



TIME-PATH ALLOCATION & RE-ALLOCATION POLICY

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Prepared by: Aurizon Bulk Central Access Manager and Legal Counsel

Approved by: General Manager Aurizon Bulk Central

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TABLE OF CONTENTS

1. INTRODUCTION.....	5
1.1. ABCN	5
1.2. The Code	5
1.3. Third Party Access to the Railway	5
2. THE BASIC PRINCIPLE OF ACCESS.....	5
3. MASTER TRAIN PLAN	5
4. CONDITIONAL AND RESERVED TRAIN PATHS	6
5. COMPETITION FOR THE SAME TRAIN PATH	6
6. POSSESSION OF THE RAILWAY	7
7. VARIATIONS TO SCHEDULED TRAIN PATHS	8
7.1. ABCN's Temporary Variations of Scheduled Train Paths	8
7.2. Other Variations of Scheduled Train Paths.....	8
8. TRAIN PATH CANCELLATION, REMOVAL AND DELETION	9
8.1. Cancellation by Above-Rail Operator.....	9
8.2. Removal of Train Path for Under-utilisation	10
8.3. Train-Path Deletion.....	10
9. LIMITATION TO AVAILABILITY OF SCHEDULED TRAIN PATHS	10
10. EFFECT OF VARIATIONS TO TRAIN PATHS ON ACCESS CONTRACT	11
11. RENEGOTIATION OF TRAIN PATH.....	11
12. DEALINGS WITH ACCESS RIGHTS	11
12.1. Consent.....	11
12.2. ABCN's consent discretionary.....	11
13. USE OF THE NETWORK	11
13.1. Technical specifications and standards	11
13.2. Compliance required	11
14. LEGAL COMPLIANCE.....	12
15. COMPLIANCE WITH ABCN'S DIRECTIONS	12
16. REVIEW	12
17. GLOSSARY OF TERMS USED.....	13

1. INTRODUCTION

1.1. ABCN

Aurizon Bulk Central (Network) Pty Ltd (ABCN) has leasehold title to, and rights of occupation of, the railway corridor from Tarcoola in South Australia to Darwin in the Northern Territory, under subleases granted by the Australasia Railway Corporation.

1.2. The Code

ABCN is in a position to provide the railway infrastructure facilities for the purpose of providing a freight or passenger service by means of the Tarcoola- Darwin railway and is the 'access provider' within the meaning of the AustralAsia Railway (Third Party Access) Code (Code) as set out in the schedule to the AustralAsia Railway (Third Party Access) Act 1999 (SA).

The Code requires ABCN to have a time-path allocation and reallocation policy. This document is ABCN's policy response to that requirement (Policy).

1.3. Third Party Access to the Railway

The Code gives the right for certain 'third parties' (Above-Rail Operators) to negotiate access to the Railway infrastructure between Tarcoola and Darwin.

This Policy governs the terms on which Above-Rail Operators that wish to access and use the Network (Access Seekers) may be granted access to the Network. Where access to the Network is granted, Access Seekers will also be required to enter into a separate agreement (Track Access Agreement) with ABCN for that purpose.

2. THE BASIC PRINCIPLE OF ACCESS

The principle underlying this Policy is that ABCN will make access available to Access Seekers whenever there is Available Capacity.

3. MASTER TRAIN PLAN

A Master Train Plan is included as Annexure 1.

The Master Train Plan is a graphical representation of committed entitlements on an operator-by-operator basis, together with:

- (a) section running time information for indicative Services; and
- (b) any applicable route standards.

The Master Train Plan shows:

- (a) Scheduled Train Paths;
- (b) Conditional Train Paths;
- (c) Reserved Train Paths; and
- (d) all planned Train movements for which advice has been given to an Above-Rail Operator that the path for the Train movement is available and able to be practically operated, but for which no contractual agreement has been reached.

4. CONDITIONAL AND RESERVED TRAIN PATHS

- (a) ABCN may create a Conditional Train Path at the request of an Above-Rail Operator if:
 - (i) ABCN has received a correctly presented access application;
 - (ii) ABCN has confirmed there is an operational need;
 - (iii) there is Available Capacity; and
 - (iv) ABCN has determined there is no conflict between a proposed Conditional Train Path and Scheduled Train Paths.
- (b) ABCN may create an entitlement to an Above-Rail Operator to a Reserved Train Path if:
 - (i) a Track Access Agreement has been entered into between ABCN and the Access Seeker; and
 - (ii) the Reserved Train Path will become a Scheduled Train Path within 6 months.
- (c) Reserved Train Paths may apply over the entire Network.
- (d) The application of a Reserved Train Path entitlement will not be used to alter or override a Scheduled Train Path.

5. COMPETITION FOR THE SAME TRAIN PATH

Whenever ABCN receives access applications from different Access Seekers for the same Train Path and both requests cannot be satisfied by using alternative but similar Train Paths, ABCN will resolve the applications according to the following principles:

- (a) If two or more applicants are seeking access with respect to mutually exclusive access rights, each applicant will be so advised prior to ABCN making any decision affecting either application.
- (b) In resolving the applications, ABCN will:
 - (i) consider the commercial merit of each of the applications;
 - (ii) use the pricing principles set out in paragraphs 5(c) and (d) of this Policy;
 - (iii) not disclose commercially-sensitive information to those with a conflict of interest, or misuse for commercial gain information in any other way not provided for by the Code; and
 - (iv) keep ABCN's records separate from those of ABCN's affiliated above-rail operator.
- (c) In formulating its pricing for use of the Network, ABCN will consider the following issues (without limitation) with respect to each application:
 - (i) the characteristics of the relevant Train (e.g. axle load, speed, wheel diameter and Train length);
 - (ii) the characteristics of the relevant Service (e.g. origin and destination, the number and length of intermediate stops, departure and arrival times and days of the week);
 - (iii) the commercial impact on ABCN's business of satisfying the request, including (without limitation):
 - (A) the duration of the proposed Track Access Agreement;
 - (B) the terms and any conditions of the proposed Track Access Agreement;

- (C) the potential for growth of ABCN's business;
- (D) the opportunity costs to ABCN of the request;
- (E) the consumption of ABCN's resources in relation to the request;
- (F) the Access Seeker's credit risk;
- (G) the market value of the Train Path sought; and
- (H) the relevant segments of the Network for which access is sought under the request;
- (iv) capital or other contributions by the Access Seeker to ABCN's costs; and
- (v) logistical impacts on ABCN's business including (without limitation):
 - (A) the impact on other Services and risk of failure of the Above-Rail Operator to perform;
 - (B) reduced Capacity and system flexibility.
- (d) In formulating its pricing for use of the Network, ABCN will not use the identity of an Access Seeker as a basis for differentiating between Access Seekers in circumstances where the applications are alike (having regard to all the matters set out in paragraph 5(c) of this Policy).

6. POSSESSION OF THE RAILWAY

- (a) The Above-Rail Operator acknowledges that:
 - (i) ABCN may, without notice to Above-Rail Operators, perform repairs, maintenance or upgrading of the Railway, construct Further Infrastructure on the Network, or take possession (Possession) of any part of the Network, at any time; and
 - (ii) ABCN reserves the right to permit other parties (including Government Agencies) to carry out External Maintenance Works on the Network in the event that those other parties request to do so.
- (b) If the activities referred to in paragraphs 6(a)(i) and 6(a)(ii) are reasonably likely to materially affect the Scheduled Train Paths, ABCN must, prior to commencement of those works:
 - (i) take all reasonable steps to minimise any disruption to the Scheduled Train Paths;
 - (ii) notify each Above-Rail Operator that is likely to be affected by the activities referred to in paragraphs 6(a)(i) and 6(a)(ii), of the relevant activities as soon as reasonably practicable and in any case not less than 30 days before taking Possession (except in the case of an emergency); and
 - (iii) use its best endeavours to provide an alternative Train Path by 7 days after initial notice is received, but there is no requirement for ABCN to obtain an Above-Rail Operator's consent to such activities referred to in paragraphs 6(a)(i) and 6(a)(ii).
- (c) ABCN will consult with each Above-Rail Operator that is likely to be affected by Possession of the Network a reasonable time before taking Possession of the Network (except in the case of an emergency), with a view to efficient Possession planning and with a view to minimising disruption to Services.
- (d) For the avoidance of all doubt, Possession of the Network by ABCN will result in the closure of the Network to all Services for the purpose of effecting any or all of the activities referred to in paragraphs 6(a)(i) and 6(a)(ii).

7. VARIATIONS TO SCHEDULED TRAIN PATHS

7.1. ABCN's Temporary Variations of Scheduled Train Paths

- (a) ABCN may temporarily vary an Above-Rail Operator's Train Paths by giving instructions for the purpose of preventing any actual or potential:
 - (i) breach of safety requirements (including ABCN's Network Rules) in relation to the Network;
 - (ii) breach of an Above-Rail Operator's obligations under a Track Access Agreement (or by way of response by ABCN to such a breach);
 - (iii) material damage to the Network, ABCN's property (including the property of any Related Body Corporate of ABCN), or any associated facility;
 - (iv) injury to any person or damage to any property;
 - (v) delay to the progress of Services to the Network for Trains that have priority over that Above-Rail Operator's Trains; or
 - (vi) matters affecting the security of the Network.
- (b) The instructions referred to in paragraph 7.1(a) may comprise, but need not be confined to, instructions (Instructions) in one or more of the following terms:
 - (i) to cease use of a Train Path by the Service and for the Service to proceed over such other path on the Network as ABCN nominates;
 - (ii) to continue use by the Service of the Network subject to such variation of the applicable Train Path or the Service or the composition or quality of Trains as ABCN nominates;
 - (iii) to cause the Service to proceed to a point on the Railway and stand there until ABCN issues a further Instruction in relation to the Service; or
 - (iv) if the Service operates outside its Train Paths, to delay or redirect the Service to allow access to the Network by another Above-Rail Operator of a Train whose service would, but for the delay or redirection of an Above-Rail Operator's Service, be delayed or further delayed.

7.2. Other Variations of Scheduled Train Paths

- (a) If an Above-Rail Operator wishes to vary a Scheduled Train Path, or if ABCN wishes to vary a Scheduled Train Path for any reason other than as set out in paragraph 7.1(a) above, either temporarily or permanently, ABCN or the Above-Rail Operator (Requesting Party) must first prepare and serve on the other party (Other Party) a notice in writing (Notice).
- (b) The Notice must state:
 - (i) that the Requesting Party wishes to temporarily or permanently (as the case may be) modify the Scheduled Train Path;
 - (ii) how the Requesting Party wishes to modify the Scheduled Train Path;
 - (iii) the length of time such variation will be in force;
 - (iv) the reason or reasons for the proposal by the Requesting Party; and

- (v) the date from which the Requesting Party intends the variation to take place (Proposed Commencement Date).
- (c) Notice must be provided to the Other Party at least 30 days before the Proposed Commencement Date.
- (d) Within 20 days following receipt of a Notice, the Other Party must either:
 - (i) consent to the request contained in the Notice; or
 - (ii) refuse the request contained in the Notice, provided that:
 - (A) it has reasonable grounds to do so; and
 - (B) it provides reasons for its decision to withhold consent to the Requesting Party.
- (e) If the Other Party fails to respond to a Notice as required by paragraph 7.2(d), it will be deemed to have consented to the request contained in the Notice.
- (f) For the avoidance of doubt, an Above-Rail Operator will be deemed to have consented to the request contained in a Notice if the variation is required:
 - (i) by reason of ABCN's obligations relating to safety of the Network; or
 - (ii) for maximising usage and reliability of the Network

8. TRAIN PATH CANCELLATION, REMOVAL AND DELETION

8.1. Cancellation by Above-Rail Operator

- (a) An Above-Rail Operator may cancel any Service, provided that the total number of cancelled Services in respect of each Scheduled Train Path in each year from the Commencement Date is no greater than the number determined by the following formula:

$$N = \frac{S}{26}$$

where:

N = the maximum total number of cancelled Services; and

S = the number of Services that may be operated by that Above-Rail Operator in each calendar year, in respect of that Scheduled Train Path.

- (b) If an Above-Rail Operator cancels any Service because of Force Majeure, the Above-Rail Operator is not liable to pay the Charges in respect of the Services so cancelled.
- (c) An Above-Rail Operator may cancel a Scheduled Train Path at will by serving a written notice on ABCN to that effect, provided that:
 - (i) the Above-Rail Operator provides at least 12 months' notice to ABCN of the cancellation; and
 - (ii) during the notice period under paragraph 8.1(c)(i):
 - (A) if the Above-Rail Operator operates a Service, it pays the full charges payable under the relevant Track Access Agreement; and
 - (B) if the Above-Rail Operator does not operate a Service, it pays the flag fall component of the Charges.

- (d) If an Above-Rail Operator cancels any Service other than under paragraph 8.1(a), 8.1(b) or 8.1(c), ABCN is entitled to recover the flag fall component of the Charges determined in accordance with the Track Access Agreement.

8.2. Removal of Train Path for Under-utilisation

- (a) ABCN has the right, in its discretion and by notice in writing to an Above-Rail Operator, to delete any Scheduled Train Path (upon which deletion the relevant Track Access Agreement is deemed to be amended accordingly) if the Service using that Scheduled Train Path is not operated for more than 3 consecutive weeks at any time and, after ABCN has given the Above-Rail Operator notice of that fact, an Above-Rail Operator fails to operate the Service for more than 6 weeks in aggregate in the period of 6 months from the date of ABCN's notice.

- (b) Other than if ABCN and the Above-Rail Operator agree to substitute an alternative Train Path, a Service has not been operated within the meaning of paragraph 8.2 if the Above-Rail Operator has failed:

- (i) to present a Train at the scheduled entry point onto the Network; or
- (ii) to operate the relevant Train so that it completes its full journey on the Network,

in conformance with the locations, days and times set out in the Scheduled Train Paths applicable to such Service, in any circumstances other than those in paragraph 8.1(a), 8.1(b) or 8.1(c) or because of Force Majeure.

8.3. Train-Path Deletion

Other than in the circumstances described in paragraph 8.2, ABCN may permanently delete a Scheduled Train Path from the Master Train Plan, provided that it:

- (a) has reasonable grounds to do so;
- (b) provides reasons for its decision to do so to all affected parties; and
- (c) provides notice of its intention to do so at least 30 days before the date from which the deletion will occur.

9. LIMITATION TO AVAILABILITY OF SCHEDULED TRAIN PATHS

The availability of a Scheduled Train Path is subject to:

- (a) presentation by the Above-Rail Operator to ABCN (or a party nominated by ABCN) of a Train which is ready in all things for departure within 15 minutes of the scheduled time for departure of that Train according to the relevant Scheduled Train Path;
- (b) matters outside of the reasonable control of ABCN (except for matters which arise due to ABCN's breach of its obligations under the relevant Track Access Agreement);
- (c) the Train Management Policy;
- (d) matters which in ABCN's sole discretion are emergencies;
- (e) matters which in ABCN's sole discretion are material safety considerations;
- (f) External Maintenance Works on the Network; and
- (g) any lawful order, instruction or direction given to ABCN by any Government Agency.

10. EFFECT OF VARIATIONS TO TRAIN PATHS ON ACCESS CONTRACT

- (a) A temporary variation of a Scheduled Train Path pursuant to this Policy has the effect of suspending all contrary or inconsistent Scheduled Train Paths in a Track Access Agreement for the duration of such temporary variation.
- (b) Only permanent variations of an Above-Rail Operator's Scheduled Train Paths will be, and are hereby, deemed to be an amendment to a Track Access Agreement.

11. RENEGOTIATION OF TRAIN PATH

- (a) If the Above-Rail Operator has been granted a Scheduled Train Path, then the Above-Rail Operator may, not less than 120 days before the expiry of the term of a Scheduled Train Path, give written notice to ABCN that the Above-Rail Operator wishes to renew the Scheduled Train Path, and ABCN will enter into negotiations with the Above-Rail Operator regarding the possibility of a renewal.
- (b) If when the Above-Rail Operator has given notice under paragraph 11(a), it:
 - (i) has paid to ABCN all monies due under the relevant Track Access Agreement; and
 - (ii) is not otherwise in breach of the relevant Track Access Agreement,then ABCN may consent to the renewal of a Scheduled Train Path and enter into a new agreement for track access, on terms and subject to conditions as the parties may agree.
- (c) The Above-Rail Operator acknowledges that it does not have an automatic or enforceable right of extension or renewal of any Scheduled Train Path under this Policy or the relevant Track Access Agreement.

12. DEALINGS WITH ACCESS RIGHTS

12.1. Consent

An Above-Rail Operator may not sub-license, assign, sell, transfer, encumber or otherwise deal with or dispose of its rights under its Track Access Agreement without the prior consent in writing of ABCN.

12.2. ABCN's consent discretionary

ABCN may grant or withhold the consent referred to in paragraph 12.1 at its absolute discretion and may impose such conditions as it sees fit on the grant of its consent.

13. USE OF THE NETWORK

13.1. Technical specifications and standards

ABCN will from time to time issue technical specifications and standards prescribing the manner in which a user of the Network may access and use the Network, and related equipment and other requirements (Standards).

13.2. Compliance required

Each user of the Network must ensure that the Standards are complied with by all persons for whom that user is responsible under this Policy.

14. LEGAL COMPLIANCE

Each Above-Rail Operator given the right to access and use the Network must undertake, as part of its Track Access Agreement, to comply with all laws relating to its access to and use of the Network, and to ensure that its employees, contractors, agents, and other persons using the Network with its authority, similarly comply.

15. COMPLIANCE WITH ABCN'S DIRECTIONS

ABCN may from time to time find it necessary or desirable, through changed circumstances or otherwise, to add to or otherwise vary this Policy, or to issue directions or clarifications as to how this Policy is to be interpreted or is to operate. It will be a requirement of all Track Access Agreements that Network users comply with the Policy (as amended from time to time), and with all such directions and clarifications.

16. REVIEW

- (a) ABCN may at its discretion, by written notice given to an Above-Rail Operator, cause a Scheduled Train Path to be reviewed in a bona fide manner by the parties, by comparing the stated departure and arrival times for the Scheduled Train Path with the performance during the preceding continuous 3 month period of the actual Trains using or purporting to use that reviewable entitlement (3-month history) (Review).
- (b) Each user of the Railway (including for the avoidance of doubt, a user affiliated with ABCN) must conduct a Review at least once during each the following periods:
 - (i) the commencement date of the relevant Track Access Agreement until the end of the next 30 June or 31 December after that date (whichever occurs first);
 - (ii) each subsequent consecutive period of 12 months.
- (c) A summary of the Review must be prepared in accordance with the form prescribed by ABCN from time to time and forwarded to ABCN within 30 days after completion of the Review.
- (d) If on such Review the departure or arrival times for a Train using or purporting to use the Scheduled Train Path differ in material respects, the parties will negotiate in good faith to amend the Scheduled Train Path so that the Scheduled Train Path reflects, as closely as is reasonably practicable, the 3-month history.
- (e) Nothing in this paragraph 16 compels ABCN to offer a Train Path to an Above-Rail Operator under paragraph 16(d) if:
 - (i) such Train Path is unavailable by reason of contractual obligations owed by ABCN to any person (including another Above-Rail Operator);
 - (ii) to do so would materially adversely impact on ABCN's ability or opportunity to efficiently and safely manage the Network; or
 - (iii) the Above-Rail Operator does not agree with the terms and conditions upon which such revised Train Path is offered (including as to charges).
- (f) Nothing in this paragraph 16 compels an Above-Rail Operator to accept a Train Path offered by ABCN under paragraph 16(d), if contractual obligations owed by that Above-Rail Operator to any person (including ABCN) would prevent it from doing so.

17. GLOSSARY OF TERMS USED

Above-Rail Operator	An operator of trains in accordance with a Track Access Agreement
Access	Access means access to use the Network or Railway, or any part thereof, for the purpose of running a Service.
ABC	Aurizon Bulk Central Pty Ltd ABN 17 079 444 296.
ABCN	Aurizon Bulk Central (Network) Pty Ltd ABN 92 144 081 774.
ABCN's Network Rules	Means: <ul style="list-style-type: none">(a) the Code of Practice for the Defined Interstate Rail Network;(b) the ABC Addendum to the Code of Practice for the Defined Interstate Rail Network;(c) Aurizon Bulk Central's (formerly FreightLink) Safety Management Plan approved under section 7 of the Rail Safety Act 2007 (SA) and section 15 of the Northern Territory Rail Safety Act; and(d) all policies, procedures, directions, instructions and notices issued by ABCN or its agents to the Above-Rail Operator for the purpose of ensuring the safe use of the Network,(e) as notified by ABCN to the Above-Rail Operator and in each case as amended from time to time.
Available Capacity	That portion of the Capacity that is not required to meet the Capacity granted to an Above-Rail Operator under a Track Access Agreement in the form of Train Paths.
Business Day	Any day other than a Saturday, Sunday or public holiday in South Australia.
Capacity	The total capability of the Network for Services, including the capability of the Network to accommodate additional Train Paths after taking into account: <ul style="list-style-type: none">(a) possessions of the Network reasonably required by ABCN for maintenance, repair or enhancements; and(b) the operation of work Trains.
Charges	The charges payable by the Above-Rail Operator to ABCN under a Track Access Agreement, in respect of access to the Railway.
Commencement Date	The date on which an Above-Rail Operator first uses one of its Scheduled Train Paths under its Track Access Agreement.
Conditional Train Paths	The entitlement of an Above-Rail Operator to use the Network between agreed locations at times which are not in conflict with the operator of Scheduled Train Paths that exist for that part of the Network, and which are seasonal or vary over time because of the nature of the operations.

External Maintenance Works	<p>Any works or the provision or maintenance of any services undertaken (or required to be undertaken) in respect of the Network or any associated facilities (including without limitation design, construction, testing or commissioning) by or on behalf of;</p> <ul style="list-style-type: none">(a) a Government Agency;(b) an owner of land adjoining the Railway, to install services across the Railway to that adjoining land; or(c) a corporation exercising statutory powers to enter or acquire rights or interests in land (other than a Government Agency) to install services across the Network to that adjoining land,(d) but not including works carried out by ABCN or its contractors.
Force Majeure	<p>Any circumstance beyond the reasonable control of a party which occurs without the negligence of that party, and includes inevitable accident, derailment, storm, flood, fire, earthquake, explosion, peril of navigation, hostility, war (declared or undeclared), insurrection, sabotage, act of terrorism, security-related matters, nuclear ionisation or radioactivity, 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), quarantine or customs restrictions, strike, lockout or industrial dispute, break-down or damage to or confiscation of property, but does not include breakdown or delay of any Trains or RollingStock operated by the Above-Rail Operator.</p>
Further Infrastructure	<p>Further infrastructure added to or included in the Network, at ABCN's cost, which previously did not form part of the Network.</p>
Government Agencies	<p>Government agencies, statutory authorities or bodies exercising statutory rights with respect to rail issues.</p>
Master Train Plan	<p>The plan set out in Annexure 1.</p>
Network	<p>The Railway network in South Australia and the Northern Territory (including related infrastructure).</p>
Railway	<p>The railway from Tarcoola in South Australia to Darwin in the Northern Territory.</p>
Related Body Corporate	<p>Has the meaning in the <i>Corporations Act 2001(Cth)</i>.</p>
Reserved Train Path	<p>A Train Path recorded on the Master Train Plan which provides for the commencement of a Scheduled Train Path within 6 months of it being placed on the Master Train Plan or provides for the use of a Scheduled Train Path on a seasonal or agreed intermittent basis.</p>
RollingStock	<p>A locomotive, carriage, wagon, or other vehicle suitable for use on the Railway.</p>
Scheduled Train Paths	<p>The entitlement of an Above-Rail Operator to use a Train Path on the Network between the times and between the locations set out in a Track Access Agreement (as amended or varied permanently in accordance with this Policy).</p>

Service	A Train operated by an Above-Rail Operator using the Network, by which the Above-Rail Operator provides railway freight or passenger services, including work Trains.
Standards	The technical specifications and standards referred to in paragraph 13.1 of this Policy.
Track Access Agreement	An agreement between ABCN and an Access Seeker seeking to use the Network, prescribing the terms and conditions of that party's Access to and use of the Network.
Train	A single unit of RollingStock or two or more units coupled together, at least one of which is a locomotive or other self-propelling unit.
Train Management Policy	ABCN's Train Management Policy as amended from time to time.
Train Paths	Means: <ul style="list-style-type: none">(a) the Scheduled Train Paths;(b) the Train Paths provided to the Above-(c) Rail Operator pursuant to this Policy; and(d) all other ad hoc entitlements (including Train Paths arising by reason of compliance with ABCN's instructions) to Access to the Network which are provided by ABCN (or its authorised delegate) to the Above-Rail Operator on the terms set out in a Track Access Agreement and otherwise on such terms as ABCN (or its authorised delegate) may stipulate in accordance with a Track Access Agreement or as otherwise agreed between ABCN and the Above-Rail Operator.

ANNEXURE 1 – MASTER TRAIN PLAN