

[QRC Note: This mark-up does not include QRC's proposed Expansion funding obligation for AN.]

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Part 8 Network development and Expansions

8.1 Overview

This **Part 8** sets out various provisions relating to the creation of new Rail Infrastructure and supply chain coordination – in particular:

- (a) **clause ~~8.28-28.2~~** sets out general principles regarding limitations on Aurizon Network's rights and obligations to fund, construct or permit the creation of new Rail Infrastructure;
- (b) **clause 8.3** sets out principles in relation to Aurizon Network's undertaking of Concept Studies;
- (c) **clauses ~~8.48-48.4~~, 8.1 and ~~8.58-58.5~~** set out principles in relation to the way in which Pre-feasibility Studies and Feasibility Studies are to be funded;
- (d) **clause 8.6** sets out general principles in relation to the funding of Expansions;
- (e) **clause 8.9** describes how Users may fund all or part of an Expansion;
- (f) **clause ~~8.108-108.10~~** sets out provisions in relation to Capacity Shortfalls and Access Agreements being conditional on Expansions or Customer Specific Branch Lines;
- (g) **clause ~~8.118-118.11~~** confirms that Aurizon Network will participate in supply chain coordination including processes in relation to the review of System Operating Assumptions;
- (h) **clause ~~8.128-128.12~~** describes Aurizon Network's obligations in relation to its proposed Network Development Plan; and
- (i) **clause 8.13** sets out a voting process that Aurizon Network may apply in relation to certain matters concerning capital expenditure projects.

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8.2 General principles

8.2.1 Rights and obligations to fund, construct or permit the creation of new Rail Infrastructure

- (a) Subject to clauses 8.1.1(a), 8.2.18.1.1(a) ~~and 9~~, and **insert other Expansion obligation references**, nothing in this Undertaking:
 - (i) obliges Aurizon Network to fund, construct or permit an Expansion, or to agree to do so; or

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(ii) prevents Aurizon Network from agreeing (in its absolute discretion) to fund, construct or permit an Expansion, or any part thereof.

~~(b) Aurizon Network is not obliged to fund an Expansion unless it agrees to do so.~~

~~(e)(b) Aurizon Network is obliged to fund, construct or permit an Expansion where all of the following circumstances apply only to the extent that:~~

(i) Aurizon Network is satisfied (acting reasonably) that the Expansion is technically and economically feasible and consistent with the safe and reliable operation of the Rail Infrastructure;

~~(ii) where Aurizon Network is not required by this Undertaking to fund the cost of an Expansion, it agrees (at its election) to do so, or the cost of the Expansion is to be funded using SUFA;~~

~~(iii)(iii) Aurizon Network is required to do so in accordance with a written agreement (which is or becomes unconditional) with an Access Seeker or Funding User in respect of the Expansion; the parties have entered into SUFA agreements, a Commercial Terms document and/or an Access Agreement (as the case may be);~~

~~(iii) the Expansion is fully funded by either:~~

~~(-) Aurizon Network agreeing to fund the Expansion; or~~

~~(-) Funding Users in accordance with a User Funding Agreement for the Expansion; or~~

~~(-) Funding Users partially funding the Expansion under a User Funding Agreement and the remainder of the funding being provided by Aurizon Network; and~~

~~(vii)(iv) unless:~~

(A) otherwise agreed by Aurizon Network; or

(B) the relevant Expansion is to be funded using SUFA,

the Expansion (whether or not funded in whole or part by a person other than Aurizon Network) is or will be owned and operated by Aurizon Network.

~~(e) Notwithstanding any other provision of this Part 8,:~~

~~(-) to the extent that funding is required for Asset Replacement Expenditure, Aurizon Network will be responsible for the provision of that funding as well as undertaking or procuring the undertaking of the capital project to the extent that the capital project involves Asset Replacement Expenditure; and ***QRC Note: The definition***~~

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of Asset Replacement Expenditure should be broadened to include the costs of replacing assets which are lost as a result of Force Majeure (flood and the like) and which are required for Aurizon Network to continue to meet its existing contractual entitlements. Further consideration should be given to what other matters should be referred to in this clause.]

- ~~(-)~~ Aurizon Network is not obliged to fund, construct or permit an Expansion to the extent that the QCA could not require Aurizon Network to do so under an access determination, having regard to the matters in section 119 of the Act; and
- ~~(-)~~ a dispute determination under **clause 11** relating to Aurizon Network's obligations to fund, construct or permit Expansions under this **Part 8** must not be inconsistent with the restrictions in section 119 of the Act (regardless of whether the dispute is determined by the QCA or an expert).
- ~~(h)(c)~~ Aurizon Network is not obliged to fund or construct a Customer Specific Branch Line (subject to its obligations in relation to Connecting Infrastructure). However, nothing in this Undertaking prevents Aurizon Network from doing so at its discretion by agreement with the Customer seeking to have the Customer Specific Branch Line constructed.
- ~~(i)(d)~~ Aurizon Network's obligations in respect of Connecting Infrastructure are set out in **Part 9** and nothing in this ~~0-Part 8~~ **Part 8** limits Aurizon Network's obligations under **Part 9**.
- ~~(j)(e)~~ Aurizon Network will not unnecessarily and unreasonably delay any Expansion that it is obliged to construct in accordance with this Undertaking, provided that after any relevant agreement with any Access Seeker, Access Holder, Customer or User Funder (as applicable) including any relevant User Funding Agreement is executed for that Expansion then Aurizon Network's obligations in relation to any delay are solely governed by that agreement.
- ~~(k)(f)~~ Aurizon Network must enter into Access Agreements for the capacity to be created by an Expansion.
- ~~(l)~~ **Nothing in this Part 8:**
 - ~~(-)~~ prevents or otherwise restricts Aurizon Network and an Access Seeker (or its Customer) (in each party's absolute discretion) from entering into arrangements relating to or in connection with funding, constructing or permitting an Expansion or Customer Specific Branch Line necessary to provide additional Capacity required to grant Access Rights requested by that Access Seeker; or

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~~(-)~~ prevents Aurizon Network from electing to fund and construct Customer Specific Branch Lines and otherwise invest in the Rail Infrastructure on its own account.

~~(e)(g)~~ To the extent that this Undertaking is inconsistent with a User Funding Agreement, Connection Agreement or a Studies Funding Agreement for a Pre-feasibility Study or a Feasibility Study, the User Funding Agreement, Connection Agreement or Studies Funding Agreement (as applicable) will prevail to the extent of that inconsistency (but only as between Aurizon Network and the other parties to those agreements, any relevant Access Seeker (if its Customer is one of those parties) and any relevant Customer (if its Access Seeker is one of those parties)).

~~(e)(h)~~ Subject to the requirements of this **Part 8**, the person responsible for the investigation and design of any Expansion [or Customer Specific Branch Line] that is necessary in order to provide any Access Rights requested by an Access Seeker must be Aurizon Network. ***JQRC***
Note: We understand that for charging purposes there may be utility in a definition of CSBL. Otherwise, is there a real difference to the definition of Expansion?

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~~(e)(i)~~ In this **Part 8** where an Access Seeker has submitted two or more Access Applications which differ in respect of origins/destinations, quantum of capacity, commencement dates or other capacity requirements in relation to a particular Expansion, Aurizon Network will treat each Access Application as a separate Access Application and as if each were lodged by a separate Access Seeker.

~~(e)(j)~~ **Clauses 8.2.3 to 8.1.1** apply only to Expansions for the purpose of providing additional Access to coal carrying Train Services and does not govern the process by which Aurizon Network may fund, construct or permit an Expansion for the purpose of providing additional Access to non-coal carrying Train Services.

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8.2.2 Interdependent and sequential nature of Expansions

- (a) The following principles relate to the interdependent and sequential nature of Expansions:
- (i) for any Coal System there may be multiple Expansions that incrementally build on each other in sequence to increase the Capacity of that Coal System;
 - (ii) as the Expansions are sequential, Expansions later in the sequence will assume the satisfactory completion of, and delivery of outcomes for Expansions earlier in the sequence;
 - (iii) to the extent that events or circumstances affect an Expansion in the sequence (for example, by it being delayed, not progressing or not delivering the expected outcomes), then Expansions later in the sequence may also

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be affected and will need to be reviewed to take into account the effect of those events or circumstances;

~~(iv)~~ similarly, to the extent that any Coal Systems overlap, Expansions on one Coal System may affect Expansions on another Coal System; ~~and~~

~~(v)~~(iv) subject to clause 8.2.2(a)(v), until:

(A) the Access Seekers for any earlier Expansion in a sequence of Expansions have entered into Access Agreements, Commercial Terms or User Funding Agreements, as applicable, (**Earlier Expansion Agreements**) in respect of that earlier Expansion; and

(B) such agreements are or have become unconditional,

Access Seekers for any later Expansion in a sequence of Expansions and Aurizon Network must not enter into Access Agreements, Commercial Terms or User Funding Agreements, as applicable, (**Later Expansion Agreements**) in respect of that later Expansion except where conditional on the requirements in **clauses 8.2.2(a)(iv)(A) and (B)** being satisfied for the Later Expansion Agreement to come into full effect.

~~(v)~~ to the extent that events or circumstances affect an Expansion in the sequence (for example, by it being delayed, not progressing or not delivering the expected outcomes), there may be a reprioritisation of Expansions, provided that that reprioritisation is approved by the QCA.

~~(-)~~ Where:

~~(-)~~ different Access Seekers will be provided with Access through an interdependent sequence of Expansions (**Expansion Sequence**); and

~~(-)~~ an Expansion Re-sequence Event has occurred in relation to any Access Seekers (**Affected Access Seekers**),

~~Aurizon Network may, or if notified under **clause 8.2.2(c)** of circumstances it considers qualify as an Expansion Re-sequence Event must, acting reasonably re-allocate the Affected Access Seekers to a later Expansion in the Expansion Sequence and re-allocate other Access Seekers from a later Expansion to an earlier Expansion in the Expansion Sequence.~~

~~(-)~~ If the majority of Access Seekers for a later Expansion in an Expansion Sequence believe an Expansion Re-sequence Event has occurred in relation to an earlier Expansion in that Expansion

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~~Sequence, those Access Seekers may notify Aurizon Network of their belief and the grounds on which that belief is based. For the purpose of this **clause 8.2.2(c)**, the majority of Access Seekers will be determined by reference to the number of Train Paths sought by the Access Seekers in relation to the later Expansion.~~

- ~~(-) If Aurizon Network intends to re-allocate Access Seekers under **clause 8.2.2(b)** to a different Expansion, it must give the Access Seekers who would be affected by the re-allocation written notice and reasonable details of the intended re-allocation.~~
- ~~(-) An Access Seeker may within 10 Business Days after being given a notice under **clause 8.2.2(d)** refer the proposed re-allocation to an expert as a dispute for resolution under **clause 11.1.4** and the expert will determine whether Aurizon Network may proceed with the re-allocation having regard to the matters in **clause 8.2.2(b)**. The expert's determination will, subject to **clause 11.1.4(d)**, be binding on all of the Access Seekers who will be affected by any re-allocation and Aurizon Network.~~
- ~~(-) Aurizon Network will not proceed with an intended re-allocation until:
 - ~~(-) the period under **clause 8.2.2(e)** for referring the intended re-allocation to an expert has expired; or~~
 - ~~(-) if the intended re-allocation has been referred to an expert under **clause 8.2.2(e)**, the expert determines that Aurizon Network may proceed with the re-allocation.~~~~
- ~~(-) If an expert determines that an intended re-allocation may not proceed:
 - ~~(-) subject to **clause 8.2.2(g)(ii)**, Aurizon Network is not prevented from giving a new notice under **clause 8.2.2(e)** in relation to the relevant Expansion Sequence; or~~
 - ~~(-) where the expert determines that Aurizon Network's proposed re-allocation should be different, Aurizon Network must adopt the re-allocation determined by the expert.~~~~

~~**[Note from Aurizon Network: Proposed new definitions for Part 12:**~~

~~**Expansion Re-sequence Event**~~

~~**Where, for an Access Seeker in relation to a proposed Expansion (in an Expansion Sequence), Aurizon Network has an expectation (acting reasonably) that:**~~

- ~~**(-) the Access Seeker (or, if applicable, their Customer) is unlikely to have entered into an Access Agreement, Commercial Terms or a User Funding Agreement, as applicable, in respect of the funding and construction of that Expansion that will**~~

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~~have become unconditional, prior to the date 12 months after the Reference Date; and~~

~~(h) another Access Seeker, for whom Capacity is proposed to be created later in the Expansion Sequence, (or, if applicable, their Customer) is likely to be able to enter into an Access Agreement, Commercial Terms or a User Funding Agreement, as applicable, in respect of the funding and construction of the proposed Expansion, that will have become unconditional, sooner than the Access Agreement, Commercial Terms or a User Funding Agreement, as applicable, referred to paragraph (a).~~

~~Reference Date~~

~~The date notified by Aurizon Network under clause 8.6(f)(ii)(C) in relation to the relevant proposed Expansion.]~~

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8.2.258.2.3 Determination of sufficient demand for an Expansion

- (a) Without limiting Aurizon Network's ability to conduct a Demand Assessment for an Expansion on its own volition, Aurizon Network will promptly (and in any case within 10 Business Days of the relevant event referred to in paragraphs (i), (ii) or (iii) below) commence a Demand Assessment for an Expansion where:
- (i) the operator of an existing or proposed coal terminal formally advises that it has commenced a process to expand an existing coal terminal or to build a new coal terminal which is likely to create demand for additional below rail capacity; or
 - (ii) an Access Seeker submits an Access Application for Access that Aurizon Network concludes cannot be satisfied without Aurizon Network undertaking an Expansion ~~with a value of [\$300m] or more~~ and that Access Seeker requests in writing that Aurizon Network carry out a Concept Study for that Expansion; or
 - (iii) ~~at least 3 an~~ Access Seekers makes a written request to Aurizon Network for it to conduct a Demand Assessment.
- (b) Where Aurizon Network undertakes a Demand Assessment for an Expansion it will do so using the most appropriate means and information ~~that it identifies~~ (acting reasonably) in the circumstances ~~including as follows:~~
- (i) the Access Applications it has received;
 - (ii) its own market intelligence;

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- (iii) any [Expression of Interest] process conducted by Aurizon Network; ***[QRC Note: What is to be requested in an EOI should be set out in the Undertaking in detail. Industry object to the scope of information previously requested by AN in the last EOI process.]***
 - (iv) liaison and consultation with participants in coal supply chains and Supply Chain Groups relating to the relevant Coal System; and
 - (v) analysis or advice from ~~is~~***relevantly experienced and prudent*** expert advisors.
- (c) An Access Seeker may dispute whether Aurizon Network has acted reasonably in determining the means and information to be used for its Demand Assessment under **clause 8.2.3(b)** (including any information requested under **clause 8.2.3(f)**). Unless otherwise settled, disputes notified in accordance with this clause must be referred by Aurizon Network or a disputing party to an expert for determination in accordance with the process in **clause 11.1.4**. The expert's determination will, subject to **clause 11.1.4(d)**, be binding on all of the Access Seekers the subject of the relevant Demand Assessment and Aurizon Network.
- (d) Subject to **clause 8.2.3(e)**, where a Demand Assessment is triggered by one of the circumstances referred to in **clauses 8.2.3(a)(i), (a)(ii) or (a)(iii)**, Aurizon Network will **promptly** conduct, complete and prepare a **detailed** report of the results of its Demand Assessment:
- (i) if the Demand Assessment is carried out by means of an Expression of Interest process, within ~~60~~**20** Business Days of the commencement of the assessment study; or
 - (ii) in all other cases, within 20 Business Days of the commencement of the assessment study.
- The QCA and each Access Seeker that was the subject of the Demand Assessment will be provided with a copy of the completed Demand Assessment report.
- (e) The provided Demand Assessment report will not identify individual Access Seekers or potential access seekers by name or, to the extent practicable, precise origins or destinations for trains utilising the potential Expansion.
- (f) In order to carry out a Demand Assessment Aurizon Network may (acting reasonably) request **the following** information from Access Seekers and potential access seekers identified by Aurizon Network as potential users of the potential Expansion: ~~The type of information which can be sought by Aurizon Network includes:~~
- (i) status of a coal ~~resource~~***reserves (status and the quantity of such reserves)***; ~~[Note from Aurizon Network: Aurizon~~

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~~*Network would require information for each Access Seeker's mine about both its reserve/resource status and the quantity of such reserves/resources.]*~~

- (ii) status of project development;
 - (iii) current project development program;
 - (iv) status of mining tenure; and
 - (v) status of out-loading capacity assets or rights.
- (g) Once a Demand Assessment report has been provided, Access Seekers wishing to dispute the outcome of a Demand Assessment must notify Aurizon Network and the QCA within 20 Business Days of the provision of the Demand Assessment report to them.
- (h) Unless otherwise settled, disputes notified in accordance with **clause 8.2.3(g)** must be referred by Aurizon Network or a disputing party to an expert for determination in accordance with the process in **clause 11.1.4**. The expert (who will, failing agreement, be appointed under **clause 11.1.4(b)(i)(B)**) will determine whether the Demand Assessment report published by Aurizon Network was reasonable and if not, what Demand Assessment conclusions should apply. Aurizon Network will promptly provide each Access Seeker that was the subject of the relevant Demand Assessment:
- (i) where the expert decides that the Demand Assessment conclusions should differ from those originally proposed by Aurizon Network, a final Demand Assessment report reflecting the expert's preferred conclusions; or
 - (ii) where the expert confirms the Demand Assessment conclusions reached by Aurizon Network in its Demand Assessment report, confirmation of that fact will be provided to the relevant Access Seekers.

The expert's determination will, subject to **clause 11.1.4(d)**, be binding on all of the relevant Access Seekers and Aurizon Network.

- (i) Each Access Seeker that was the subject of the Demand Assessment will be notified promptly by Aurizon Network if a dispute has been referred to an expert under **clause 8.2.3(h)**. Each Access Seeker wishing to make a written submission to the expert on its view as to how the dispute should be resolved will have [10] Business Days from the date of notification to do so. The costs of engaging the expert will be borne by such party or parties as determined by the expert.

~~8.2.268.2.4~~ **Participation of Customers**

- (a) Without limitation to **clauses ~~8.48.48.4~~ to 8.9**, if a Customer wishes to fund the cost of:

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(i) a Pre-feasibility Study, as a Pre-feasibility Funder under **clause 8.48-48.4**;

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(ii) a Feasibility Study, as a Feasibility Funder under **clause 8.58-58.5**; or

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(iii) an Expansion, as a User under **clause 8.9**,

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as applicable, then the Customer must give a notice to Aurizon Network that it wishes to do so and agrees to be bound by the provisions of this Undertaking in relation to such matters.

(b) Where Aurizon Network does not receive a notice from a Customer under **clause 8.2.4(a)8.2.4(a)8.2.4(a)** in respect of a proposed Pre-feasibility Study, Feasibility Study or Expansion (as applicable), then Aurizon Network may refuse to negotiate agreements in relation to such matters with that Customer or to otherwise treat that Customer as a proposed Pre-feasibility Funder, or Feasibility Funder or Funding User.

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(c) Where Aurizon Network considers, acting reasonably, that a Customer has materially failed to comply with any provision of this Undertaking relating to the funding of the cost of a Pre-feasibility Study, Feasibility Study or an Expansion (as applicable), then Aurizon Network may, without prejudice to any other rights it may have, do either or both of the following:

(i) give a written Negotiation Cessation Notice to the Customer or its Access Seeker (as applicable) under **clause 4.11**; and

(ii) cease any other relevant negotiations with that Customer in relation to the funding of the cost of the Pre-feasibility Study, Feasibility Study or an Expansion (as applicable) by giving written notice to that Customer.

(d) Where Aurizon Network is to conduct a Demand Assessment or any other process in relation to an Expansion or proposed Expansion it must invite all relevant Customers of which it is aware to participate in the Demand Assessment process. It is acknowledged that for the purpose of determining the relevant Customers where the Demand Assessment relates to a terminal Expansion, relevant Customers are the relevant participants in the terminal Expansion.

8.2.278.2.5 Compliance with obligations

Aurizon Network must meet its obligations under this **9-Part 8** in respect of Pre-feasibility Studies, Feasibility Studies and Expansions, despite any resource constraints on Aurizon Network.

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8.3 Principles for Concept Studies

(a) Aurizon Network must promptly undertake a Concept Study (whether in connection with the Network Development Plan or otherwise) for capacity that is consistent with the capacity identified in the relevant

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Demand Assessment report finalised under **clause 8.2.3** following completion of the final Demand Assessment, However, this obligation will not apply where a further Concept Study is not required because a sufficient Concept Study for the relevant Expansion is already underway or completed.

- (b) Aurizon Network will publish on the Website general details of:
 - (i) each Concept Study it is undertaking promptly after commencement of work on the Concept Study; and
 - (ii) the conclusions reached in respect of each Concept Study promptly after its completion.

(a) Aurizon Network will promptly, following completion of a Concept Study, provide relevant Access Seekers with comprehensive details of the proposed scope of works, procurement methodology and cost and schedule information (to a reasonable standard of detail) in respect of the scope.

(ii)(b) Aurizon Network must fund all Concept Studies.

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8.4 Principles for Pre-feasibility Studies

[QRC Note: there should be a Standard Study Funding Agreement. If necessary, it can include optional provisions to be included for Feasibility Studies. The QRC has proposed a suggested form of Standard Study Funding Agreement. Aurizon Network has not responded to this. The QRC is unable to move forward on this issue until Aurizon Network outlines its position with respect to the Standard Study Funding Agreement.]

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- (a) Following a Concept Study, Aurizon Network must promptly undertake and complete scoping, planning, an evaluation of alternatives or other preliminary studies or assessments for that Expansion (**Pre-feasibility Study**), if:
 - (i) ~~subject to clause 8.4(b),~~ one or more of Potential Pre-feasibility Funders agree with Aurizon Network for those Potential Pre-feasibility Funders to fund the Pre-feasibility Study by entering into a Study Funding Agreement (on the terms of the Standard Study Funding Agreement on such other terms as are agreed), and the relevant Studies Funding Agreements become unconditional;
 - ~~(ii) the Potential Pre-feasibility Funders and Aurizon Network agree that Aurizon Network should fund the Pre-feasibility Study; or~~
 - ~~(ii) Aurizon Network chooses, at its discretion, to fund the Pre-feasibility Study itself in circumstances where:~~
 - ~~(B) no unconditional Studies Funding Agreement comes into effect as contemplated by clause 8.4(a)(i);~~

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- ~~(0) — within 40 Business Days after the date of a communication referred to in **clause 8.4(d)(ii)** if no dispute has been commenced under **clause 8.4(i)**; or; and~~
- ~~(0) — where a dispute has been commenced under **clause 8.4(i)**, within 15 Business Days after the expert determination; and~~
- ~~(E) no agreement is reached as contemplated by **clause 8.4(a)(ii)**,~~

(A Pre-feasibility Study does not include a Concept Study).

[Note from Aurizon Network: Definition of Potential Pre-feasibility Funders: “in respect of a proposed Pre-feasibility Study, the Access Seekers (or if applicable Conditional Access Holders) or Customers who are required to be given an opportunity to fund that Pre-feasibility Study as determined in accordance with clause 8.4(b) or clause 8.4(d)”]

~~(b) — If all of the relevant Studies Funding Agreement for a Pre-feasibility Study terminate prior to completion of the Pre-feasibility Study, then Aurizon Network may elect to continue to undertake and complete the Pre-feasibility Study.~~

~~(e)(b)~~ The Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Pre-feasibility Study under **clause 8.4(a)(i) 8.4(a)(i) 8.4(a)(i)** for an Expansion, as proposed Pre-feasibility Funders, will be:

- (i) where Aurizon Network knows that a Capacity Shortfall exists and the proposed Expansion could create Capacity that would reduce or remove the Capacity Shortfall, Access Seekers with Capacity Shortfall Access Applications to which that Capacity Shortfall relates (or, as applicable, their Customers); and
- (ii) those Access Seekers (or, as applicable, their Customers) whom Aurizon Network decides, acting reasonably, satisfy all of the following requirements:

The relevant Access Seeker:

- (1) is participating in a process for the acquisition of out-loading capacity (such as an expression of interest process or study funding process in relation to a coal export terminal or a domestic power station or similar out-loading facility) or otherwise has a reasonable likelihood of obtaining out-loading capacity, in either case, in a timeframe and having an out-loading capacity entitlement that are

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- consistent with the Access Seeker's Access Application;
- (2) has at least an Exploration Permit for Coal under the *Mineral Resources Act 1989* (Qld);
 - (3) has a credible program for the development of its mine or mine expansion on a basis that is consistent with its Access Application;
 - (4) is diligently developing its mine or mine expansion in accordance with the development program referred to in paragraph (3); and
 - (5) where applicable, has the ability to meet the funding obligation under the terms of the relevant Studies Funding Agreement. ~~(Acknowledgement by the Access Seeker that it is willing to provide a bank guarantee as required under the relevant Standard Studies Funding Agreement will be deemed to satisfy this criterion).~~ **[QRC Note: Bank guarantees should not be required from Investment Grade companies or where a PCG is provided by an investment grade company.]**

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~~(d)~~(c) Following a decision under **clause 8.4(b)**, Aurizon Network will advise:

- (i) each Access Seeker (or, as applicable, Customer) who was not selected to fund the Pre-feasibility Study of that fact; and
- (ii) each Access Seeker (or, as applicable, Customer) who was selected to fund the Pre-feasibility Study of that fact and of the Access Rights for which it has been selected to participate in the funding of the Pre-feasibility Study.

~~(e)~~(d) Any Access Seeker (or, as applicable, Customer) that disagrees with the outcome of Aurizon Network's selection process as communicated to it under **clause 8.4(c)** may, within [10] Business Days of that communication require Aurizon Network to refer the matter to an expert for dispute resolution in accordance with **clause 11.1.4**. The expert (who will, failing agreement, be appointed under **clause 11.1.4(b)(i)(B)**) shall either confirm Aurizon Network's original decision or substitute the expert's own decision. The expert's decision will, subject to **clause 11.1.4(d)**, be binding on all potential Pre-feasibility Funders (and their Customers) and Aurizon Network as to the issues in dispute.

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~~(f)~~(e) Each Access Seeker (or where applicable, Customer) that was given an opportunity to fund the relevant Pre-Feasibility Study will be notified promptly by Aurizon Network if a dispute has been referred to an expert under **clause 8.4(d)**. Each Access Seeker (or, as applicable, its Customer) wishing to make a written submission to the expert on its view as to how the dispute should be resolved will have [10] Business Days from the date of notification to do so. The cost of engaging the expert will be borne by the party or parties determined by the expert.

~~(e)~~(f) Unless otherwise agreed by Aurizon Network and relevant proposed Pre-feasibility Funder, a Studies Funding Agreement for a Pre-feasibility Study will be in the form of the Standard Studies Funding Agreement (Pre-feasibility). ~~For clarity, a~~An Access Seeker (or Customer) given an opportunity to fund a Pre-feasibility Study may require that such funding be provided in accordance with the Standard Studies Funding Agreement (Pre-feasibility).

~~(h)~~(g) Aurizon Network must consult with the relevant proposed Pre-feasibility Funders in relation to the scope of the Pre-feasibility Study and reasonably consider the Pre-feasibility Funders' comments. Aurizon Network will provide the Pre-feasibility Funders with detailed written reasons ~~for its position on the scope of the Pre-feasibility Study~~where it rejects a suggestion of the Pre-feasibility Funder.

~~(i)~~(h) If Aurizon Network and the relevant proposed Pre-feasibility Funders do not reach agreement on:

- (i) the scope of the Pre-feasibility Study; or
- (ii) the completion of schedules in a Studies Funding Agreement in the form of the Standard Studies Funding Agreement (Pre-feasibility),
within:
 - (iii) [20] Business Days of a communication referred to in **clause 8.4(c)(ii)**; or
 - (iv) if a decision communicated in accordance with **clause 8.4(c)** is referred for dispute resolution as contemplated by **clause 8.4(d)**, within [5] Business Days following the expert's decision,

then, any of those persons may, within [10] Business Days after the expiration of the relevant period referred to in **clause 8.4(h)(iii)** or **clause 8.4(h)(iv)**, as applicable, require Aurizon Network to refer the issue of scope and/or the schedules to an expert as a dispute for resolution under **clause 11.1.4**. The expert (who will, failing agreement, be appointed under **clause 11.1.4(b)(i)(B)**) shall determine ~~whether~~ the scope and information in the schedules to the Pre-feasibility Funding Agreement ~~proposed by Aurizon Network are~~

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~~reasonable (and therefore appropriate) or if not, the scope and the schedule information~~ to be included.

~~(j)~~(i) The determination of a dispute under ~~clause 8.4(h)8.4(h)8.4(h)~~ will, subject to **clause 11.1.4(d)**, be binding on all proposed Pre-feasibility Funders and Aurizon Network. Aurizon Network does not breach this Undertaking in doing anything necessary to comply with that determination.

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~~(k)~~(i) Where **clauses 8.4(d)** or ~~8.4(h)8.4(h)8.4(h)~~ applies, **clause 11.1.4** will be applied in respect of a proposed Pre-feasibility Funder who is a Customer as though a reference to:

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- (i) an Access Seeker includes a reference to that Customer; and
- (ii) a Related Party for a Customer includes the Access Seeker for that Customer.

~~(l)~~(k) If the Pre-feasibility Study for an Expansion is funded under one or more Studies Funding Agreements (**Pre-feasibility SFA**), then:

- (i) as a condition of any Studies Funding Agreements for a Feasibility Study (**Feasibility SFA**) in relation to that Expansion, the relevant Feasibility Funders will be required to include in the funding provided to Aurizon Network under their Feasibility SFAs amounts that in aggregate equal the amount to be repaid or reimbursed by Aurizon Network under **clause 8.4(k)(ii)8.4(k)(ii)8.4(l)(ii)**; and
- (ii) after those Feasibility SFAs become unconditional, Aurizon Network will, in accordance with each relevant Pre-feasibility SFA, repay or reimburse (as applicable) the funding provided by the Pre-feasibility Funder under that Pre-feasibility SFA.

~~(m)~~(l) The capital expenditure for an Expansion includes the cost of a Pre-feasibility Study relating to that Expansion. However, any amounts that are not repaid or reimbursed (as applicable) under **clause 8.4(k)8.4(k)8.4(l)** will not be treated as capital expenditure and will not be included in the Regulatory Asset Base.

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~~(n)~~(m) Without limiting any provision of this Undertaking, Aurizon Network is not obliged to construct, fund or permit an Expansion or to undertake a Feasibility Study, merely because Aurizon Network undertakes or funds any Pre-feasibility Study relating to that Expansion.

~~(o)~~(n) Aurizon Network will publish on the Website general details of each multi-user Pre-feasibility Study it is undertaking promptly after commencement of work on the Pre-feasibility Study. The publication will not identify individual Access Seekers by name, precise details of origins and destinations (to the extent possible) or any other confidential information.

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8.4 Target Capacity for Feasibility Study

- (e) Where Aurizon Network:
 - (iii) has completed a Pre-feasibility Study in respect of a potential Expansion; and
 - (iv) is proposing that a Feasibility Study should be commenced, prior to applying the provisions in **clause 8.6**, Aurizon Network will notify all relevant Access Seekers that it is proposing that a Feasibility Study should be commenced and the targeted amount of Capacity for the potential Expansion (**Target Capacity**).
- (e) An Access Seeker may, within 10 Business Days after being given a notice under **clause 8.5**, dispute the Target Capacity for the proposed Feasibility Study by referring the matter to an expert for dispute resolution in accordance with **clause 11.1.4**. The expert must either confirm the Target Capacity or determine the appropriate Target Capacity. The expert's determination will, subject to **clause 11.1.4(d)**, be binding on all Access Seekers notified under **clause 8.5(a)** and Aurizon Network as to the Target Capacity.
- (e) Aurizon Network will not seek to commence a Feasibility Study until:
 - (viii) the period under **clause 8.5(b)** for referring the Target Capacity to an expert has expired; or
 - (ix) if the Target Capacity has been referred to an expert under **clause 8.5(b)**, the expert either confirms the Target Capacity or determines the appropriate Target Capacity.

8.5 Principles for Feasibility Studies

- Subject to first complying with **clause 8.5**, following a Pre-Feasibility Study, Aurizon Network must promptly undertake and complete the detailed scoping, design and definition of the preferred scheme selected in the relevant Pre-feasibility Study for that Expansion, including planning and preparation for procurement and construction; (**Feasibility Study**), if:
 - (a) subject to **clause 8.6(b)**, one or more of the Potential Feasibility Funders agree with Aurizon Network to fund the Feasibility Study by entering into a Study Funding Agreement (on the terms of the Standard Study Funding Agreement or such other terms as are agreed).
[QRC Note: A more detailed description of Feasibility Study is required. A FS should deliver a specified output to a specified level of detail.]
and the relevant Studies Funding Agreements become unconditional; unconditional; or

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~~the relevant Potential Feasibility Funders and Aurizon Network agree that Aurizon Network should fund the Feasibility Study; or~~

~~Aurizon Network chooses, at its discretion, to fund the Feasibility Study itself in circumstances where:~~

~~no unconditional Studies Funding Agreement comes into effect as contemplated by **clause 8.6(a)(i)**:~~

~~within 40 Business Days after the date of a communication referred to in **clause 8.6(f)(ii)** if no dispute has been commenced under **clause 8.6(g)**; or~~

~~where a dispute has been commenced under **clause 8.6(g)**, within 15 Business Days after the expert determination; ; and~~

~~no agreement is reached as contemplated by **clause 8.6(a)(ii)**.~~

[Note from Aurizon Network: Definition of Potential Feasibility Funders: "in respect of a proposed Feasibility Study, the Access Seekers or Customers (or if applicable Conditional Access Holders) who are required to be given an opportunity to fund that Feasibility Study as determined in accordance with clause 8.5(b) and clause 8.5(f)"]

~~(a) If all of the relevant Studies Funding Agreement for a Feasibility Study terminate prior to completion of the Feasibility Study, then Aurizon Network may elect to continue to undertake and complete the Feasibility Study.~~

(b) Subject to **clause 8.5(c)**, the Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Feasibility Study under **clause 8.5(a)** for an Expansion, as proposed Feasibility Funders, will be:

(i) firstly, where Aurizon Network knows that a Capacity Shortfall exists and the proposed Expansion could create Capacity that would reduce or remove the Capacity Shortfall, Access Seekers with Capacity Shortfall Access Applications to which that Capacity Shortfall relates (or, as applicable, their Customers) other than any of them who (or whose Customer) were offered an opportunity to fund the Pre-feasibility Study for the Expansion but did not become a Pre-feasibility Funder for that Pre-feasibility Study; and

(ii) secondly, subject to **clause 8.5(d)**, those Access Seekers (or, as applicable, their Customers) whom Aurizon Network decides (acting reasonably) satisfy all of the following requirements, namely an Access Seeker who:

(A) is participating in a process for the acquisition of out-loading capacity (such as an expression of interest process or study funding process in relation

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to a coal export terminal or a domestic power station or similar out-loading facility) or otherwise has a reasonable likelihood of obtaining out-loading capacity in either case, in a timeframe and having an out-loading capacity entitlement that are consistent with the Access Seeker's Access Application;

- (B) has at least a Mineral Development Licence under the *Mineral Resources Act 1989* (Qld);
- (C) has a credible program for the development of its mine or mine expansion on a basis that is consistent with its Access Application;
- (D) is diligently developing its mine or mine expansion in accordance with the development program referred to in paragraph (3);
- (E) has Marketable Coal Reserves (as defined by the JORC Code **[definition to be included]**) equal to at least 10 times the annual capacity for which Access is required (as determined by reference to the Access Seeker's Access Application), following ramp up; and
- (F) where applicable, has the ability to meet the funding obligation under the terms of the proposed Studies Funding Agreement. **[QRC Note: See note above.]** ~~(Acknowledgement by the Access Seeker that it is willing to provide a bank guarantee under the relevant Standard Studies Funding Agreement will be deemed to satisfy this criterion).~~

(c) For the purposes of **clause 8.5(b)**:

(i) where the Access Seeker has a Customer (the identity and details of which has been notified to Aurizon Network by the Access Seeker):

(A) Aurizon Network will notify the Customer that it is identifying Potential Feasibility Funders for the relevant Feasibility Study; and

(B) the Customer must notify Aurizon Network within **[10 Business Days]** after receiving that notice:

(1) that the Customer should be considered for an opportunity to fund the Feasibility Study (rather than the Access Seeker) (**Customer Nomination**); or

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(2) that the Access Seeker (and, where there are two or more Access Seekers seeking the same Access Rights, which of the Access Seekers) should be considered for an opportunity to fund the Feasibility Study (rather than the Customer or any other of those Access Seekers) (**Access Seeker Nomination**);

(ii) where Aurizon Network is given:

(A) a Customer Nomination under **clause 8.5(c)(i)(B)(1)**, only the Customer can be eligible for an opportunity to fund the relevant Feasibility Study (and not the Access Seeker(s) for the Customer); or

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(B) an Access Seeker Nomination under **clause 8.5(c)(i)(B)(2)**, only the nominated Access Seeker can be eligible for an opportunity to fund the relevant Feasibility Study (and not the Customer or any other relevant Access Seeker for the Customer); and

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(iii) where:

(A) subject to **clause 8.5(c)(iii)(B)**, the Customer does not give Aurizon Network a Customer Nomination or an Access Seeker Nomination under **clause 8.5(c)(i)(B)**, only the Access Seeker for the Customer can be eligible for an opportunity to fund the relevant Feasibility Study (and not the Customer); or

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(B) the Customer does not give Aurizon Network a Customer Nomination or an Access Seeker Nomination under **clause 8.5(c)(i)(B)** and there are two or more Access Seekers for the Customer who are seeking the same Access Rights, neither the Customer nor any of those Access Seekers can be eligible for an opportunity to fund the relevant Feasibility Study.

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(d) If the ~~Target Capacity for the Feasibility Study is such that the Feasibility Study is for and to be created by the proposed~~ Expansion ~~that~~ is expected to ~~create~~ be insufficient Capacity for all the relevant Access Seekers that satisfy the requirements under **clause 8.5(b)(ii)**, then Aurizon Network will decide (acting reasonably), as between those particular Access Seekers (or, as applicable, their Customers) which will be given an opportunity to fund the Feasibility Study by Aurizon Network having regard to the following criteria:

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- (i) those Access Seekers who meet the requirements set out in **clause 8.5(b)(ii)** to a greater extent than other Access Seekers;
- (ii) the Access Seekers who funded the Pre-feasibility Study;
- (iii) maximisation of the allocation of capacity;
- (iv) maximisation of the duration of the expected Access having regard to:
 - (A) the ratio of coal reserves to the Access capacity sought; and
 - (B) the likelihood of continuing to extract such coal reserves over time.

For clarity, the assessment under **clause 8.5(b)(ii)** will be undertaken to ensure that the aggregate of requested capacity of the proposed Feasibility Funders is not more than (and wherever possible equals) the capacity for which the Feasibility Study is being conducted.

- (e) Following a decision under **clause 8.5(b)**, Aurizon Network will notify:
 - (i) each Access Seeker (or, as applicable, Customer) who was not selected to fund the Feasibility Study of that fact; and
 - (ii) each Access Seeker (or, as applicable, Customer) who was selected to fund the Feasibility Study:
 - (A) of that fact;
 - (B) of the Access Rights for which the Access Seeker has been selected to participate in the funding of the Feasibility Study; and
 - (C) the date by which Aurizon Network anticipates that an Access Agreement, Commercial Terms or a User Funding Agreement, as applicable, in respect of the funding and construction of the Expansion the subject of the Feasibility Study would become unconditional.
- (f) Any Access Seeker (or, as applicable, its Customer) that disagrees with the outcome of Aurizon Network's selection process as communicated to it under **clause 8.5(e)** may, within [10] Business Days of that communication require Aurizon Network to refer the matter to an expert for dispute resolution in accordance with **clause 11.1.4**. The expert, (who will, failing agreement, be appointed under **clause 11.1.4(b)(i)(B)**), shall either confirm Aurizon Network's original decision or substitute the expert's own decision. The expert's decision will, subject to **clause 11.1.4(d)**, be binding on all potential Feasibility Funders (and their Customers) and Aurizon Network as to the issues in dispute.

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- (g) Each Access Seeker (or where applicable, Customer) that was given an opportunity to fund the relevant Feasibility Study will be notified promptly by Aurizon Network if a dispute has been referred to an expert under **clause 8.5(f)** and will, if the Access Seeker (or, as applicable, its Customer) wishes to do so, has [10] Business Days from the date of notification to make a written submission to the expert on its view as to how the dispute should be resolved. The cost of engaging the expert will be borne by the party or parties determined by the expert.
- (h) Aurizon Network will provide details to each relevant Access Seeker of Aurizon Network's assessment of that Access Seeker's case against the requirements and criteria in **clause 8.5(b)(ii)**.
- (i) Subject to **clause 8.4(k)(i)**~~8.4(k)(i)~~~~8.4(l)(i)~~, unless otherwise agreed by Aurizon Network and the relevant proposed Feasibility Funder a Studies Funding Agreement for a Feasibility Study will be in the form of the Standard Studies Funding Agreement ~~(Feasibility)~~. ~~For clarity, an~~~~Each~~ Access Seeker (or Customer) given an opportunity to fund a ~~Pre-f~~Feasibility Study may require that such funding be provided in accordance with the Standard Studies Funding Agreement ~~(Feasibility)~~.
- (j) Aurizon Network must consult with the relevant proposed Feasibility Funders in relation to the scope of the Feasibility Study and reasonably consider the Feasibility Funders' comments. Aurizon Network will provide the Feasibility Funders with detailed written reasons where it rejects a suggestion of a Feasibility Funder for its position on the scope of the Feasibility Study.
- (k) If Aurizon Network and the relevant proposed Feasibility Funders do not reach agreement on:
- (i) the scope of the Feasibility Study; or
 - (ii) the completion of schedules in the Studies Funding Agreements in the form of the Standard Studies Funding Agreement (Feasibility),
- within:
- (iii) ~~[3020]~~ [30] Business Days of the communication referred to in **clause 8.5(e)(ii)**; or
 - (iv) if the decision communicated in accordance with **clause 8.5(e)** is referred for dispute resolution as contemplated by **clause 8.5(f)**, within [5] Business Days following the expert's decision,
- then, any of those persons may, within [10] Business Days after the expiration of the relevant period referred to in **clause 8.5(k)(iii)** or **clause 8.5(k)(iv)**, as applicable, require Aurizon Network to refer the matter to an expert as a dispute for resolution under **clause 11.1.4**.

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The expert, (who will, failing agreement, be appointed under **clause 11.1.4(b)(i)(B)**), shall determine ~~whether~~ the scope and information in the schedules to the Feasibility Funding Agreement ~~proposed by Aurizon Network are reasonable (and therefore appropriate) or if not, the scope and the schedule information~~ to be included.

- (l) The determination of a dispute under **clause 8.5(k)** will, subject to **clause 11.1.4(d)**, be binding on all proposed Feasibility Funders and Aurizon Network. Aurizon Network does not breach this Undertaking in doing anything necessary to comply with that determination.
- (m) Where **clauses 8.5(f)** or ~~8.5(k)8.5(k)8.5(k)~~ apply, **clause 11.1.4** will be applied in respect of a Customer who is a party to the dispute as though a reference to:
 - (i) an Access Seeker includes a reference to that Customer; and
 - (ii) a Related Party for a Customer includes the Access Seeker for that Customer.
- (n) Within 20 Business Days after a Studies Funding Agreement for a Feasibility Study becoming unconditional, Aurizon Network will:
 - (i) issue an IAP (or if one has previously been provided, a revised IAP) to the relevant Access Seeker who is, or whose Customer is, funding the Feasibility Study; and
 - (ii) subject to ~~clauses 8.5(o)8.5(e)8.5(e)~~ and **(p)**, grant that Access Seeker a provisional allocation of the capacity detailed in the Train Service Description included in the Studies Funding Agreement (**Provisional Capacity Allocation**).

~~For clarity, where Aurizon Network is funding a Feasibility Study, Aurizon Network will issue an IAP or a revised IAP (as applicable) to any relevant Access Seekers.~~
- (o) If an Access Seeker intends to progress its Access Application under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in an IAP or revised IAP issued under ~~**clause 8.5(n)(i)8.5(n)(i)8.5(n)(i)**~~, that Access Seeker must notify Aurizon Network of that intention in writing within 20 Business Days after Aurizon Network gives a relevant notice under ~~**clause 8.1.1(a)8.1.1(a)8.1.1(a)**~~.
- (p) Subject to **clause 0**, all or part of a Provisional Capacity Allocation may be withdrawn by Aurizon Network acting reasonably, where:
 - (i) the relevant Access Seeker's circumstances change in a substantial way so that the Access Seeker ceases to satisfy all of the requirements in **clause 8.5(b)(ii)** or meets one or more of those requirements to a substantially lesser extent

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than when the assessment was originally made by Aurizon Network under that clause;

- (ii) (other than due to ~~any default or negligent~~ act or omission of Aurizon Network) the relevant mine or out-loading facility (including an expansion of a mine or out-loading facility) will be delayed by 12 months or more as compared to the timeframe that was proposed when Aurizon Network made the original assessment;
- (iii) Aurizon Network exercising a right to lawfully terminate the ~~Studies Funding Agreement with relevant~~ Feasibility Funder for the Feasibility Study due to a breach by the relevant Feasibility Funder; or
- (iv) Aurizon Network and the relevant Access Seeker (or, as applicable, its Customer) do not execute an Access Agreement or an agreement in relation to the funding and/or construction of the Expansion within ~~six~~ insert months (or such longer period as agreed by Aurizon Network) after the Feasibility Study is completed (provided that to the extent that the Access Seeker, or its Customer, is a party to a dispute under **clause 8.9.2** then the time from when that dispute is notified for the purpose of **clause 11.1.4** to the determination of that dispute by the expert is excluded from that period). **QRC Note: The appropriate time for this paragraph depends on the expansion obligation, whether User Funding applies or where there is a dispute in the negotiation of the Access Agreement.**

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For clarity, subject to the terms of the relevant Studies Funding Agreements, where a Provisional Capacity Allocation is withdrawn under this **clause 8.5(p)**, Aurizon Network must to the extent feasible (and provided that other Access Seekers will not be materially delayed) reallocate that Provisional Capacity Allocation to another person in accordance with **clause 8.5(b)**.

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- (q) If Aurizon Network intends exercising its rights under **clause 8.5(p)** to withdraw all or a part of a Provisional Capacity Allocation, it must give the relevant Feasibility Funder written notice and a reasonable opportunity (for a period of at least 10 Business Days) to explain why Aurizon Network should not exercise its rights in the way proposed. If having considered any explanation provided by the Access Seeker Aurizon Network (acting reasonably) withdraws all or part of the Provisional Capacity Allocation it must give the relevant Access Seeker written notice, including reasons for its decision.
- (r) An affected Feasibility Funder may within 10 Business Days of receiving notice of Aurizon Network's decision to withdraw Provisional Capacity Allocation under **clause 8.5(p)** refer the matter to an expert as a dispute for resolution under **clause 11.1.4**. The expert will

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determine whether ~~Aurizon Network has acted reasonably in deciding to withdraw~~ the Provisional Capacity Allocation should be withdrawn or not. The expert's determination will, subject to **clause 11.1.4(d)**, be binding on the parties to the dispute.

(s) Subject to the terms of the relevant Studies Funding Agreements, where a Provisional Capacity Allocation is withdrawn under **clause 8.5(p)**~~8.5(p)~~~~8.5(p)~~, Aurizon Network will use reasonable endeavours to seek a replacement Access Seeker (or, as applicable, Customer) (**Replacement**) for all or some of that Capacity who:

(i) will be selected using the criteria set out in **clause 8.5(b)** and subject to **clause 8.5(d)**; and

(ii) is willing to enter into a Studies Funding Agreement as a Feasibility Funder for the relevant Feasibility Study,

subject to that Replacement and the other relevant Feasibility Funders agreeing with Aurizon Network any relevant amendments relating to scope, timing and cost of the Feasibility Study in respect of the Studies Funding Agreement for that Feasibility Study.

(t) For clarity, if a proposed replacement Feasibility Funder enters into a Studies Funding Agreement in respect of the relevant Feasibility Study, then **clauses 8.5(n) to (r)** apply to that replacement Feasibility Funder.

(u) A Provisional Capacity Allocation will automatically cease to apply upon the Access Seeker to which that Provisional Access Allocation applies signing an Access Agreement, Commercial Terms or User Funding Agreement relating to corresponding Access Rights.

(v) If the Feasibility Study for an Expansion is funded under one or more Studies Funding Agreements (**Feasibility SFA**), then:

(i) where there will be a User Funding Agreement for that Expansion, as a condition of that User Funding Agreement the relevant Funding Users will be required to include in the funding provided to Aurizon Network under their User Funding Agreement amounts that in aggregate equal the amount to be repaid or reimbursed by Aurizon Network under **clause 8.5(v)(ii)**; and

(ii) where:

(A) the agreements with Access Seekers (or their Customers) for the funding and construction of that Expansion or the Access Agreement for utilisation of that Expansion have been executed and have become unconditional; and

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(B) a Feasibility Funder is a party to those agreements and will use Access Rights granted as a result of the Capacity to be created by that Expansion,

Aurizon Network will, in accordance with the relevant Feasibility SFA for that Feasibility Funder, repay or reimburse to the Feasibility Funder (as applicable) the funding provided by the Feasibility Funder under that Feasibility SFA.

- (w) The capital expenditure for an Expansion includes the cost of Feasibility Studies relating to that Expansion. However, any amounts that are not repaid or reimbursed (as applicable) under **clause 8.5(v)8.5(u)** will not be treated as capital expenditure and will not be included in the Regulatory Asset Base.
- (x) Without limiting any provision of this Undertaking, Aurizon Network is not obliged to construct, fund or permit an Expansion merely because Aurizon Network undertakes or funds any Feasibility Study relating to that Expansion.
- ~~(y) Aurizon Network will publish on the Website general details of each Feasibility Study it is undertaking promptly after commencement of work on the Feasibility Study. The publication will not identify individual Access Seekers by name or, to the extent possible, precise details of origins and destinations.~~

~~8.5 Failure to enter into agreements~~

~~(aa) If a proposed Pre-feasibility Funder or Feasibility Funder considers that Aurizon Network has failed to enter, or unreasonably delayed entering, into a Studies Funding Agreement in accordance with this Undertaking, then the proposed Pre-feasibility Funder or Feasibility Funder (as applicable) may refer the matter to an expert for dispute resolution in accordance with **clause 11.1.4**. The expert's decision will, subject to **clause 11.1.4(d)**, be binding on all proposed Pre-feasibility Funders or Feasibility Funders (and their Customers), as applicable, for the relevant Expansion and Aurizon Network as to the issues in dispute.~~

~~(bb)(y) If the expert determines that Aurizon Network has failed to enter, or unreasonably delayed entering, into a Studies Funding Agreement in accordance with this Undertaking, then Aurizon Network must enter into that Studies Funding Agreement within 10 Business Days.~~

8.6 Funding of Studies

Pre-feasibility Studies and Feasibility Studies must be funded by Access Seekers and/or Customers and must not be funded by:

(a) Aurizon Network; or

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(b) a Train Operator, other than where on behalf of a specifically identified Customer.

8.7 Step-in where Aurizon Network fail to enter into Study Funding Agreement or delay doing so

(a) If Aurizon Network fails to enter into a Study Funding Agreement in accordance with this Undertaking or unreasonably delays doing so, a relevant affected Access Seeker or Customer may refer the matter to resolution as a dispute under clause [11.1.4]. If the expert determines that Aurizon Network is obliged to enter into a Study Funding Agreement and has failed unreasonably to do so or unreasonably delayed doing so, the expert may (with the approval of all relevant Access Seekers and Customers) determine that the relevant study be undertaken by a nominee of all relevant Customers.

(b) If an expert determines that the relevant study is to be undertaken by the nominee of all relevant Customers:

(i) Aurizon Network must comply with that determination;

(ii) Aurizon Network must provide the nominee with all information reasonably required by the nominee to undertake the applicable study (provided however that the nominee must only use such information in connection with the performance of the study); and

(iii) Aurizon Network must use the relevant study output for the purposes for which it was provided as if that study had been prepared by Aurizon Network.

8.68.8 Funding an Expansion - general

(a) Subject to this **clause 8.6** and **clause 8.9**, an Access Seeker may fund its relevant portion of the cost of an Expansion that is necessary to create additional Capacity so that Access Rights may be granted to Access Seekers but only if Aurizon Network:

(i) is not obliged under this Undertaking to do so; and

(ii) either:

(A) is not willing to do so (as notified or deemed notified under **clause 8.1.1(a)**); or

(B) is only willing to do so subject to Commercial Terms that are unacceptable to the Access Seeker.

~~— Aurizon Network is not obliged to construct or permit an Expansion that is not fully funded.~~

~~— Aurizon Network will notify where an Expansion is subject to a Feasibility Study that:~~

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~~has been funded under Studies Funding Agreements,~~ the Feasibility Funders within ~~60-20~~ Business Days after ~~these the relevant~~ Studies Funding Agreements become unconditional ~~!;~~ or

~~has not been funded under Studies Funding Agreements, all relevant Access Seekers within [40] Business Days of the agreement under clause 8.6(a)(ii) being reached or the choice in clause 8.6(a)(iii) being made, as applicable,~~

(b) ~~of~~ whether:

(i) ~~Aurizon Network is not willing to fund the Expansion;~~

(ii) ~~Aurizon Network may be~~ willing to fund the Expansion without Commercial Terms; ~~or and,~~

(iii) ~~whether~~ Aurizon Network requires Commercial Terms to be agreed in relation to the funding of the Expansion (and, if so, the details of the conditions that will comprise Commercial Terms).

~~(b)(c)~~ If Aurizon Network has not given a notice under **clause 8.1.1(a)**~~8.1.1(a)8.1.1(a)~~, then (for the purpose of Access Seekers commencing the processes under **clause 8.9.1(a)**) Aurizon Network is taken to not be willing to fund the Expansion.

~~(e)(d)~~ If Aurizon Network has given a notice under **clause 8.1.1(a)**~~8.1.1(a)8.1.1(a)~~ and the relevant Access Seeker is willing to negotiate, then Aurizon Network and the relevant Access Seeker will negotiate in good faith the proposed Commercial Terms (~~if any~~) on which Aurizon Network will be willing to fund the Expansion.

~~(d)(e)~~ Where Aurizon Network has given a notice under **clause 8.8(b)(iii)**~~8.8(e)~~ that it requires Commercial Terms an Access Seeker may require Aurizon Network to negotiate a User Funding Agreement for all or part of an Expansion in parallel to negotiations in relation to the Commercial Terms.

~~(e)(f)~~ **Clause 8.8(b)**~~8.8(e)~~ does not prevent Aurizon Network from subsequently notifying relevant parties of whether Aurizon Network is willing to fund the Expansion with or without Commercial Terms. Any notice under this **clause 8.8(f)** does not prevent Access Seekers from pursuing User Funding in preference to the proposal from Aurizon Network for it to fund the Expansion (even if Aurizon Network's proposal is to fund without Commercial Terms).

~~(f)(g)~~ Where Aurizon Network is obliged under this Undertaking to fund an Expansion, Aurizon Network must negotiate an Access Agreement in accordance with this Undertaking with those Access Seekers that will utilise the Expansion.

~~(g)(h)~~ It is acknowledged that an Expansion may be funded partly by Funding Users and partly by Aurizon Network.

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~~(h)~~(i) Where Aurizon Network is:

(i) granting a Provisional Capacity Allocation under **clause 8.5(n)**; or

(ii) negotiating or entering into an Access Agreement,

Aurizon Network will not have regard to whether any relevant Expansion is or may be a User Funded Expansion or is or may be funded by Aurizon Network.

8.7.8.9 User Funded Expansions

8.7.18.9.1 Process where Users intend to fund an Expansion

(a) If an Access Seeker intends to fund its relevant portion of the cost of an Expansion under **clause 8.8(a)8.8(a)8.8(a)**:

(i) each proposed Funding User must give written notice to Aurizon Network of its bona fide intention to negotiate a User Funding Agreement for its relevant portion of the cost of the Expansion;

(ii) after receiving such written notice, Aurizon Network and the proposed Funding Users will negotiate in good faith a User Funding Agreement;

(iii) upon the User Funding Agreement being agreed by Aurizon Network and the Funding Users, or its terms being determined through dispute resolution, in accordance with this Undertaking:

(A) Aurizon Network will issue the proposed User Funding Agreement to the proposed Funding Users and other relevant parties (for example, the State – if applicable), as applicable; and

(B) subject to the proposed Funding Users and other relevant parties (for example, the State, if applicable) first executing that User Funding Agreement, Aurizon Network will execute the User Funding Agreement; and

(iv) the User Funding Agreement must be in the form of the Standard User Funding Agreement unless otherwise agreed by Aurizon Network and the proposed Funding Users.

(b) Where **clause 8.9.1(a)(iii)** applies, Aurizon Network will use reasonable endeavours to procure the State to enter into a User Funding Agreement.

8.7.28.9.2 Disputes about completion of SUFA schedules

(a) If Aurizon Network and any User do not reach agreement on the completion of schedules to a User Funding Agreement that is in the

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form of the Standard User Funding Agreement, then any of those persons may at any time refer the matter to the QCA for determination under **clause 11.1.5**.

- (b) The determination of a dispute under **clause 8.9.2(a)8.9.2(a)8.9.2(a)** will be binding on all proposed Funding Users and Aurizon Network. Aurizon Network does not breach this Undertaking in doing anything necessary to comply with that determination.
- (c) Where **clause 8.9.2(a)8.9.2(a)8.9.2(a)** applies, **clause 11.1** will be applied in respect of a User who is a Customer as though a reference to:
 - (i) an Access Seeker includes a reference to that Customer; and
 - (ii) a Related Party for a Customer includes the Access Seeker for that Customer.

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8.7.38.9.3 Operation of a User Funded Expansion and Capital Indicator allocation

- (a) A User Funded Expansion will be ~~owned or~~ leased, and operated, by Aurizon Network in accordance with the provisions of the relevant User Funding Agreement and must constitute part of the Rail Infrastructure.
- (b) Subject to approval by the QCA, where a User Funded Expansion occurs, Aurizon Network will nominate the proportion (if any) of the relevant approved Capital Indicator to reflect the expected capital expenditure in relation to the User Funding Agreement(s) for that User Funded Expansion. ***[QRC Note: Please refer to the QRC's separate comments on the Capital Indicator and revenue smoothing.]***

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8.7.48.9.4 Capacity Shortfalls for User Funded Expansions

Without limiting **clauses 8.4(b)(i)** and **8.5(b)(i)**, any Capacity and Capacity Shortfall issues as between Aurizon Network and the Funding Users (including all relevant Access Seekers or Access Holders) in relation to a User Funded Expansion will be dealt with in accordance with the terms of the relevant User Funding Agreement.

8.7.58.9.5 Inconsistency with a User Funding Agreement

To the extent of any inconsistency, the terms of an executed User Funding Agreement prevail over the terms of this Undertaking as between Aurizon Network and the Funding Users (including any Access Seeker or Access Holder for which a Funding User is Customer in relation to the User Funded Expansion).

8.7.68.9.6 Regulatory pre-approval of scope

Promptly after a written request from a Funding User, Aurizon Network must either seek:

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- (a) a vote by Interested Participants under **clause 8.13** to accept; or
- (b) approval from the QCA for, the scope and standard of work for the relevant Expansion.

~~**[Note from Aurizon Network: Aurizon Network's obligations in relation to seeking to have the capital expenditure for a User Funded Expansion included in the Regulatory Asset Base is set out in the SUFA.] [QRC Note: The obligations set out in respect of SUFA are insufficient. An obligation for Aurizon Network to seek inclusion of expansion costs in the RAB should be included in this undertaking (as per the below clause).]**~~

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8.9.7 Obligation to seek inclusion of Expansion cost in Regulated Asset Base

- (a) ~~The Regulated Asset Base will include User Funded Expansions, notwithstanding that the cost of such Expansions are not paid for by Aurizon Network.~~
- (b) ~~Subject to **clause 8.9.7(c)** as soon as is reasonably practicable, Aurizon Network will apply to the QCA to have all of the costs of a User Funded Expansion included in the Regulatory Asset Base.~~
- (c) ~~Prior to making an application under **clause 8.9.7(b)** or making any other submission or communication in relation to the inclusion of the costs of a User Funded Expansion into the Regulatory Asset Base, Aurizon must:~~
 - (i) ~~consult with the Funding Users; and~~
 - (ii) ~~include any comments or changes reasonably requested by the Funding Users in any application, submission or correspondence to or with the QCA.~~
- (d) ~~Aurizon Network will pass on to the Funding Users any material information (including correspondence) in relation to the QCA's assessment of the costs of a User Funded Expansion.~~

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8.9.8 Tax rulings

~~**8.7.7 [QRC Note: Please refer to separate Tax Ruling provisions submitted with the QRC's Main Submission dated 10 October 2013.]**~~

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- (-) ~~Where, after the terms of the User Funding Agreement between the Funding Users and Aurizon Network negotiated in accordance with **clause 8.9.1(a)(ii)** are substantially agreed, Aurizon Network is requested to do so by all Funding Users engaged in the process prescribed by **clause 8.9.1**, Aurizon Network must, subject to **clause 8.9.7(c)**:~~
 - (-) ~~prepare an application to the Commissioner (as defined in section 2 of the *Taxation Administration Act 1953 (Cth)*) for a private ruling (as defined in section 359-5 of the *Taxation Administration Act 1953 (Cth)*) in relation to the material~~

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income tax implications arising for Aurizon Network of the proposed User Funding Agreement (~~Material Tax Matters~~);

~~(-) submit the application prepared in accordance with clause 8.9.7(a)(i) to the Commissioner, except where clause 8.9.7(b) applies; and~~

~~(-) use reasonable endeavours to obtain a favourable private ruling in respect of the Material Tax Matters, except where clause 8.9.7(b) applies.~~

~~(-) This clause applies where:~~

~~(-) the Commissioner has indicated that a favourable private ruling (as defined in section 359-5 of the Taxation Administration Act 1953 (Cth)) would not be provided or that the Commissioner would not provide a private ruling in respect of one or more of the Material Tax Matters; and~~

~~(-) Aurizon Network has obtained advice from an appropriately qualified tax adviser that the Commissioner is unlikely to provide a favourable ruling in respect of the Material Tax Matters referred in clause 8.9.7(b)(i).~~

~~(-) Aurizon Network will consult (acting reasonably) with the Funding Users in relation to:~~

~~(-) the Material Tax Matters to be included in the application for the private ruling contemplated by clause 8.9.7(a)(i) and the preparation of that application;~~

~~(-) any proposal by Aurizon Network to not submit the application for the private ruling in the circumstances contemplated by clause 8.9.7(a)(ii); and~~

~~(-) the action required to be taken by Aurizon Network for the purposes of clause 8.9.7(a)(iii).~~

8.7.198.9.9 Review of the SUFA

Promptly after executing the first User Funding Agreement in the form of the SUFA, Aurizon Network will:

(a) review the SUFA including having regard to the principles contained in [insert] [QRC Note: principles underlying SUFA should be set out in this Undertaking.]; and

(b) consult with the Funding Users and Access Seekers about the workability of the SUFA for User Funding,

and, after doing so:

(c) submit to the QCA any amendments that Aurizon Network (acting reasonably) considers will improve the workability of the SUFA in the form of a draft amending access undertaking under the Act; or

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(d) if Aurizon Network (acting reasonably) considers no amendments are required, Aurizon Network must make a submission to the QCA giving detailed written reasons for that belief.-

8.88.10 Contracting for Capacity

8.8.18.10.1 Access Agreements conditional on an Expansion or Customer Specific Branch Line

If Access Rights sought by an Access Seeker require an Expansion or Customer Specific Branch Line, then Aurizon Network must only enter into an Access Agreement with that Access Seeker if that Access Agreement:

- (a) is subject to a condition precedent that requires the relevant Expansion or Customer Specific Branch Line to have been completed and commissioned; ~~and~~
- (b) includes terms and conditions so that the Access Rights relevant to the Expansion or Customer Specific Branch Line are limited to the available Capacity for the Expansion or Customer Specific Branch Line; and
- (c) -the Access Seeker and Aurizon Network have agreed the scope of work the subject of the Expansion (other than a User Funded Expansion¹) or Customer Specific Branch Line or in the absence of agreement on such scope, the scope has been determined by an expert.

Where an Access Seeker and Aurizon Network do not reach agreement on the scope of work (including standard of work) for an Expansion or Customer Specific Branch Line, either party may at any time refer the matter to an expert for dispute resolution under **clause 11.4.1**.

The determination of such a dispute will be binding on all relevant Access Seekers and Aurizon Network.

8.10.2 No amendment of scope of work

- (a) Aurizon Network may not amend the agreed or determined scope of work for an Expansion (other than a User Funded Expansion²) or Customer Specific Branch Line referred to in **clause 8.10.1**, other than with the written agreement of the relevant Conditional Access Holders or as determined under **clause 8.10.1(b)**.
- (b) If Aurizon Network and Conditional Access Holders cannot reach agreement on an amendment to a scope of work referred to in **clause 8.10.2(a)**, either party may refer the matter to an expert for dispute resolution in accordance with **clause 11.4.1**.

¹ Agreement on the scope of work for a User Funded Expansion is determined under clause 8.9.

² Amendments to the scope of User Funded Expansion are to be determined in accordance with the User Funding Agreement.

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(c) The decision of an expert referred to in **clause 8.10.2(b)** is binding on all relevant Conditional Access Holders and Aurizon Network.

~~(b)(d)~~ It is acknowledged that a Conditional Access Holder must not withhold its approval to an amendment to the scope of work to the extent that that amendment is necessary to address a latent condition, change in law or force majeure event.

~~[Note from Aurizon Network: The Standard Access Agreements (SAAs) already includes provision for the inclusion of a description of an Expansion that is a condition precedent to Train Services commencing. Under the SAAs that description is part of the access agreement and currently can only be amended by agreement.] [QRC Note: Agreeing the scope of expansions through user funding schedules or the negotiation of access agreements would mean only the scope for user funded projects would require the agreement of access seekers. This is insufficient. There should be an obligation in the Undertaking for Aurizon Network to agree the scope of an expansion with access seekers in relation to all expansions (whether user funded or not).]~~

8.8.28.10.3 Capacity Shortfalls

(a) If Aurizon Network grants Access Rights (**Conditional Access Rights**) to Access Seekers (**Conditional Access Holders**) that are conditional on an Expansion being completed and commissioned, then Aurizon Network will, no more than six months following commissioning of the Expansion and subject to **clause 8.10.3(b)**, undertake an assessment of the change in Capacity arising as a result of that Expansion (**Capacity Change**) after the Expansion is commissioned by calculating the Capacity Change as:

- (i) the Existing Capacity at the time; less
- (ii) the Existing Capacity of the system in the absence of the Expansion,

using consistent System Operating Assumptions. Aurizon Network must notify all of the relevant Conditional Access Holders of the conclusions of that assessment and the basis for those conclusions.

(b) Aurizon Network may by written notice to all relevant Conditional Access Holders defer an assessment for the purposes of **clause 8.10.3(a)** until such time as Aurizon Network reasonably considers that the relevant Expansion is fully operational and the demand conditions are such that a reasonable assessment can be undertaken.

(c) If a Conditional Access Holder disputes an assessment by Aurizon Network under **clause 8.10.3(a)**, the Conditional Access Holder may refer that dispute to an expert in accordance with **clause 11.1.4**. The determination of the expert will be binding. The expert will determine which party or parties should bear the costs of the expert.

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- (d) If Aurizon Network's assessment under **clause 8.10.3(a)** indicates that there is a [Capacity Shortfall] [**QRC Note: Capacity Shortfall needs to be more precisely defined.**] in relation to Conditional Access Holders, then:
- (i) the Conditional Access Rights of each Conditional Access Holder are reduced in accordance with its Access Agreement; and
 - (ii) subject to **clause 8.10.3(e)**, where those Conditional Access Rights are reduced, each Conditional Access Holder will be taken to have lodged an Access Application with Aurizon Network for Access Rights equivalent to that reduction if they notify Aurizon Network within 20 Business Days after the reduction occurs that they wish to seek Access Rights equal to that reduction (unless their Access Agreement provides to the contrary).
- (e) For the purpose of a Conditional Access Holder's Access Application under **clause 8.10.3(d)**:
- (i) the Access Application is taken to be on the same terms as the previous Access Application made by that Conditional Access Holder for those Conditional Access Rights but only to the extent that its Conditional Access Rights have been reduced in accordance with its Access Agreement as a result of the Capacity Shortfall;
 - (ii) Aurizon Network and the Conditional Access Holder are taken to have complied with **clauses 4.2 to 4.4(b)**; and
 - (iii) **clause 4.4(c)** applies to the Access Application.
- ~~(e) Aurizon Network is only obliged to comply with this clause 8.10 to the extent that such compliance:~~
- ~~(iii) is consistent with Aurizon Network's commercial objectives; and~~
 - ~~(iii) does not (and Aurizon Network is not compelled to do anything that would) inhibit, restrict, fetter or adversely affect Aurizon Network's ability:~~
 - ~~(-) to exercise any discretion, power, function or right; or~~
 - ~~(-) to comply with any obligation or to do anything, in accordance with this Undertaking or an Access Agreement.~~
- (f) Subject to any agreement with the relevant Conditional Access Holders, where an Expansion (**Shortfall Expansion**) is required as a result of a Capacity Shortfall arising in respect of an earlier Expansion

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(Earlier Expansion) and that Shortfall Expansion is technically and economically feasible:

- (i) subject to **clause 8.10.3(f)(ii)**, if the Earlier Expansion:
 - (A) was funded by Aurizon Network, Aurizon Network will bear the cost of the Shortfall Expansion;
 - (B) was partly funded by Aurizon Network:
 - (1) Aurizon Network will bear the proportion of the cost of the Shortfall Expansion that represents the proportion of the Earlier Expansion that was funded by Aurizon Network; and
 - (2) the Conditional Access Holder(s) who (or whose Customers) provided funding in respect of the Earlier Expansion will bear the remainder of the cost of the Shortfall Expansion if they require it (in which case Aurizon Network and the Conditional Access Holder(s) (or their Customers) will promptly enter into User Funding Agreements on the same terms); or
 - (C) was not funded (in whole or part) by Aurizon Network, a Conditional Access Holder will bear the cost of the Shortfall Expansion if they require it; and

~~(ii)~~ if the Capacity Shortfall was caused by any ~~default or negligent~~ act or omission of Aurizon Network, Aurizon Network will bear the cost of the Shortfall Expansion.

~~(iii)(g)~~ Unless agreed otherwise by the relevant Conditional Access Holders, Aurizon Network must promptly undertake a Shortfall Expansion.

[Note from Aurizon Network: The remainder of this Part 8 has not been considered for the purpose of this draft.] [QRC Note: For ease of reference, QRC have marked-up the remainder of this Part 8 to reflect its mark-up which accompanied its Main Submission dated 10 October 2013.]

8.98.11 Coal supply chain coordination

8.9.18.11.1 Supply chain coordination

~~(a)~~ Aurizon Network will use reasonable endeavours ~~to participate~~:

~~(i)(a)~~ to participate in a Supply Chain Group in relation to:

~~(A)(i)~~ the coordination and effective performance of a relevant coal supply chain; and

~~(B)(ii)~~ if applicable, the development of a Supply Chain Master Plan; ~~and~~

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(b) ~~to participate~~ in discussions with other service providers and participants in the coal supply chain, on request, with a view to the coordination of maintenance activities in the relevant supply chain; and

(ii)(c) ~~maximise throughput in [each] supply chain.-~~

~~(b) Aurizon Network will not be obliged to make any binding commitment or to take any action as a result of its participation and discussions referred to in clause 8.11.1(a).~~

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8.9.28.11.2 System Operating Assumptions

[QRC Note: in definitions, Clause 12, System Operating Assumptions definition is out of order.]

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(a) In reviewing the System Operating Assumptions for a Coal System, Aurizon Network will:

(i) ~~notify~~ notify the QCA, all relevant Access Holders and the applicable Supply Chain Group (if any) of the relevant System Operating Assumptions and the time in which to make submissions;

(ii) consider any submissions from Access Holders and from the Supply Chain Group in respect of the proposed System Operating Assumptions or whether any variation of the System Operating Assumptions is required (as applicable); and

(iii) respond to any such submissions as soon as reasonably practicable including whether and, if so, how Aurizon Network has varied the proposed or existing System Operating Assumptions (as applicable) in response to those submissions.

(b) Without limitation to **clause 000**, Aurizon Network will use reasonable endeavours to review the System Operating Assumptions for a Coal System as soon as practical after Aurizon Network becomes aware that any permanent change has occurred, or will occur, to that Coal System that materially adversely affects the System Operating Assumptions.

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~~(e) Nothing in this clause 8.11.2 obliges Aurizon Network to vary the System Operating Assumptions.~~

(c) Aurizon Network will use reasonable endeavours to keep its most current System Operating Assumptions available on the Website (including with the redaction of any information that is confidential or which, if so published, would give rise to a breach by Aurizon Network of a confidentiality obligation).

(d) Any amendment or change to the System Operating Assumptions must be approved by the QCA.

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~~(d)~~(e) The System Operating Assumptions as at the Approval date are set out in [insert].

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8.9.38.11.3 Capacity review

[Note: the definition of Capacity should be amended so as to tie-in this clause.]

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- (a) Aurizon Network may undertake ~~a review~~ an assessment of Capacity for a Coal System in conjunction with the development or review of the Network Development Plan. Aurizon Network must assess the Capacity of each Coal System not less than once each year.
- (b) Aurizon Network will undertake a Capacity review for a Coal System if the System Operating Assumptions are varied as a result of a review under ~~clause 8.11.2(b)~~ ~~8-11-2(b)~~ ~~8-11-2(b)~~ or are otherwise varied in a way that materially decreases the Existing Capacity in that Coal System.
- (c) If a Capacity ~~review assessment~~ reveals that there is a deficit in the Capacity for a Coal System at a particular point in time (**Deficit**), then Aurizon Network will have regard to that Deficit prior to executing an Access Agreement that would increase the size of that Deficit and prior to constructing any relevant Expansion for that Coal System.
- (d) Where Aurizon Network undertakes an assessment of Capacity of a Coal System, it must consult with:
- (i) Access Holders for the relevant Coal System; and
- (ii) an independent, appropriately qualified expert (acting as an independent expert).
- (e) In undertaking a Capacity assessment Aurizon Network must have regard to:
- (i) usage in accordance with Good Engineering Practices;
- (ii) a goal of achieving reasonable maximum capacity;
- (iii) Access Agreements; and
- (iv) interfaces with loading and out-loading facilities.
- (f) Aurizon Network must promptly provide its Capacity assessment, reasonable reasons for its Capacity assessment and the opinion of its independent expert to the QCA, all relevant Access Holders, where relevant, Access Holders' Customers and Access Seekers.
- ~~(e)~~(g) [insert] or more Access Holders, Customers or Access Seekers may refer under **clause [11.4.1]** Aurizon Network's assessment of Capacity as a dispute for determination by an expert. The expert's determination will be binding. The costs of the expert must be borne by such party or parties determined by the expert.

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8.108.12 Network Development Plan

[QRC Note: the definition of Network Development Plan should be more prescribed – i.e. both as to content and form of the Plan. The Network Development Plan definition should include:

The Network Development Plan will:

- (a) align with any System Operating Assumptions;*
- (b) align with any Supply Chain Master Plan;*
- (c) if applicable, considers any supply chain model; and*
- (d) will be based on a concept level of study.*

The Network Development Plan must include information on the following matters for each Individual Coal System:

- (e) the System Operating Assumptions upon which the Network Development Plan is based;*
- (f) the assessment of the current Capacity for each Coal System;*
- (g) the aggregated contracted Train Paths for coal carrying Train Services;*
- (h) the capacity planning scenarios;*
- (i) the proposed asset Replacement Expenditure, Expansions, Capital Expenditure.*

The Network Development Plan will include information on the scope, standard and preliminary costs of proposed Expansion projects including information that:

- (j) Identifies, by individual coal system, capacity analysis information, reasons for the expansion, identification of the projects that will be required to provide increased capacity to meet increased demand and estimated timing and volume trigger points for each project.*
- (k) Identifies for each specific project, the scope of the project and describes the general standard of works, the additional capacity to be delivered by the expansion, the potential risks, and preliminary cost information which includes potential impact on the reference train tariff.*
- (l) Quantifies the impact on Capacity during construction and measures for ameliorating this impact.*

(m) Alternatives considered and assessed during the evaluation and the reasons these will not be progressed.]

- (a) Aurizon Network will develop ~~a~~*an initial* Network Development Plan ~~and use reasonable endeavours to on or before [insert].~~ *Aurizon Network must* keep its most current Network Development Plan available on the Website.
- (b) The Network Development Plan will identify possible options for increasing Capacity ~~and may for the next [insert] years and~~ include

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possible options for otherwise developing or improving a Coal System's performance.

- (c) Aurizon Network will review and update the Network Development Plan annually ~~or, where it is required to undertake a Demand Assessment and~~ more frequently as it reasonably considers necessary, including if circumstances change in a way that Aurizon Network expects will materially adversely affect the Network Development Plan.
- (d) In developing or reviewing the Network Development Plan, Aurizon Network:
 - (i) will from time to time, inform and ~~otherwise~~ consult with, and consider submissions from, Access Holders, Access Seekers and other interested parties identified by Aurizon Network in relation to the proposed Network Development Plan; and
 - (ii) will have regard to:
 - (A) Good Engineering Practices;
 - ~~(A)(B)~~ forecast changes in demand for Queensland coal exports;
 - ~~(B)(C)~~ any Expression of Interest submissions;
 - ~~(C)(D)~~ any relevant Access Applications;
 - ~~(D)(E)~~ any relevant port terminal developments or development of other out-loading facilities;
 - ~~(E)(F)~~ any previous or current studies undertaken by Aurizon Network;
 - ~~(F)(G)~~ any supply chain master plan;
 - ~~(G)(H)~~ relevant System Operating Assumptions, System Rules and maintenance plans; and
 - ~~(H)(I)~~ other developments or circumstances which in Aurizon Network's opinion are relevant to the Network Development Plan.
- (e) Aurizon Network will:
 - (i) make available to the QCA and the parties consulted with as contemplated by **clause 8.12(d)(i)**, a draft of a new Network Development Plan at least [40] Business Days before publishing the Network Development Plan on the Website; and
 - (ii) will consider any written submissions from those parties which are received no later than [20] Business Days before the intended publication date for the Network Development

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Plan before finalising and publishing the Plan. (Parties sent the draft Network Development Plan will be told at the time the intended publication date for the finalised Plan).

- (f) Neither anything in this **clause 8.12** nor the development, review or notification of a Network Development Plan gives rise to any commitment, representation or obligation in relation to funding, constructing, permitting or otherwise implementing any aspect of the Network Development Plan.

8.11.13 Acceptance of capital expenditure projects by Interested Participants

[QRC Note: The QRC does not support the proposed new voting process. The QRC propose a process which is based on the UT3 version.]

8.11.1 Purpose

- (a) This **clause 8.13** sets out a voting process for relevant Access Holders, Customers and Access Seekers to accept any one or more of:
- (i) the prudence of scope of a capital expenditure project;
 - (ii) the prudence of standard of works of a capital expenditure project; and
 - (iii) the cost allocation principles for a proposed Reference Tariff variation under **clause 6.2.4(a)(iv)(A)**.
- (b) The voting process is an alternative to seeking acceptance of those matters by the QCA under **clauses 3 or 4 of schedule E** (as applicable). However, an unsuccessful vote does not prevent Aurizon Network from seeking the QCA's acceptance on the same matter or a future vote.
- (c) A capital expenditure project referred to in relation to this **clause 8.13** includes all projects of any kind that involve capital expenditure including capital expenditure projects required for safety reasons or for Expansions.

8.11.2 Application

- (a) This **clause 8.13** applies where Aurizon Network seeks acceptance of:
- (i) the scope or standard (as applicable) of a capital expenditure project;
 - (ii) a change to the scope or standard (as applicable) of a capital expenditure project where:
 - (A) Aurizon Network previously obtained the acceptance of Interested Participants for that scope or standard (as applicable); and

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- (B) that change is a material change; or
- (iii) the cost allocation principles for the purposes of developing a proposed Reference Tariff variation under **clause 6.2.4(a)(iv)(A)**,
(Voting Proposal) by a vote of Interested Participants under this **clause 8.13**.
- (b) Aurizon Network must notify the QCA of the outcome of a vote under this **clause 8.13**.
- (c) Nothing in this **clause 8.13**:
 - (i) obliges Aurizon Network to seek acceptance of the scope or standard of a capital expenditure project, or the development of a Reference Tariff variation, under this **clause 8.13**; or
 - (ii) prevents Aurizon Network from seeking the QCA's acceptance of any or all of the scope or standard of a capital expenditure project, or the development of a Reference Tariff variation, even if a vote seeking the acceptance of the same under this **clause 8.13** has been unsuccessful or if Aurizon Network has sought a vote on, for example, scope but not on standard.
- (d) Aurizon Network does not have an obligation to construct or fund a capital expenditure project as a result of seeking or obtaining any acceptance of the scope or standard of a capital expenditure project, or the development of a Reference Tariff variation, under this **clause 8.13**.
- (e) This **clause 8.13** must be read in conjunction with **clauses 2.2(g)** and **(h)** of **schedule E** (as though these provisions were part of this **clause 8.13**) to the extent that those provisions refer to this **clause 8.13**.

8.11.3 Identification of Interested Participants

- (a) For a vote called by Aurizon Network regarding the acceptance of the scope or standard of that capital expenditure project, the persons eligible to participate in that vote (referred to as **Interested Participants** in respect of that vote) are Customers, and Access Holders and Access Seekers without Customers, where the Access Charges (or likely Access Charges) relevant to the person:
 - (i) are (or will be) determined by reference to a Reference Tariff; and
 - (ii) would be affected by including the amount of capital expenditure for a capital expenditure project into the Regulatory Asset Base.

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- (b) — For a vote called by Aurizon Network regarding the acceptance of the development of a Reference Tariff variation, the persons eligible to participate in that vote (referred to as **Interested Participants** in respect of that vote) are the relevant Affected Parties (referred to under **clause 6.2.4(a)(iv)(A)**).
- (c) — Despite **clauses 8.13.3(a)** and **(b)**:
- (i) — Aurizon Network will not identify any person as an Interested Participant if that would result in any 'double-counting' of votes — for example, where two Access Seekers are competing to provide rail haulage services to a prospective Customer only that Access Seeker nominated by the prospective Customer will be eligible to vote; and
- (ii) — if:
- (A) — a person has not been invited to participate as an Interested Participant; and
- (B) — that person believes that it is entitled to participate, then:
- (C) — that person may request to be allowed to participate by notifying Aurizon Network including setting out reasons why it should be allowed to do so; and
- (D) — Aurizon Network will use its reasonable endeavours to accommodate that request if it is appropriate to do so.

8.11.4 Voting rights

- (a) — In this **clause 8.13.4**, **Affected Train Path** means a Train Path where the applicable Reference Tariff for a Train Service using that Train Path would be affected by:
- (i) — where the Voting Proposal relates to the scope or standard of works for a capital expenditure project, including the amount of capital expenditure for the relevant capital expenditure project into the Regulatory Asset Base; or
- (ii) — where the Voting Proposal relates to the cost allocation principles for proposed Reference Tariff variation, the proposed Reference Tariff variation.
- (b) — Each Interested Participant's vote will be weighted by multiplying its vote by the number of Affected Train Paths for that Interested Participant as determined by Aurizon Network based on the relevant Access Rights (whether under an Access Agreement or the subject of an Access Application) in accordance with the principles under **clause 8.13.4(c)**.

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(c) ~~Aurizon Network must determine Affected Train Paths for the purpose of **clause 8.13.4(b)** in a manner consistent with the following principles:~~

~~(i) where the Access Agreement in relation to that Interested Participant:~~

~~(A) will be in force at the time that is five years after acceptance is sought under this **clause 8.13**; or~~

~~(B) is subject to a legally binding commitment (even if conditional on the completion of an Expansion or Customer Specific Branch Line or other conditions which are Aurizon Network's responsibility to satisfy or can be waived by Aurizon Network);~~

~~the Affected Train Paths must be determined based on the Access Rights specified in that Access Agreement for a 12 month period starting five years after the first day of the month in which acceptance is sought under this **clause 8.13**;~~

~~(ii) where:~~

~~(A) the Access Agreement is due to expire within five years after acceptance is sought under this **clause 8.13**; and~~

~~(B) Aurizon Network reasonably expects that a Renewal will occur in relation to the relevant Access Rights under that Access Agreement;~~

~~the Affected Train Paths must be determined based on the Access Rights specified in that Access Agreement for the last period of 12 months of that Access Agreement;~~

~~(iii) to the extent that the Interested Participant is (or is also) an Access Seeker or an Access Seeker's Customer:~~

~~(A) where the Available Capacity, plus the Capacity expected to be created by the capital expenditure project, that may potentially be used for Affected Train Paths (**Total Available Capacity**) is less than that needed by Aurizon Network to provide all of the Access Rights sought by Access Seekers (who, or whose Customers, are Interested Participants) for Affected Train Paths (**Requested Capacity**), the Affected Train Paths must be calculated as the Access Seeker's proportion of the Total Available Capacity calculated on a pro-rated basis by reference the Access Seeker's proportion of the Requested Capacity; or~~

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~~(B) — where the Total Available Capacity is greater than the Requested Capacity, the Affected Train Paths sought by the Access Seeker,~~

~~in either case, for a 12 month period starting five years after the first day of the month in which acceptance is sought under this **clause 8.13**; and~~

~~(iv) — if more than one of **clauses 8.13.4(c)(i) to (iii)** apply in respect of an Interested Participant, then the Affected Train Paths calculated under those clauses will be aggregated for that Interested Participant.~~

8.11.5— Acceptance process

~~(a) — If Aurizon Network seeks a vote from Interested Participants on a Voting Proposal, then Aurizon Network will:~~

~~(i) — identify the Interested Participants and notify each identified Interested Participant of the vote; and~~

~~(ii) — make available information relevant to the Voting Proposal and the voting process to those Interested Participants.~~

~~(b) — A notice under **clause 8.13.5(a)(i)** must specify the period within which the vote will occur being at least six weeks after the notice is given (**Voting Period**).~~

~~(c) — During the Voting Period:~~

~~(i) — Aurizon Network will use reasonable endeavours to provide information, forums and engage in discussions with Interested Participants in relation to the relevant Voting Proposal if it chooses to do so or if reasonably requested by any Interested Participants; and~~

~~(ii) — Interested Participants are to notify Aurizon Network of whether they accept or do not accept the Voting Proposal by voting 'yes' or 'no'.~~

~~(d) — If an Interested Participant votes 'no' on the basis of any of the following:~~

~~(i) — where the vote relates to the scope of a capital expenditure project, the capital expenditure project:~~

~~(A) — is not technically and/or economically feasible or is inconsistent with the safe and reliable operation of the Rail Infrastructure;~~

~~(B) — would materially adversely affect the Interested Participant's access rights, providing evidence of how those rights would be affected; or~~

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- (C) is inefficient, including having regard to the System Operating Assumptions referred to by Aurizon Network;
- (ii) where the vote relates to the standard of works of a capital expenditure project, the standard of works:
 - (A) is unreasonable based on the project's scope;
 - (B) is inconsistent with relevant standards, including:
 - (1) the standard of existing or adjacent Rail Infrastructure (except to the extent that the project's scope requires a higher standard); and
 - (2) relevant Australian standards or Codes of Practice; or
 - (C) does not reflect an appropriate balance between capital and operating expenditure; or
- (iii) where the vote relates to the cost allocation principles for a proposed Reference Tariff variation:
 - (A) the proposed cost allocation principles do not satisfy the pricing principles in section 168A of the Act;
 - (B) a proposed Reference Tariff variation based on the cost allocation principles would adversely impact on that Interested Participant's ability to compete in a relevant market; or
 - (C) the Interested Participant should not contribute towards the cost of the capital expenditure project now or at any time in the future;

then that 'no' vote must be accompanied by detailed reasons in relation to those matters. For clarity, **clauses 8.13.5(d)(i) to (iii)** do not prevent a 'no' vote from being made on a different basis—although, any such vote must still be accompanied by detailed reasons.

- (e) If an Interested Participant does not respond within the Voting Period or does not respond in a way that is a clear 'yes' or 'no' vote, then the Interested Participant is deemed to have accepted the relevant Voting Proposal—that is, voted 'yes'.
- (f) If an Interested Participant responds with a 'no' vote, but:
 - (i) that vote does not comply with **clause 8.13.5(d)**; or

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~~(ii) — the reasons provided with that vote cannot reasonably be regarded as appropriate grounds for, or as relevant to, such a vote,~~

~~then Aurizon Network may exclude that Interested Participant's vote.~~

~~(g) — The Interested Participants will be deemed to have accepted the relevant Voting Proposal if Interested Participants for at least 60% of the aggregated Affected Train Paths for all Interested Participants (other than those excluded under **clause 8.13.5(f)**) have, or are deemed to have, voted 'yes'.~~

~~(h) — Aurizon Network will notify each of those Interested Participants of the results of the vote within five Business Days after Aurizon Network has determined those results.~~

8.11.6 — Information and materials relating to acceptance votes

~~(a) — Aurizon Network will make available information, when it considers it relevant or necessary to do so, to participants in the coal supply chains relating to Coal Systems (as well as the QCA, Queensland Rail Limited and the DTMR) relating to proposed capital expenditure projects relevant to Coal Systems.~~

~~(b) — If a capital expenditure project, the scope of which is being voted on by Interested Participants under **clause 8.13.5**, is a General Expansion Capital Expenditure project, then Aurizon Network will use reasonable endeavours to cooperate with a consultant jointly appointed by, and at the cost of, those Interested Participants for a peer review of Aurizon Network's capacity planning inputs and processes and capacity model outputs in respect of the capital expenditure project. Aurizon Network will run a range of scenarios in that model, as requested by that consultant (acting reasonably). Aurizon Network's obligations under this **clause 8.13.6(b)** do not include any obligation to provide the consultant with access to the capacity analysis model, confidential information or any other information or thing in respect of which Aurizon Network has any intellectual property³.~~

~~(c) — Aurizon Network will make available to Interested Participants information on the capital expansion project, or the development of a Reference Tariff variation, where those Interested Participants have been asked to vote on the scope or standard (as applicable) of that capital expenditure project, or the development of that Reference Tariff variation, including a working paper the requirements for which are referred to in **clauses 8.13.6(d) to (f)** (as applicable). For clarity, a working paper may relate to more than one capital expenditure project.~~

³ Intellectual property includes any intellectual and industrial property rights conferred or recognised by any law anywhere throughout the world, including rights in relation to copyright, trade marks, trade secrets and patent rights (including the right to apply for registration of any such rights) and know-how that is confidential.

- ~~(d) — A working paper relating to a capital expenditure project's proposed scope as developed in the Feasibility Study will set out the following information in relation to that capital expenditure project:~~
- ~~(i) — information on the following:~~
 - ~~(A) — the reason for the project including relevant capacity planning information;~~
 - ~~(B) — the project's scope and general standard of works;~~
 - ~~(C) — the additional capacity expected to be delivered by the project;~~
 - ~~(D) — the project's preliminary cost;~~
 - ~~(E) — the potential impact of project construction on Existing Capacity;~~
 - ~~(F) — the relevant System Operating Assumptions;~~
 - ~~(G) — the aggregated contracted Train Paths for Train Services on the relevant Rail Infrastructure; and~~
 - ~~(H) — rationale for the choice of scope for the project with reference to the Pre-feasibility Study and the Network Development Plan (where relevant); and~~
 - ~~(ii) — where the project's scope has materially varied since a vote of Interested Participants accepting the scope:~~
 - ~~(A) — the scope variations and the reasons for them; and~~
 - ~~(B) — the relevant changes in the working paper compared to the working paper made available to Interested Participants for the previous vote.~~
- ~~(e) — A working paper relating to a capital expenditure project's standard will set out the information referred to in **clause 8.13.6(d)(i)** plus information in relation to that capital expenditure project:~~
- ~~(i) — demonstrating that the proposed standard is reasonable based on the project's scope;~~
 - ~~(ii) — regarding its consistency with:~~
 - ~~(A) — the standard of existing or adjacent infrastructure with similar usage levels, or its modern engineering equivalent;~~
 - ~~(B) — Aurizon Network's and established Australian design, engineering, safety and construction standards for similar purpose assets and meeting all relevant legislative requirements; and~~
 - ~~(C) — relevant codes of practice; and~~

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- (iii) ~~regarding any relevant substitution possibilities between capital and operating expenditure.~~
- (f) ~~A working paper relating to the cost allocation principles for a proposed Reference Tariff variation under **clause 6.2.4(a)(iv)(A)** will set out the following information:~~
 - (i) ~~an indicative estimate of the System Allowable Revenue associated with the relevant capital expenditure project;~~
 - (ii) ~~the indicative impact on an existing relevant Reference Tariff from including the value of the relevant assets in the Regulated Asset Base;~~
 - (iii) ~~an indicative estimate of the economic benefits (including avoidable costs) to existing Access Holders arising from the relevant capital expenditure project; and~~
 - (iv) ~~Aurizon Network's proposed cost allocation principles for the Expansion or Customer Specific Branch Line (as applicable), including the relevant Distance Discount.~~
- (g) ~~If Aurizon Network is seeking a vote of Interested Participants on more than one aspect of the same capital expenditure project, then Aurizon Network may issue a single working paper that satisfies the requirements of each of **clauses 8.13.6(d) to (f)** (as applicable).~~

8.11.7—Compliance

- (a) ~~Any person who is an Interested Participant, or is entitled to be an Interested Participant, in respect of a proposed vote to be conducted under this **clause 8.13** who has any concerns about Aurizon Network's compliance with this **clause 8.13** in respect of the proposed vote may notify Aurizon Network of those concerns in writing including providing reasons or other information in support of those concerns prior to the end of the Voting Period.~~
- (b) ~~Aurizon Network may take whatever action is reasonably required to address any concerns notified to it under **clause 8.13.7(a)** to achieve substantial compliance with this **clause 8.13**. Aurizon Network is not obliged to repeat a vote process where a valid concern is raised:~~
 - (i) ~~if remedying the concern would not be expected to change the outcome of the vote; or~~
 - (ii) ~~if it can remedy the concern in a way that achieves substantial compliance.⁴~~

⁴ For example, if a person notifies Aurizon Network that it should be Interested Participant but the Voting Period has already commenced, then one remedy might be for Aurizon Network to provide all of the relevant notices, information and other material already provided to the other Interested Participants to that person and allow that person an extension of the Voting Period so that person can participate in the vote.

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- ~~(c) — An audit of Aurizon Network's compliance with this **clause 8.13** in relation to a vote will be procured by Aurizon Network:~~
- ~~(i) — prior to Aurizon Network relying on that vote for the purposes of the QCA's acceptance of prudence of scope or standard of capital expenditure project; and~~
 - ~~(ii) — subject to **clauses 8.13.7(d) to (f)**, in accordance with **clauses 10.8(a) to (d)** and **10.8(g) to (j)**.~~
- ~~(d) — Where an audit is required under **clause 8.13.7(c)**:~~
- ~~(i) — Aurizon Network must provide to the auditor copies of all concerns notified to it under **clause 8.13.7(a)** in relation to the relevant vote for the purpose of the audit certificate's preparation; and~~
 - ~~(ii) — the auditor will compile an audit report identifying:
 - ~~(A) — whether Aurizon Network has complied in all material respects with this **clause 8.13** and, if not, details as to the relevant non-compliance; and~~
 - ~~(B) — the process adopted for the conduct of the audit.~~~~
- ~~(e) — If, in preparing an audit certificate, the auditor identifies flaws in the calculation of the Access Train Paths, then:~~
- ~~(i) — Aurizon Network may recalculate the Access Train Paths and recount the votes in a manner consistent with the auditor's findings;~~
 - ~~(ii) — the auditor will take that recalculation and recount into account in preparing the audit certificate; and~~
 - ~~(iii) — to the extent that the Aurizon Network has already notified Interested Participants of the outcome of the vote, Aurizon Network will notify the Interested Participants as soon as reasonably practical of the recounted vote.~~
- ~~(f) — If:~~
- ~~(i) — in preparing an audit certificate, the auditor identifies a flaw in a vote of Interested Participants under this **clause 8.13**; and~~
 - ~~(ii) — either:
 - ~~(A) — Aurizon Network cannot remedy the flaw in a way that achieves substantial compliance with this **clause 8.13**; or~~
 - ~~(B) — the flaw would be expected to change the outcome of the vote,~~~~
- ~~then Aurizon Network may, but is not obliged to, redo the voting process.~~

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New Definitions for Clause 12

Demand Assessment: ~~[Note: Definition to be determined.]~~ means a reasonable estimation of:

- (a) the demand for Capacity beyond Existing Capacity and committed Expansions; and
- (b) the estimated time that the Capacity referred to in paragraph (a) is required.

having diligently and prudently considered relevant information.]

Pre-feasibility Study [Note: Definition to be determined.] **[QRC Note: Definition should provide for the delivery of a specified output, to a specified amount of information.]**

Feasibility Study [Note: Definition to be determined.] **[QRC Note: Definition should provide for the delivery of a specified output, to a specified amount of information.]**

JORC Code: [Note: Definition to be determined.]

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