road	862 metres

Infrastructure	Length	Infrastructure	Length
No 11 Road	1590 metres	No 12 Road	1640 metres
No 13 Road	1586 metres	No 14 Road </td <td>1494 metres</td>	1494 metres
No 15 Road	317 metres	No 16 Road	285 metres
No 17 Road	200 metres	No 18 Road	200 metres

Port Augusta Roundhouse Area



Clear standing room is available as follows:

Infrastructure	Length	Infrastructure	Length
Wall Road	525 metres	Town Side Padgets	210 metres
Town Side Elevator	255 metres	Weighbridge Road	120 metres
Old Weighbridge Road	150 metres	Gulf Side Padgets	210 metres
Gulf Side Elevator	255 metres	Outs Road	255 metres
Roundhouse Straight	315 metres	Beach Road	315 metres
Bin Road	255 metres	Hospital Road	275 metres
Repair Road	255 metres	Work Road	315 metres

SCHEDULE 8

WHYALLA YARD FACILITY SCHEDULE

Ref	Item	Details
A	Whyalla Yard Access Areas	<p>means those areas of the Whyalla Yard Facility specified in column 3 of the Whyalla Yard Access Table below, which the Operator is entitled to access during the corresponding Yard Access Times. Access past Switch 20 is controlled by OneSteel.</p> <p>Access to any areas not specified in column 3 of the Whyalla Yard Access Table, must be requested in writing using an Access Form to be submitted in accordance with the terms of this Agreement and by:</p> <ul style="list-style-type: none">• email to drycreek-shiftcoordinators@aurizon.com.au with copies to mark.sims@aurizon.com.au; and• fax to (08 8343 7780) with a copy to (08 8343 5456).
B	Whyalla Yard Access Times	<p>means the times, as specified in column 2 of the Whyalla Yard Access Table below, during which the Operator is entitled to access the relevant Whyalla Yard Access Areas. During the Whyalla Yard Access Times, the Operator is permitted to:</p> <p>(a) access the Whyalla Yard Access Area, as specified in column 3 of the Whyalla Yard Access Table below; and</p> <p>(b) undertake the Permitted Activities, as specified in column 4 of the Whyalla Yard Access Table below.</p>
C	Permitted Activities	<p>means those activities, as specified in column 4 of the Whyalla Yard Access Table below, that the Operator is entitled to undertake within the relevant Whyalla Yard Access Areas during the corresponding Whyalla Yard Access Times, and which may be adjusted from time to time subject to the prior written agreement of Aurizon and the Operator.</p>
D	Prohibited Activities	<p>means those activities, as specified in column 5 of the Whyalla Yard Access Table below, that the Operator is prohibited from undertaking within the Whyalla Yard Facility (including the relevant Whyalla Yard Access Area), and which may be adjusted from time to time subject to the prior written agreement of Aurizon and the Operator.</p>
E	Yard Service/s	<p>nil, unless such other services (and associated Yard Services Charges) are agreed in writing by Aurizon and the Operator.</p>
F	Train Length and Weight	<p>means the length and weight of a Train that will access a Whyalla Yard Access Area, as specified in column 6 of the Whyalla Yard Access Table below.</p>

Ref	Item	Details
G	Train Name	means the name of the Train that will access a Whyalla Yard Access Area, as specified in column 7 of the Whyalla Yard Access Table below.

WHYALLA YARD ACCESS TABLE

1. Day	2. Whyalla Yard Access Times		3. Whyalla Yard Access Area	4. Permitted Activities	5. Prohibited Activities	6. Train Length & Train Weight	7. Train Name
	Arrive	Depart					
Monday			Main Line (clear 5 points to 44 points) Main Line (clear 31 points to 44 points) Crossing loop (clear 6 points to 43 points) Crossing loop (clear 19 points to dead end) Weighbridge Gas siding RoadRailer loop Intermodal dead end Intermodal loop Goods shed platform road North dead end	The Operator is permitted to undertake the following activities within the Whyalla Yard Access Areas during the Whyalla Yard Access Times unless otherwise advised by Aurizon from time to time: <ul style="list-style-type: none"> • Train marshalling in the following areas only: <ul style="list-style-type: none"> ○ Main Line (clear 5 points to 44 points) ○ Main Line (clear 31 points to 44 points) ○ Crossing loop (clear 6 points to 43 points) ○ Crossing loop (clear 19 points to dead end) ○ Weighbridge ○ Goods shed platform road ○ North dead end ○ Stock ramp loop 	<ul style="list-style-type: none"> • Fuelling • Wagon Storage • Anything that is not a Permitted Activity as set out in Item 4 of this Whyalla Yard Access Table. 		

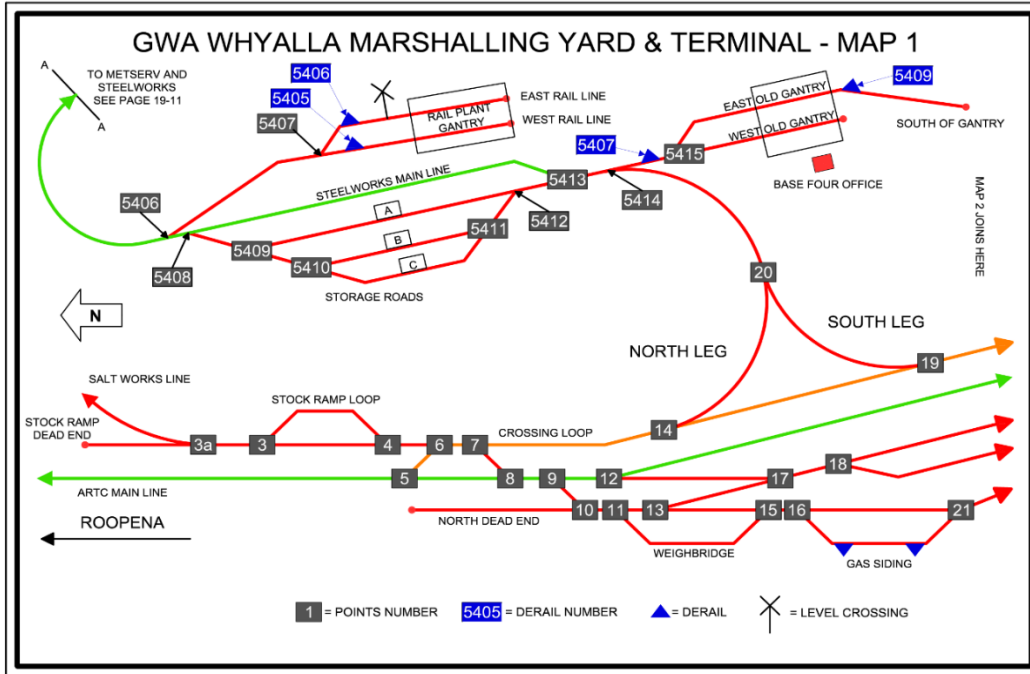
1. Day	2. Whyalla Yard Access Times		3. Whyalla Yard Access Area	4. Permitted Activities	5. Prohibited Activities	6. Train Length & Train Weight	7. Train Name
	Arrive	Depart					
			Stock ramp loop Stock ramp dead end	<ul style="list-style-type: none"> ○ Stock ramp dead end ● Loading and unloading in the following areas only: <ul style="list-style-type: none"> ○ Gas siding - wagons loading only ○ RoadRailer loop – ballast loading only ○ Intermodal loop – ballast loading only ● Train stabling in the following areas only: <ul style="list-style-type: none"> ○ Intermodal dead end ○ Stock ramp loop ○ Stock ramp dead end ● Train shunting ● Operation of Rolling Stock to enter and exit the relevant Whyalla Yard Access Area 			
Tuesday							
Wednesday							
Thursday							
Friday							
Saturday							
Sunday							

APPENDIX: WHYALLA YARD FACILITY

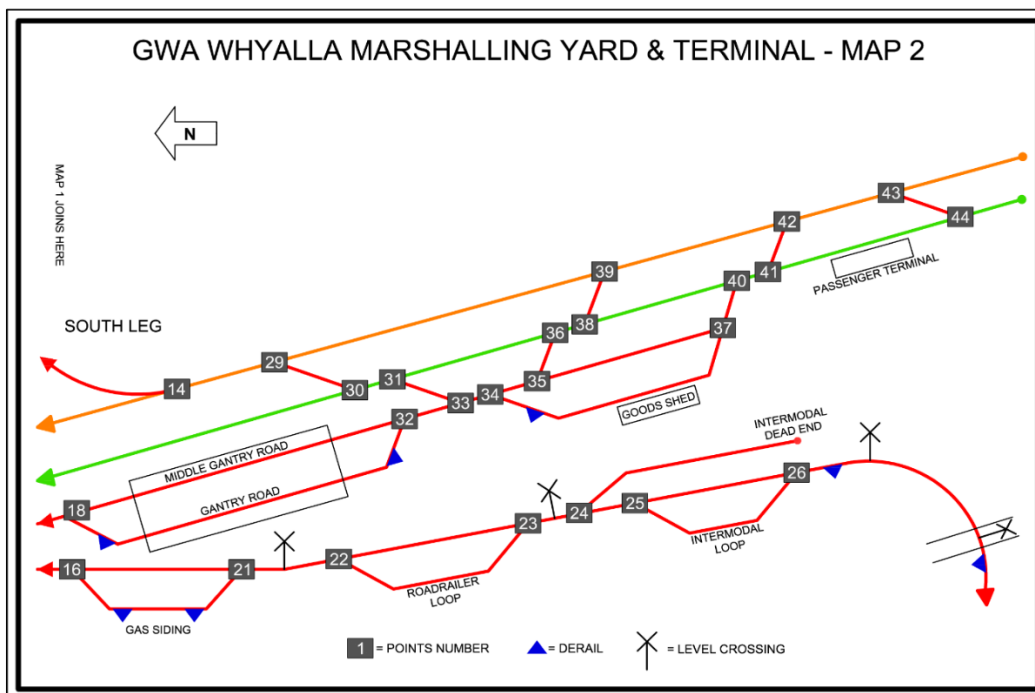
The Whyalla Yard Facility is comprised of the Whyalla Marshalling Yard (Standard Gauge) described below:

Whyalla Marshalling Yard (Standard Gauge)

WHYALLA MARSHALLING YARD & TERMINAL - MAP 1



WHYALLA MARSHALLING YARD & TERMINAL - MAP 2



Standing room in Whyalla Marshalling Yard (Standard Gauge) is as follows:

Infrastructure	Length	Infrastructure	Length
Main Line (clear 5 points to 44 points)	1605 metres	Middle gantry road	468 metres
Main Line (clear 31 points to 44 points)	910 metres	Intermodal dead end	217 metres
Crossing loop (clear 6 points to 43 points)	1550 metres	Gantry Road	468 metres
Crossing loop (clear 19 points to dead end)	1350 metres	Intermodal loop	113 metres
Cattle Siding	(Out of service)	Goods shed platform road	341 metres
Weighbridge	93 metres	North dead end	110 metres
Gas siding	110 metres	Stock ramp loop	184 metres
RoadRailer loop	312 metres	Stock ramp dead end	168 metres

SCHEDULE 9

PORT PIRIE YARD FACILITY SCHEDULE

Ref	Item	Details
A	Port Pirie Yard Access Areas	<p>means those areas of the Port Pirie Yard Facility specified in column 3 of the Port Pirie Yard Access Table below, which the Operator is entitled to access during the corresponding Port Pirie Yard Access Times.</p> <p>Access to any areas not specified in column 3 of the Port Pirie Yard Access Table, must be requested in writing using an Access Form to be submitted in accordance with the terms of this Agreement and by:</p> <ul style="list-style-type: none">• email to drycreek-shiftcoordinators@aurizon.com.au with copies to mark.sims@aurizon.com.au; and• fax to (08 8343 7780) with a copy to (08 8343 5456).
B	Port Pirie Yard Access Times	<p>means the times, as specified in column 2 of the Port Pirie Yard Access Table below, during which the Operator is entitled to access the relevant Port Pirie Yard Access Areas. During the Port Pirie Yard Access Times, the Operator is permitted to:</p> <p>(a) access the Port Pirie Yard Access Area, as specified in column 3 of the Port Pirie Yard Access Table below; and</p> <p>(b) undertake the Permitted Activities, as specified in column 4 of the Port Pirie Yard Access Table below.</p>
C	Permitted Activities	<p>means those activities, as specified in column 4 of the Port Pirie Yard Access Table below, that the Operator is entitled to undertake within the relevant Port Pirie Yard Access Areas during the corresponding Port Pirie Yard Access Times, and which may be adjusted from time to time subject to the prior written agreement of Aurizon and the Operator.</p>
D	Prohibited Activities	<p>means those activities, as specified in column 5 of the Port Pirie Yard Access Table below, that the Operator is prohibited from undertaking within the Port Pirie Yard Facility (including the relevant Port Pirie Yard Access Area), and which may be adjusted from time to time subject to the prior written agreement of Aurizon and the Operator.</p>
E	Yard Services	<p>nil, unless such other services (and associated Yard Services Charges) are agreed in writing by Aurizon and the Operator.</p>
F	Train Length and Weight	<p>means the length and weight of a Train that will access a Port Pirie Yard Access Area, as specified in column 6 of the Port Pirie Yard Access Table below.</p>

Ref	Item	Details
G	Train Name	means the name of the Train that will access a Port Pirie Yard Access Area, as specified in column 7 of the Port Pirie Yard Access Table below.

PORT PIRIE YARD ACCESS TABLE

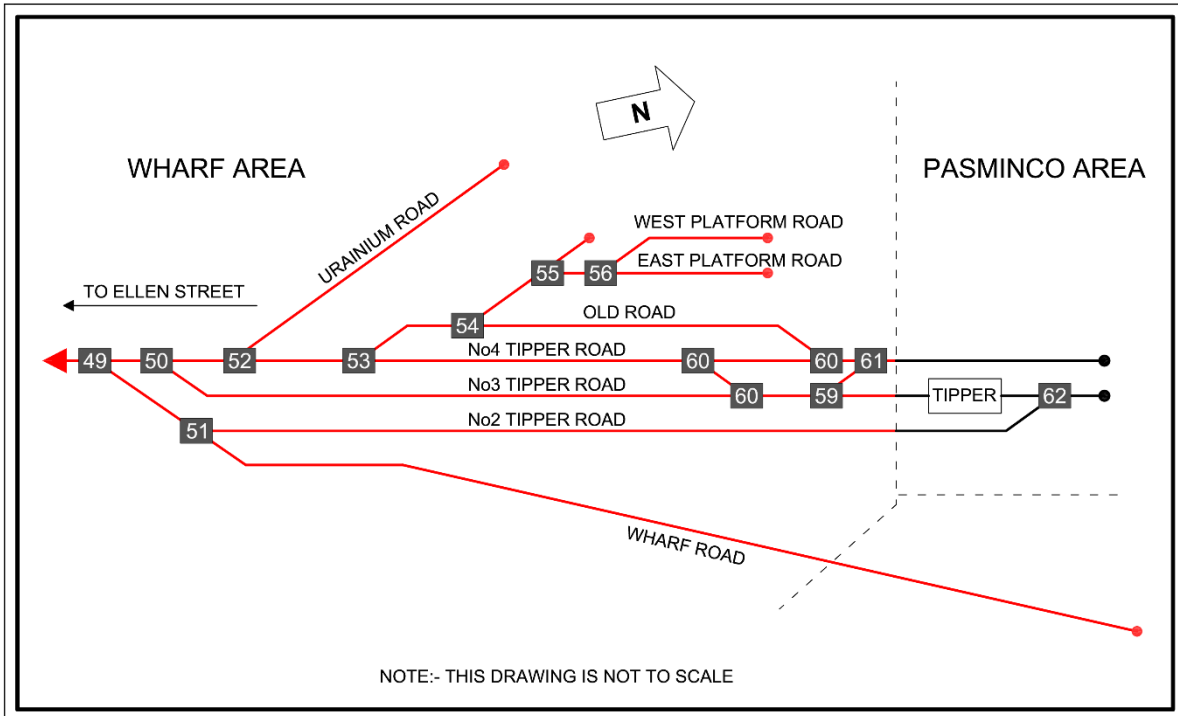
1. Day	2. Port Pirie Yard Access Times		3. Port Pirie Yard Access Area	4. Permitted Activities	5. Prohibited Activities	6. Train Length & Train Weight	7. Train Name
	<i>Arrive</i>	<i>Depart</i>					
Monday			Shunt Main No 1 Ore Road No 2 Ore Road Weighbridge Road	<ul style="list-style-type: none"> • Train stabling and marshalling on the Port Pirie Yard Access Area during the Port Pirie Yard Access Times • Train shunting • Operation of Rolling Stock to enter and exit the relevant Port Pirie Yard Access Area 	<ul style="list-style-type: none"> • Fuelling • Loading and unloading • Maintenance of Rolling Stock • Anything that is not a Permitted Activity as set out in Item 4 of this Port Pirie Yard Access Table 		
Tuesday							
Wednesday							
Thursday							
Friday							
Saturday							
Sunday							

APPENDIX: PORT PIRIE YARD FACILITY

The Port Pirie Yard Facility is comprised of:

- (a) the Port Pirie Zinifex and Wharf Area described below; and
- (b) the Port Pirie Main Yard described below.

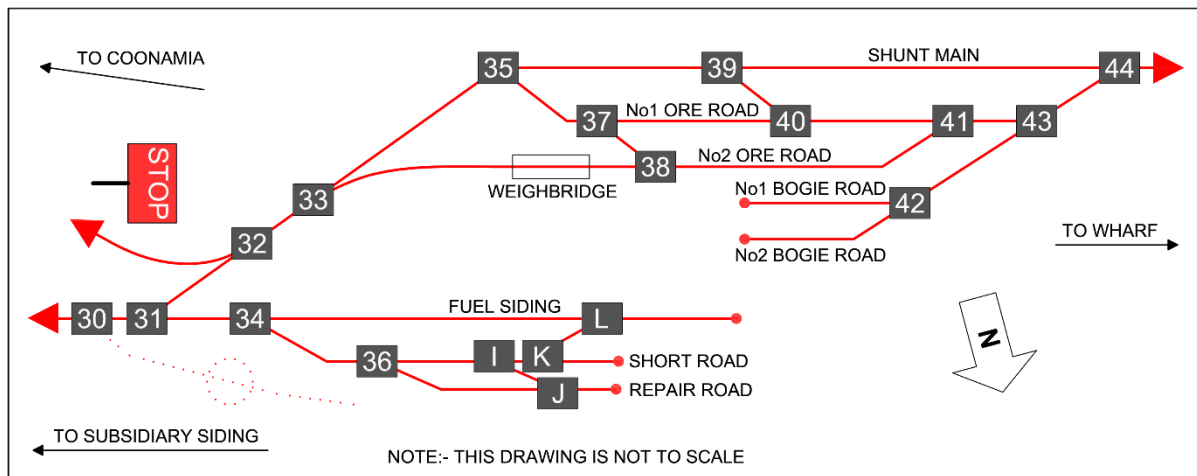
Port Pirie Zinifex and Wharf Area



Standing room (Standard Gauge) is as follows:

Infrastructure	Length	Infrastructure	Length
Uranium road	2000 metres	No 4 Tippler (to Stop Board)	430 metres
West Platform	540 metres	No 3 Tippler (to Stop Board)	580 metres
East Platform	540 metres	No 2 Tippler (in clear)	580 metres
Old Road (in clear)	711 metres	Wharf Road Access	740 metres

Port Pirie Main Yard



Standing room (Standard Gauge) is as follows:

Infrastructure	Length	Infrastructure	Length
Shunt Main	942 metres	Weighbridge Road	239 metres
No 1 Ore Road	675 metres	Short Road	203 metres
No 2 Ore Road	675 metres	Repair Road	235 metres
No 1 Bogie Road	235 metres	Fuel siding	495 metres
No 2 Bogie Road	235 metres		

SCHEDULE 10

TAILEM BEND YARD FACILITY SCHEDULE

Ref	Item	Details
A	Tailem Bend Yard Access Areas	<p>means those areas of the Tailem Bend Yard Facility specified in column 3 of the Tailem Bend Yard Access Table below, which the Operator is entitled to access during the corresponding Tailem Bend Yard Access Times.</p> <p>Access to any areas not specified in column 3 of the Tailem Bend Yard Access Table, must be requested in writing using an Access Form to be submitted in accordance with the terms of this Agreement and by:</p> <ul style="list-style-type: none">• email to drycreek-shiftcoordinators@aurizon.com.au with copies to mark.sims@aurizon.com.au; and• fax to (08 8343 7780) with a copy to (08 8343 5456).
B	Tailem Bend Yard Access Times	<p>means the times, as specified in column 2 of the Tailem Bend Yard Access Table below, during which the Operator is entitled to access the relevant Tailem Bend Yard Access Areas. During the Tailem Bend Yard Access Times, the Operator is permitted to:</p> <p>(a) access the Tailem Bend Yard Access Area, as specified in column 3 of the Tailem Bend Yard Access Table below; and</p> <p>(b) undertake the Permitted Activities, as specified in column 4 of the Tailem Bend Yard Access Table below.</p>
C	Permitted Activities	<p>means those activities, as specified in column 4 of the Tailem Bend Yard Access Table below, that the Operator is entitled to undertake within the relevant Tailem Bend Yard Access Areas during the corresponding Tailem Bend Yard Access Times, and which may be adjusted from time to time subject to the prior written agreement of Aurizon and the Operator.</p>
D	Prohibited Activities	<p>means those activities, as specified in column 5 of the Tailem Bend Yard Access Table below, that the Operator is prohibited from undertaking within the Tailem Bend Yard Facility (including the relevant Tailem Bend Yard Access Area), and which may be adjusted from time to time subject to the prior written agreement of Aurizon and the Operator.</p>
E	Yard Services	<p>nil, unless such other services (and associated Yard Services Charges) are agreed in writing by Aurizon and the Operator.</p>
F	Train Length and Weight	<p>means the length and weight of a Train that will access a Tailem Bend Yard Access Area, as specified in column 6 of the Tailem Bend Yard Access Table below.</p>

Ref	Item	Details
G	Train Name	means the name of the Train that will access a Tailern Bend Yard Access Area, as specified in column 7 of the Tailern Bend Yard Access Table below.

TAILEM BEND YARD ACCESS TABLE

1. Day	2. Tailem Bend Yard Access Times		3. Tailem Bend Yard Access Area	4. Permitted Activities	5. Prohibited Activities	6. Train Length & Train Weight	7. Train Name
	<i>Arrive</i>	<i>Depart</i>					
Monday			Roads to be agreed between Aurizon and the Operator on presentation of an Access Form.	<ul style="list-style-type: none"> • Train stabling and marshalling on the Tailem Bend Yard Access Area during the Tailem Bend Yard Access Times • Train shunting • Operation of Rolling Stock to enter and exit the relevant Tailem Bend Yard Access Area • Long term stabling 	<ul style="list-style-type: none"> • Fuelling • Loading and unloading • Maintenance of Rolling Stock • Anything that is not a Permitted Activity as set out in Item 4 of this Tailem Bend Yard Access Table 		
Tuesday							
Wednesday							
Thursday							
Friday							
Saturday							
Sunday							

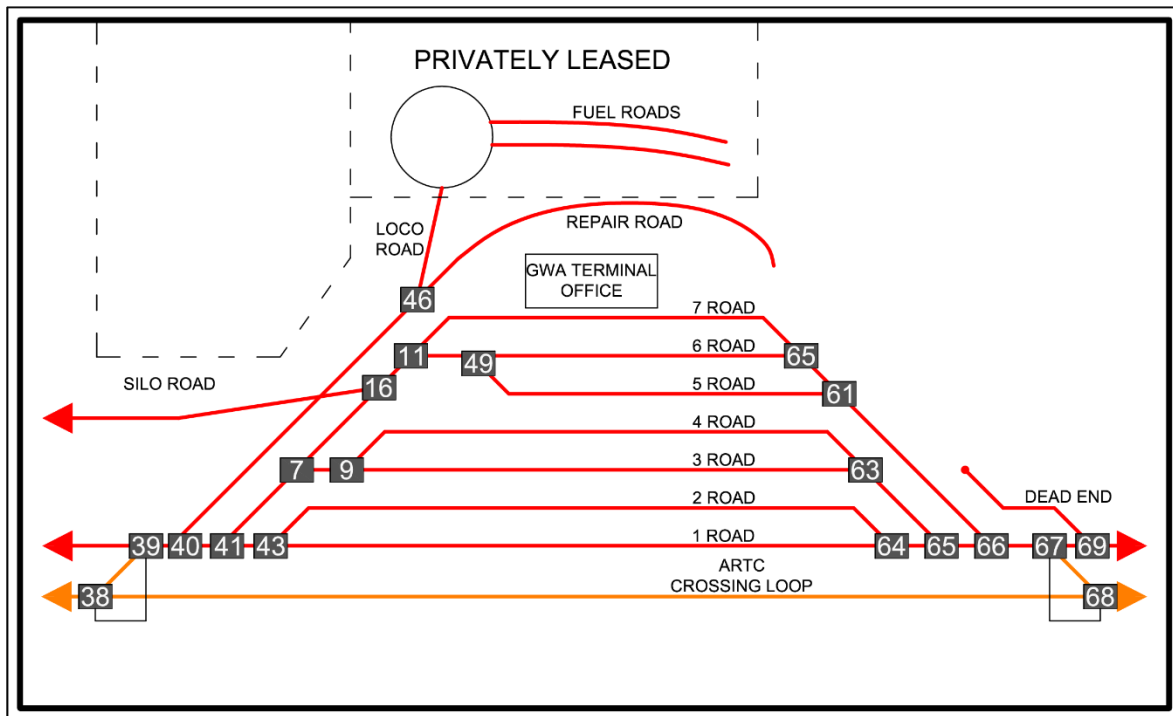
APPENDIX: TAILEM BEND YARD FACILITY

The Tailem Bend Yard Facility is comprised of:

- (a) the Marshalling Yard Area described below; and
- (b) the Silo Area described below.

Marshalling Yard Area

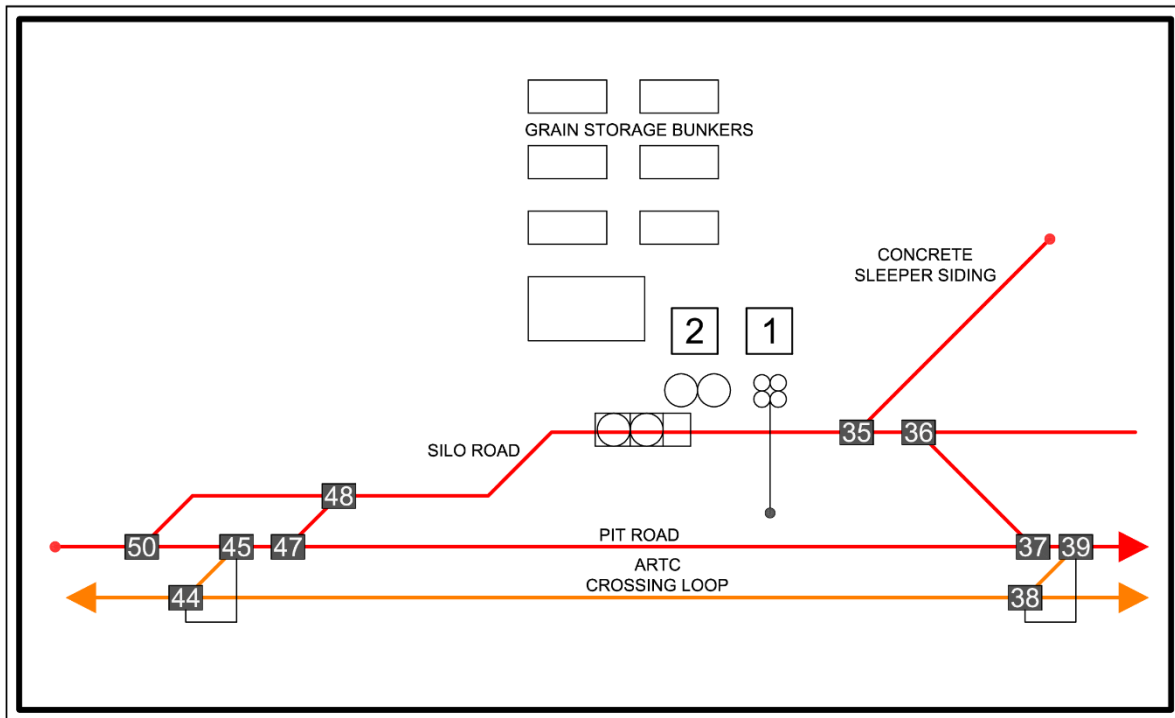
TAILEM BEND TERMINAL - MAP 1



Standing room (Standard Gauge) in the Marshalling Yard Area of the terminal is as follows:

Infrastructure	Length	Infrastructure	Length
No 1 road	606 metres	No 7 road	488 metres
No 2 road	606 metres	Repair road	369 metres
No 3 road	584 metres	Loco road	58 metres
No 4 road	584 metres	Dead end	108 metres
No 5 road	469 metres	Silo road (clear)	244 metres
No 6 road	488 metres	Fuel roads	160 metres

TAILEM BEND TERMINAL - MAP 2



Standing room (Standard Gauge) in the silo area of the terminal is as follows:

Infrastructure	Length	Infrastructure	Length
Pit road (Clear)	733 metres	Silo road (Shed to loco road crossover)	481 metres
Silo road (No 35 points to shed)	192 metres	North dead end	241 metres
Silo road (Shed to No 48 points)	363 metres	Silo road (Shed to dead end)	877 metres
Silo road (Shed to No 50 points)	601 metres	Concrete sleeper siding	263 metres

SCHEDULE 11

MAINLINE YARD FACILITY SCHEDULE

Ref	Item	Details
A	Mainline Yard Access Areas	<p>means those areas of the Mainline Yard Facility specified in column 3 of the Mainline Yard Access Table below, which the Operator is entitled to access during the corresponding Mainline Yard Access Times.</p> <p>Access to any areas not specified in column 3 of the Mainline Yard Access Table, must be requested in writing using an Access Form to be submitted in accordance with the terms of this Agreement and by:</p> <ul style="list-style-type: none">• email to drycreek-shiftcoordinators@aurizon.com.au with copies to mark.sims@aurizon.com.au; and• fax to (08 8343 7780) with a copy to (08 8343 5456).
B	Mainline Yard Access Times	<p>means the times, as specified in column 2 of the Mainline Yard Access Table below, during which the Operator is entitled to access the relevant Mainline Yard Access Areas. During the Mainline Yard Access Times, the Operator is permitted to:</p> <p>(a) access the Mainline Yard Access Area, as specified in column 3 of the Mainline Yard Access Table below; and</p> <p>(b) undertake the Permitted Activities, as specified in column 4 of the Mainline Yard Access Table below.</p>
C	Permitted Activities	<p>means those activities, as specified in column 4 of the Mainline Yard Access Table below, that the Operator is entitled to undertake within the relevant Mainline Yard Access Areas during the corresponding Mainline Yard Access Times, and which may be adjusted from time to time subject to the prior written agreement of Aurizon and the Operator.</p>
D	Prohibited Activities	<p>means those activities, as specified in column 5 of the Mainline Yard Access Table below, that the Operator is prohibited from undertaking within the Mainline Yard Facility (including the relevant Mainline Yard Access Area), and which may be adjusted from time to time subject to the prior written agreement of Aurizon and the Operator.</p>
E	Yard Services	<p>nil, unless such other services (and associated Yard Services Charges) are agreed in writing by Aurizon and the Operator.</p>
F	Train Length and Weight	<p>means the length and weight of a Train that will access a Mainline Yard Access Area, as specified in column 6 of the Mainline Yard Access Table below.</p>

Ref	Item	Details
G	Train Name	means the name of the Train that will access a Mainline Yard Access Area, as specified in column 7 of the Mainline Yard Access Table below.
H	Mainline Yard Facility	a description of the Mainline Yard Facility is set out in the 'Aurizon Information Brochure' provided to the Operator by Aurizon.

MAINLINE YARD ACCESS TABLE

1. Day	2. Mainline Yard Access Times		3. Mainline Yard Access Area	4. Permitted Activities	5. Prohibited Activities	6. Train Length & Train Weight	7. Train Name
	<i>Arrive</i>	<i>Depart</i>					
Monday			Roads to be agreed between Aurizon and the Operator on presentation of an Access Form.	<ul style="list-style-type: none"> • Train stabling and marshalling on the Mainline Yard Access Area during the Mainline Yard Access Times • Train shunting • Operation of Rolling Stock to enter and exit the relevant Mainline Yard Access Area 	<ul style="list-style-type: none"> • Fuelling • Loading and unloading • Train (or any part thereof) remaining within the Mainline Yard Access Area for over 48 hours, unless agreed by Aurizon in writing. • Maintenance of Rolling Stock • Anything that is not a Permitted Activity as set out in Item 4 of this Mainline Yard Access Table 		
Tuesday							
Wednesday							
Thursday							
Friday							
Saturday							
Sunday							

SCHEDULE 12

DRY CREEK YARD FACILITY SCHEDULE

Ref	Item	Details
A	Dry Creek Yard Access Areas	<p>means those areas of the Dry Creek Yard Facility specified in column 3 of the Dry Creek Yard Access Table below, which the Operator is entitled to access during the corresponding Dry Creek Yard Access Times, subject to permission being received from local yard management. Access to the Dry Creek South Broad Gauge Marshalling Yard Area is restricted to broad gauge only.</p> <p>Access to any areas not specified in column 3 of the Dry Creek Yard Access Table, must be requested in writing using an Access Form to be submitted in accordance with the terms of this Agreement and by:</p> <ul style="list-style-type: none">• email to drycreek-shiftcoordinators@aurizon.com.au with copies to mark.sims@aurizon.com.au; and• fax to (08 8343 7780) with a copy to (08 8343 5456).
B	Dry Creek Yard Access Times	<p>means the times, as specified in column 2 of the Dry Creek Yard Access Table below, during which the Operator is entitled to access the relevant Dry Creek Yard Access Areas. During the Dry Creek Yard Access Times, the Operator is permitted to:</p> <p>(a) access the Dry Creek Yard Access Area, as specified in column 3 of the Dry Creek Yard Access Table below; and</p> <p>(b) undertake the Permitted Activities, as specified in column 4 of the Dry Creek Yard Access Table below.</p>
C	Permitted Activities	<p>means those activities, as specified in column 4 of the Dry Creek Yard Access Table below, that the Operator is entitled to undertake within the relevant Dry Creek Yard Access Areas during the corresponding Dry Creek Yard Access Times, and which may be adjusted from time to time subject to the prior written agreement of Aurizon and the Operator.</p>
D	Prohibited Activities	<p>means those activities, as specified in column 5 of the Dry Creek Yard Access Table below, that the Operator is prohibited from undertaking within the Dry Creek Yard Facility (including the relevant Dry Creek Yard Access Area), and which may be adjusted from time to time subject to the prior written agreement of Aurizon and the Operator.</p>
E	Yard Services	<p>nil, unless such other services (and associated Yard Services Charges) are agreed in writing by Aurizon and the Operator.</p>

Ref	Item	Details
F	Train Length and Weight	means the length and weight of a Train that will access a Dry Creek Yard Access Area, as specified in column 6 of the Dry Creek Yard Access Table below.
G	Train Name	means the name of the Train that will access a Dry Creek Yard Access Area, as specified in column 7 of the Dry Creek Yard Access Table below.

DRY CREEK YARD ACCESS TABLE

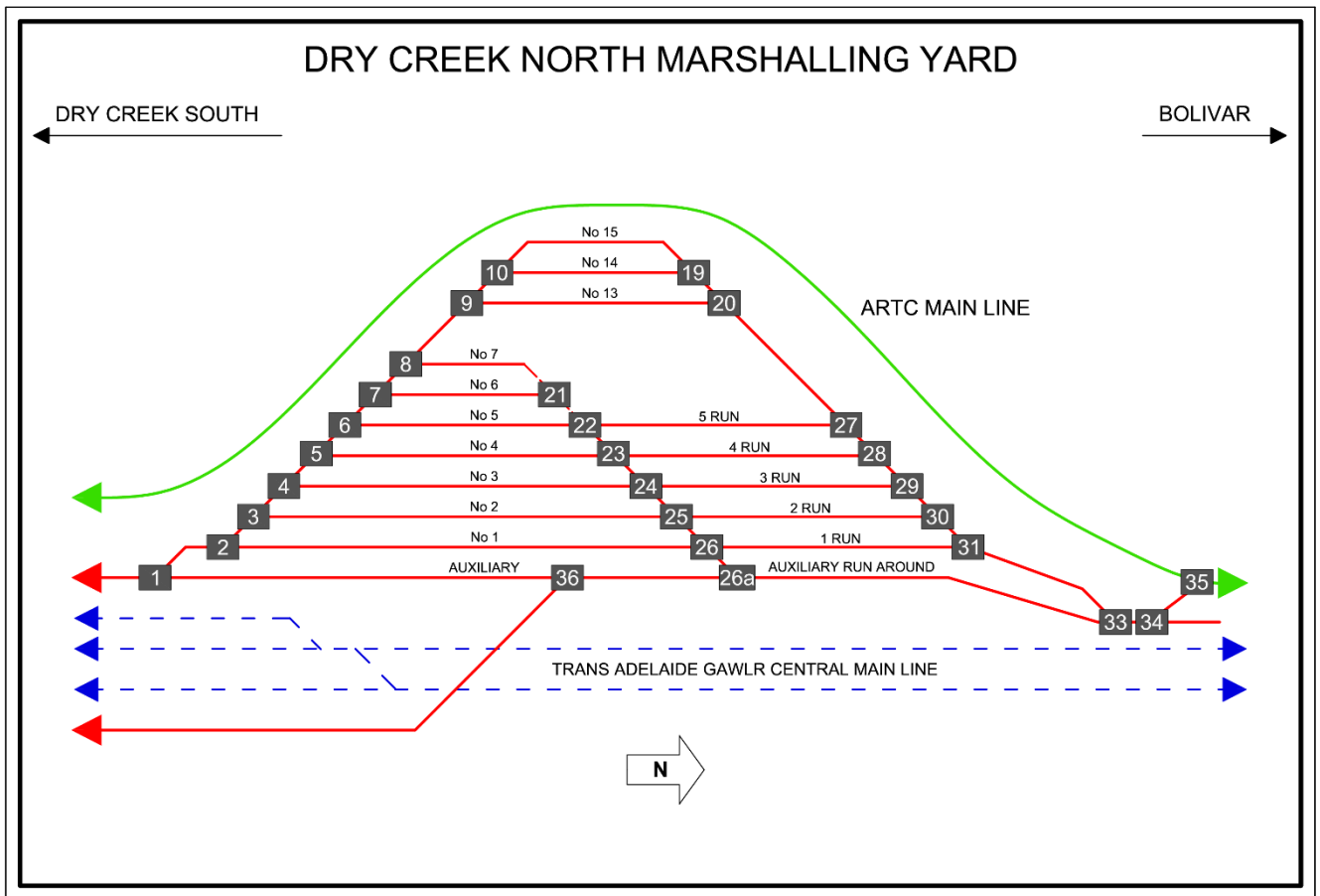
1. Day	2. Dry Creek Yard Access Times		3. Dry Creek Yard Access Area	4. Permitted Activities	5. Prohibited Activities	6. Train Length & Train Weight	7. Train Name
	Arrive	Depart					
Monday			Roads to be agreed between Aurizon and the Operator on presentation of an Access Form.	<ul style="list-style-type: none"> • Train stabling and marshalling on the Dry Creek Yard Access Area during the Dry Creek Yard Access Times • Train shunting • Operation of Rolling Stock to enter and exit the relevant Dry Creek Yard Access Area 	<ul style="list-style-type: none"> • Fuelling • Loading and unloading • Maintenance of Rolling Stock • Anything that is not a Permitted Activity as set out in Item 4 of this Dry Creek Yard Access Table 		
Tuesday							
Wednesday							
Thursday							
Friday							
Saturday							
Sunday							

APPENDIX: DRY CREEK YARD FACILITY

The Dry Creek Yard Facility is comprised of:

- (a) the Dry Creek North Marshalling Yard (Standard Gauge) described below; and
- (b) the Dry Creek South Broad Gauge Marshalling Yard described below.

Dry Creek North Marshalling Yard (Standard Gauge)



Clear standing room in the Dry Creek North Marshalling Yard (Standard Gauge) is as follows:

Infrastructure	Length	Infrastructure	Length
Auxiliary	1470 metres	Auxiliary run-around	780 metres
No 1 road	1430 metres	No 1 run-around	505 metres
No 2 road	1365 metres	No 2 run-around	465 metres
No 3 road	1280 metres	No 3 run-around	420 metres
No 4 road	1050 metres	No 4 run-around	380 metres
No 5 road	945 metres	No 5 run-around	340 metres

Infrastructure	Length	Infrastructure	Length
No 6 road	845 metres	Auxiliary (total foul of crossover)	2285 metres
No 7 road	760 metres	Cattle ramp	480 metres
No 13 road	760 metres	Cattle ramp straight	490 metres
No 14 road	715 metres	Sheep ramp	280 metres
No 15 road	675 metres		

Dry Creek South Broad Gauge Marshalling Yard

Access to the Dry Creek South Marshalling Yard is restricted to broad gauge only. Clear standing room in the Dry Creek South Broad Gauge Marshalling Yard is as follows:

Infrastructure	Length	Infrastructure	Length
No 1 road	959 metres	No 1 lead	342 metres
No 2 road	900 metres	No 2 lead	342 metres
No 3 road	886 metres	No 3 lead	440 metres
No 4 road	893 metres	No 4 lead	405 metres
No 5 road	929 metres	No 1 run-around	285 metres
No 6 road	901 metres	No 2 run-around	98 metres
No 7 road	835 metres	No 1 to 4 bogie roads	240 metres
No 8 road	769 metres	Stock van wash road	790 metres
No 9 road	769 metres	Wash run around	210 metres

SCHEDULE 13

PORT ADELAIDE YARD FACILITY SCHEDULE

Ref	Item	Details
A	Port Adelaide Yard Access Areas	<p>means those areas of the Port Adelaide Yard Facility specified in column 3 of the Port Adelaide Yard Access Table below, which the Operator is entitled to access during the corresponding Port Adelaide Yard Access Times, subject to permission being received from local yard management.</p> <p>Access to any areas not specified in column 3 of the Port Adelaide Yard Access Table, must be requested in writing using an Access Form to be submitted in accordance with the terms of this Agreement and by:</p> <ul style="list-style-type: none">• email to drycreek-shiftcoordinators@aurizon.com.au with copies to mark.sims@aurizon.com.au; and• fax to (08 8343 7780) with a copy to (08 8343 5456).
B	Port Adelaide Yard Access Times	<p>means the times, as specified in column 2 of the Port Adelaide Yard Access Table below, during which the Operator is entitled to access the relevant Port Adelaide Yard Access Areas. During the Port Adelaide Yard Access Times, the Operator is permitted to:</p> <p>(a) access the Port Adelaide Yard Access Area, as specified in column 3 of the Port Adelaide Yard Access Table below; and</p> <p>(b) undertake the Permitted Activities, as specified in column 4 of the Port Adelaide Yard Access Table below.</p>
C	Permitted Activities	<p>means those activities, as specified in column 4 of the Port Adelaide Yard Access Table below, that the Operator is entitled to undertake within the relevant Port Adelaide Yard Access Areas during the corresponding Port Adelaide Yard Access Times, and which may be adjusted from time to time subject to the prior written agreement of Aurizon and the Operator.</p>
D	Prohibited Activities	<p>means those activities, as specified in column 5 of the Port Adelaide Yard Access Table below, that the Operator is prohibited from undertaking within the Port Adelaide Yard Facility (including the relevant Port Adelaide Yard Access Area), and which may be adjusted from time to time subject to the prior written agreement of Aurizon and the Operator.</p>
E	Yard Services	<p>nil, unless such other services (and associated Yard Services Charges) are agreed in writing by Aurizon and the Operator.</p>
F	Train Length and Weight	<p>means the length and weight of a Train that will access a Port Adelaide Yard Access Area, as specified in column 6 of the Port Adelaide Yard Access Table below.</p>

Ref	Item	Details
G	Train Name	means the name of the Train that will access a Port Adelaide Yard Access Area, as specified in column 7 of the Port Adelaide Yard Access Table below.

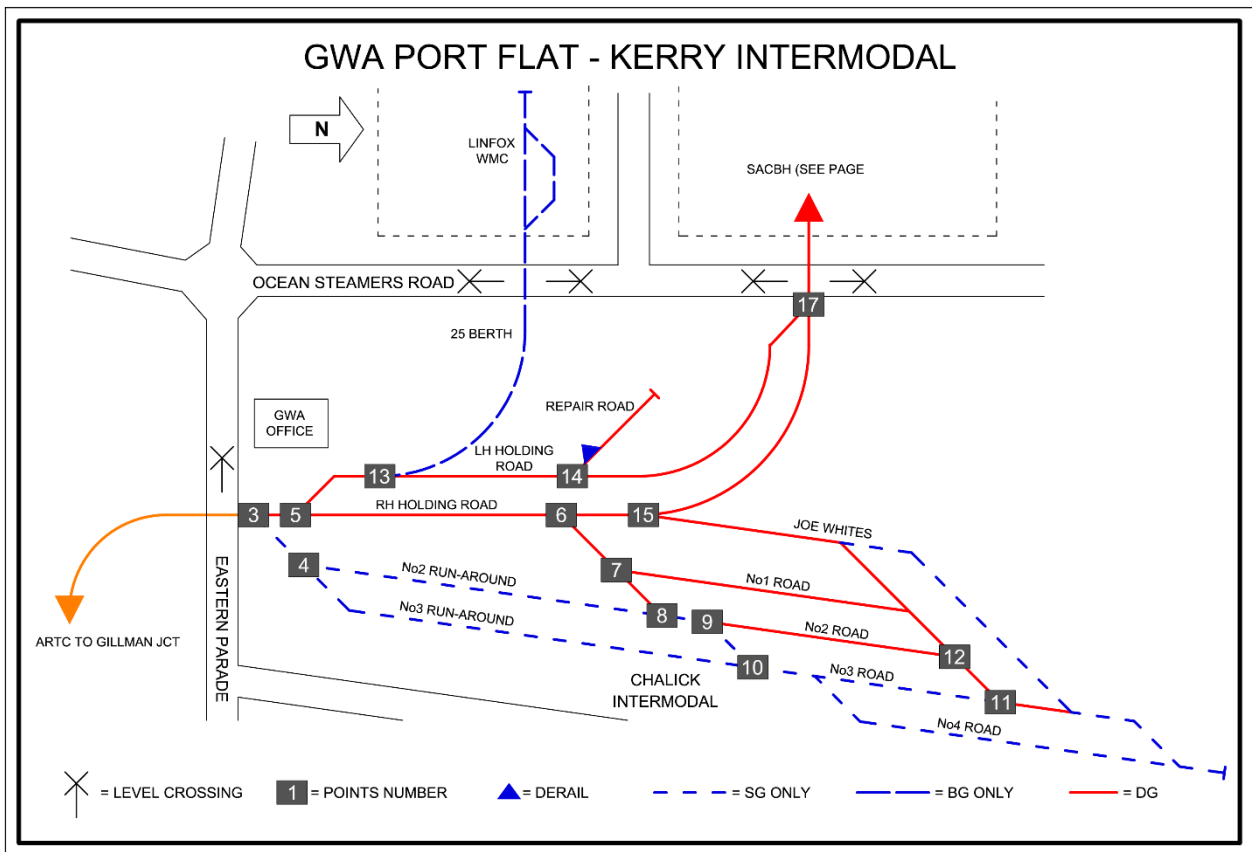
PORT ADELAIDE YARD ACCESS TABLE

1. Day	2. Port Adelaide Yard Access Times		3. Port Adelaide Yard Access Area	4. Permitted Activities	5. Prohibited Activities	6. Train Length & Train Weight	7. Train Name
	<i>Arrive</i>	<i>Depart</i>					
Monday			Roads to be agreed between Aurizon and the Operator on presentation of an Access Form.	<ul style="list-style-type: none"> • Train stabling and marshalling on the Port Adelaide Yard Access Area during the Port Adelaide Yard Access Times • Train shunting • Operation of Rolling Stock to enter and exit the relevant Port Adelaide Yard Access Area 	<ul style="list-style-type: none"> • Fuelling • Loading and unloading • Maintenance of Rolling Stock • Anything that is not a Permitted Activity as set out in Item 4 of this Port Adelaide Yard Access Table 		
Tuesday							
Wednesday							
Thursday							
Friday							
Saturday							
Sunday							

APPENDIX: PORT ADELAIDE YARD FACILITY

The Port Adelaide Yard Facility is comprised of:

- (a) the Port Adelaide Standard Broad and Dual Gauge Track described below;
- (b) the Arrival and Run Around Roads (Dual Gauge) described below;
- (c) the 25 Berth Siding (Broad Gauge) described below;
- (d) the Joe Whites Malting Road (Dual Gauge) described below; and
- (e) the Clyde Repair Road (Dual Gauge) described below.



Port Adelaide Standard Broad and Dual Gauge Track

Clear standing room in the Port Adelaide Standard Broad and Dual Gauge Track is as follows:

Infrastructure	Length	Infrastructure	Length
No 1 road gauge	665 metres	No 2 run-around gauge	288 metres
No 2 road gauge	665 metres	No 3 run-around gauge	342 metres

Infrastructure	Length	Infrastructure	Length
No 3 road gauge	665 metres	No 3 run / 3 road (foul of crossover points)	1042 metres
No 3 road dead end gauge	140 metres		

Arrival and Run Around Roads (Dual Gauge)

Clear standing room on both the left and right hand holding roads is:

Infrastructure	Length	Infrastructure	Length
Left side road	445 metres	Left side road	445 metres

25 Berth Siding (Broad Gauge)

Standing room in the 25 Berth Siding is as follows:

Infrastructure	Length	Infrastructure	Length
Left holding road to level crossing	227 metres	Front to rear of shed	70 metres
Level crossing to shed	140 metres	Run around road (clear)	155 metres

Joe Whites Malting Road (Dual Gauge)

Infrastructure	Length
Clearance point to gates	1060 metres

Clyde Repair Road (Dual Gauge)

Infrastructure	Length
Clyde Repair Road	170 metres

EXECUTED as an agreement

Executed by Aurizon Bulk Central)
Pty Ltd)
ABN 17 079 444 296)
in accordance with section 127 of)
the *Corporations Act 2001*)
)
)

.....
Director/Company Secretary

.....
Director

.....
Name of Director/Company Secretary
(BLOCK LETTERS)

.....
Name of Director
(BLOCK LETTERS)

EXECUTED by)
[Company Name])
ABN)
in accordance with section 127 of)
the *Corporations Act 2001*)
)

.....
Director/Company Secretary

.....
Director

.....
Name of Director/Company Secretary
(BLOCK LETTERS)

.....
Name of Director
(BLOCK LETTERS)

[Delete the below signature block if there will be no guarantor]

EXECUTED by)
[Company Name])
ABN)
in accordance with section 127 of)
the *Corporations Act 2001*)
)

.....
Director/Company Secretary

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Director

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Name of Director/Company Secretary
(BLOCK LETTERS)

.....
Name of Director
(BLOCK LETTERS)