

This mark-up contains a number of amendments which have been agreed between the QRC and Aurizon Network through consultation. For clarity, all mark-up shown in yellow highlighting reflects additional amendments proposed by the QRC which have not been agreed with Aurizon Network.

## Part 8: Network development and Expansions

### 8.11 Coal supply chain coordination

#### 8.11.1 *Supply chain coordination*

- (a) Aurizon Network will ~~use reasonable endeavours to~~ participate:
- (i) in a Supply Chain Group in relation to:
    - (A) the coordination and effective performance of a relevant coal supply chain; and
    - (B) if applicable, the development of a Supply Chain Master Plan; and
  - (ii) 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
  - (iii) in activities which maximise:
    - (A) delivery of contracted coal supply chain capacity;  
and
    - ~~(B)~~ throughput in each supply chain in accordance with the Supply Chain Group Plan.
- (b) Subject to the terms of this Undertaking, Aurizon Network will seek to act in a way that facilitates an appropriate balance between cooperation between all elements of coal supply chains (in respect of which Access forms a part) to seek to maximise the performance of those supply chains and the other matters set out in **clause 2.2(g)**.
- (c) Aurizon Network will:
  - (i) where there is a cost to Aurizon Network which is not recoverable under this Undertaking, 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)**; and
  - ~~(ii)~~ provided there is no cost to Aurizon Network which is not recoverable under this Undertaking, will be obliged to comply with the decision reached by a Supply Chain Group, even if Aurizon Network has elected not to participate in that Supply Chain Group discussion.

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### 8.11.2 System Operating Parameters

- (a) Upon commencement of this Undertaking, Aurizon Network will immediately prepare System Operating Parameters for each System.
- (b) Aurizon Network is required to submit:
- (i) its initial System Operating Parameters; and
  - (ii) any reviewed System Operating Parameters (including where no amendments have been made),
- to the QCA for approval. The QCA may, in its discretion, call for public consultation on the terms of the initial or reviewed System Operating Parameters.
- (c) After receiving the initial or reviewed System Operating Parameters from Aurizon Network and conducting any public consultation that it believes is necessary, the QCA will either:
- (i) approve Aurizon Network's submitted System Operating Parameters;
  - (ii) approve Aurizon Network's submitted System Operating Parameters subject to amendments to be made before they become operational;
  - (iii) reject Aurizon Network's submitted System Operating Parameters, and provide amendments that it requires Aurizon Network to complete before resubmission; or
  - ~~(ii)~~(iv) reject Aurizon Network's System Operating Parameters, and draft and impose its own System Operating Parameters.
- ~~(e)~~(d) In reviewing the System Operating Parameters for a Coal System, Aurizon Network will:
- (i) notify the applicable Access Holders and their Customers where applicable and Supply Chain Group (if any) and the QCA of the relevant System Operating Parameters and the time in which to make submissions;
  - (ii) consider any submissions from those Access Holders or their Customers and the Supply Chain Group in respect of the proposed System Operating Parameters or whether any variation of the System Operating Parameters is required (as applicable); and
  - (iii) respond to any such submissions as soon as reasonably practicable within 10 Business Days including whether and, if so, how Aurizon Network has varied the proposed or existing System Operating Parameters (as applicable) in response to those submissions. [QRC note: the System Operating Parameters and System Rules are essential to ensuring

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that Capacity is quickly and appropriately allocated between Access Holders and Customers. Leaving an undefined or open-ended timeframe for responding to submissions on the SOPs reduces the effectiveness of the process and does not acknowledge the need for fast and accurate amendments in the SOP.]

- (e) Without limitation to **clause 8.11.2(d)**, Aurizon Network will review the System Operating Parameters for a Coal System as soon as practical after Aurizon Network becomes aware that any ~~permanent~~ sustained change has occurred, or will occur, to that Coal System that materially ~~adversely~~ affects the System Operating Parameters.
- ~~(d)~~(f) Without limitation to **clause 8.11.2(h)**, Aurizon Network will, ~~on request from an Access Holder,~~ make the outcomes of a review of the System Operating Parameters available to that all relevant Access Holders promptly after completing the review (provided that Aurizon Network is not required to disclose any information that is confidential or which, if made available, would give rise to a breach by Aurizon Network of a confidentiality obligation). [QRC Note: The outcomes should be made available promptly (and not on request). It is not clear what confidentiality obligations would prevent disclosure of the SOP. In order for Access Holders to have any ability to meaningfully comment on Capacity it is crucial that the SOP is wholly disclosed.]
- (g) ~~Nothing in this clause 8.11.2 obliges~~ Aurizon Network ~~to vary~~ will automatically review the System Operating Parameters in the event of:
- (i) the connection of a new coal basin or port terminal;
  - (ii) the completion of a major Expansion;
  - (iii) a 30% increase in system capacity; or
  - ~~(i)~~(iv) where requested by Access Holders for at least 60% of the Train Paths or the Customers representing at least 60% of the Train Paths, in relation to the relevant Coal System.
- ~~(e)~~(h) Aurizon Network will keep its most current System Operating Parameters 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).
- ~~(f)~~(i) Aurizon Network will ensure that the System Operating Parameters are consistent with Good Engineering Practices.
- ~~(g)~~(j) On, or as soon as reasonably practicable after, the Approval Date, Aurizon Network will make available to each Access Holder the

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System Operating Parameters (as at the Approval Date) relevant to that Access Holder.

**8.11.28.11.3 Capacity ~~Review~~ Assessment**

(a) Aurizon Network will undertake a Capacity ~~assessment~~ Review for a Coal System if:

(i) the System Operating Parameters are varied as a result of a review under **clause 8.11.2(e)** or are otherwise varied in a way that Aurizon Network considers (acting reasonably) can be expected to materially ~~change~~ ~~decreases~~ the Existing Capacity in that Coal System; or

(ii) Aurizon Network knows of any Below Rail change which:

(A) is not directly or indirectly reflected in the System Operating Parameters; and

(B) is reasonably expected to result in a material and sustained change to the Existing Capacity in that Coal System.

For clarity, **clause 8.11.3(a)(ii)** does not apply to circumstances that would result in short-term, temporary or transient changes to Existing Capacity (including, for example, circumstances such as Force Majeure Events, Network Incidents and the construction, maintenance or renewal of Rail Infrastructure).

~~(a)~~(b) Without limitation to **clause 8.11.3(a)**, Aurizon Network will undertake a Capacity ~~Review~~ ~~assessment~~ for a Coal System at intervals of no more than 12 months.

~~(b)~~(c) A Capacity ~~Review~~ ~~assessment~~ for a Coal System ~~under this clause 8.11.3 (Capacity Assessment)~~ must include (without limitation):

(i) consultation by Aurizon Network with Access Holders for Train Services operating in that Coal System in relation to that ~~Capacity Review~~ ~~assessment~~;

~~(i)~~(ii) consultation with any Supply Chain Group for the relevant Coal System; and

(iii) consideration of the following factors:

~~(iii)~~(A) Operational Constraints relating to that Coal System;

~~(A)~~(B) the terms of Access Agreements relating to Train Services operating in that Coal System; and

(C) the interfaces between the Rail Infrastructure and other facilities forming part of, or affecting, the relevant supply chain; and

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~~(B)~~(iv) all other matters consistent with Good Engineering Practices.

~~(e)~~(d) Aurizon Network will promptly make the ~~outcomes of a~~ Capacity Assessment Review Outcomes available to Access Holders, Access Seekers and, if applicable, their Customers.

~~(e)~~(e) If, within 20-30 Business Days after Aurizon Network makes the ~~outcomes of a~~ Capacity Review Outcomes Assessment available in accordance with **clause 8.11.3(d)**, the Access Holders for at least 60% of the Train Paths or the Customers representing at least 60% of the Train Paths. in relation to a Coal System (as determined in accordance with **clause 8.11.3(k)**) notify Aurizon Network that they wish to have ~~a~~the Capacity Review Outcomes Assessment in relation to that Coal System reviewed by an independent expert, then:

(i) Aurizon Network will (acting reasonably and in good faith) engage an ~~appropriately qualified and experienced~~ expert approved by the QCA to determine (subject to clause 8.11.3(g)) the Capacity Review Outcome, giving reasons for its determination:

~~(1)~~ whether Aurizon Network has undertaken review the Capacity Review in accordance with Good Engineering Practices Assessment; and

whether the Capacity Review Outcomes are within the range of those that may arise from a Capacity Review undertaken in accordance with Good Engineering Practices; and

to the extent that the expert determines that the Capacity Review Outcomes are not within the range of those that may arise from a Capacity Review undertaken in accordance with Good Engineering Practices;

whether and, if applicable, how the Capacity Review Outcomes should be amended to bring them within the range of those that may arise from a Capacity Review undertaken in accordance with Good Engineering Practices; and

~~(i)~~ the reasons for those decisions;

(ii) the expert must:

(A) act independently;

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- (B) not be an employee of Aurizon Network or a Related Party of Aurizon Network;
  - ~~(iii)~~(C) have no interest or duty which conflicts or may conflict with their function as expert (which must be fully disclosed in writing before their appointment);
  - (D) ~~without limitation to **clause 8.11.3(e)(ii)**, the expert must not be an employee of Aurizon Network or a Related Party of Aurizon Network;~~ acknowledge a duty to Aurizon Network and the Access Seekers and Access Holders to act independently and in accordance with this Undertaking;
  - (E) have appropriate qualifications and practical experience;
  - (F) have regard to this Undertaking and consider all submissions by Aurizon Network and any Access Seeker or Access Holder (or their Customer);
  - (G) provide a report in relation to the expert's review setting out reasonable details of the expert's review within a reasonable time after their appointment (but not disclosing any confidential information including Protected Information); and
  - (H) will be required to give an enforceable undertaking to keep confidential, and not use for another purpose, all information and other matters coming to their knowledge by reason of their appointment and performance of their review which if on-disclosed or used for another purpose could constitute a breach of Aurizon Network's confidentiality obligations (including obligations under **Part 3**) or right to confidentiality;
- (iii) subject to **clause 8.11.3(f)**, Aurizon Network will, at the reasonable request of the expert, provide to the expert information (including all applicable Operating Plans and the relevant aspects of all applicable Access Agreements) and assistance as reasonably necessary to assist the expert to properly determine any of the matters referred to under **clause 5.1.1(a)(i)(A) and (A)** the System Review Outcomes;  
and
- (iv) Aurizon Network will promptly provide the expert's report to the QCA and relevant Access Seekers and Access Holders (or their Customers where applicable) after receiving the expert's report.

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- (f) Aurizon Network is not required to provide, or make available, to the expert:
- (i) the capacity analysis model (but Aurizon Network will run a range of scenarios in the relevant capacity analysis model, as requested by the expert (acting reasonably));
  - (ii) information, materials or other things that are not in Aurizon Network's possession ~~or control~~;
  - (iii) information, materials or other things if doing so would cause or contribute to Aurizon Network failing to comply with its obligations to another person or under a Law (but without limiting Aurizon Network's obligation to provide, or make available, to the expert all applicable Operating Plans and the relevant aspects of all applicable Access Agreements);  
or
  - (iv) any information, materials or other things (including the capacity analysis model) prior to the expert giving to Aurizon Network an enforceable undertaking in accordance with **clause 8.11.3(e)(ii)(H)** on terms satisfactory to Aurizon Network (acting reasonably and in good faith).
- (g) The expert's determination of a matter under **clause 0 or clause 5.1.1(a)(i)(A) must** 8.11.3(e)(i) must:
- (i) include a review of the System Operating Parameters as to whether the System Operating Parameters used:
    - (A) are consistent with existing Access Agreements including Operating Plans accepted by Aurizon Network under Access Agreements; and
    - (B) for assumptions in respect of matters not derived from Access Agreements or Operating Plans accepted by Aurizon Network, are ~~within the range of those that may be made or used in accordance with Good Engineering Practices~~ appropriate; and
  - (ii) be consistent with any positions that Aurizon Network has adopted for the purpose of complying with obligations, duties, requirements, undertakings, commitments or things that Aurizon Network is legally obliged to comply with including under:
    - (A) any Rail Connection Agreement, User Funding Agreement or any other agreement, deed or enforceable document;
    - (B) any Laws (including the Rail Safety Act); and
    - (C) the Undertaking; and

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- (iii) not be such that it may cause or contribute to a breach of any of the obligations or other matters referred to in **clause 8.11.3(g)(ii)** if that determination was complied with by Aurizon Network.
- ~~(e)~~(h) If the expert determines under **clause 5.1.1(a)(i)(A)** **8.11.3(e)(i)** that the Capacity Review Outcomes should be amended, then the Capacity Review Outcomes are taken to be amended as determined by the expert.
- (i) If ~~a~~the Capacity **Review Outcomes 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:
- (i) 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; and
- (ii) assess the affects of the Deficit (if any) on existing Access Rights and identify potential solutions to address the Deficit.
- ~~(f)~~(j) Nothing in this **clause 8.11.3** affects or limits the application of **clause 8.10.3** which sets out how Capacity Shortfalls will be addressed or affects Aurizon Network's obligations or liabilities under an Access Agreement or other agreement.
- ~~(g)~~(k) For the purpose of **clauses 8.11.2(g), 8.11.3(e), 8.12(e) and 8.12(i)**, the relevant Train Paths must be determined in a manner consistent with the following principles:
- ~~(i)~~ the Train Paths for an Access Holder only include those Train Paths for the Access Holder relating solely to the relevant Coal System;
- [QRC note: this clause ignores the possible impacts of cross-system traffic]
- ~~(ii)~~(i) the Train Paths must be calculated as at the date on which Aurizon Network receives a notice under **clause 8.11.3(e) (Notice Date)**, and will include any Conditional Access Holder Train Paths which might impact on the Capacity of the Coal System in question;
- ~~(iii)~~(ii) subject to **clause 8.11.3(k)(iii)**, the Train Paths must be determined (based on the Access Rights specified in that Access Agreement) for a 12 month period starting on the Notice Date; and
- ~~(iv)~~(iii) where:
- (A) the Access Agreement is due to expire less than 12 months after the Notice Date; and

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(B) there has been a Renewal in relation to the relevant Access Rights under that Access Agreement,

the Train Paths must be determined (based on the Access Rights specified in the relevant Access Agreements) for a 12 month period starting on the Notice Date.

~~(h)~~(l) Any obligation on Aurizon Network to provide or make available any information in accordance with this **clause 8.11.3** is subject to:

(i) Aurizon Network being reasonably able to do so without causing or contributing to a breach of Aurizon Network's obligations under **Part 3**, or an Access Agreement ~~or any relevant confidentiality agreement~~; and

(ii) if it is possible to do so, for the purpose of avoiding a breach of the type referred to in **clause 8.11.3(l)(i)**, Aurizon Network may redact any information that is confidential or which, if published, would give rise to such a breach or do or refrain from doing anything else reasonably necessary to avoid a breach of the type referred to in **clause 8.11.3(l)(i)**.

unless such information can reasonably be aggregated or de-identified as envisaged under the relevant ring-fencing obligations in Part 3 of this Undertaking.

## 8.12 Network Development Plan

(a) Aurizon Network will develop a Network Development Plan and keep its most current Network Development Plan available on the Website.

(b) The Network Development Plan will:

(i) comply with the Network Management Principles;

(ii) align with any System Operating Parameters;

(iii) align with any Supply Chain Master Plan;

(iv) if applicable, consider any supply chain model; and

(v) will be based on a concept level of study.

~~(a)~~(c) The Network Development Plan's objective is to identify a selection of medium to long-term alternatives that could potentially be implemented to satisfy potential future demand for Access in each Coal System, and will include options for otherwise developing or improving a Coal System's performance.

~~(b)~~(d) The Network Development Plan will contain (as a minimum) the following information:

(i) a review of the a detailed assessment of the nameplate capacity by Track Segment for each Coal System;

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- (ii) a detailed assessment of capacity broken down by Existing Capacity, Committed Capacity and Available Capacity (and not taking into account Operational Constraints or removing those operations and maintenance components considered in the definition of Existing Capacity);
- (iii) a review of the details of Operational Constraints, including details of the impact of Operational Constraints on Existing Capacity and Available Capacity;
- (iv) the System Operating Parameters upon which the Network Development Plan is based;
- (v) the aggregated contracted Train Paths by Track Segment for each Coal System for coal-carrying Train Services (both with and without the impact of Operational Constraints);
- ~~(vi)~~ any capacity planning scenarios employed by Aurizon Network;
- ~~(vii)~~ an overview of opportunities for increasing Existing Capacity including, to the extent Aurizon Network has the necessary skills, knowledge and experience, opportunities comprised of actions known to Aurizon Network, or proposed to Aurizon Network by any Supply Chain Group, other than Expansions or other Below Rail actions<sup>1</sup> (Non-Below Rail Alternatives);
- ~~(viii)~~ a comparison of opportunities for increasing Existing Capacity for each Coal System including indicative timeframes and indicative costs provided that for Non-Below Rail Alternatives only to the extent Aurizon Network has the necessary skills, knowledge and experience to comment on possible timeframes or costs; and
- ~~(ix)~~ the studies and investigations that Aurizon Network expects to undertake to inform the next review and update of the Network Development Plan.

- (e) Aurizon Network will review and update the Network Development Plan annually or more frequently as it considers necessary (acting reasonably), including if circumstances change in a way that Aurizon Network expects will materially adversely affect the Network Development Plan including (but not limited to) in the event of:
  - (i) the connection of a new coal basin or port terminal;
  - (ii) the completion of a major Expansion;
  - (iii) a 30% increase in System Capacity;

<sup>1</sup> For example, Above Rail actions or other actions upstream or downstream of Below Rail actions in the supply chain such as changes to mine loading or terminal unloading facilities or to supply chain operating modes.

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(iv) a request for a review by Access Holders for at least 60% of the Train Paths or the Customers representing at least 60% of the Train Paths, in relation to the relevant Coal System; or

(v) a change in circumstances in a way that Aurizon Network expects (acting reasonably and in good faith) will materially affect the Network Management Principles, the Network Development Plan, or the System Operating Parameters.

~~(e)~~(f) 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 and their Customers where applicable, Access Seekers and their Customers where applicable, 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;

(B) forecast changes in demand for Queensland coal exports;

(C) any Expression of Interest submissions;

(D) any relevant Access Applications;

~~(D)~~(E) any Expansion that Aurizon Network is obliged to fund under this Part 8;

~~(E)~~(F) any relevant port terminal developments or development of other out-loading facilities;

~~(F)~~(G) any relevant previous or current studies undertaken by Aurizon Network;

(H) any supply chain master plan;

~~(G)~~(I) the Network Management Principles;

~~(H)~~(J) relevant System Operating Parameters, System Rules and maintenance plans; and

(K) other developments or circumstances which in Aurizon Network's opinion are relevant to the Network Development Plan.

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

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- (i) identifies, by individual Coal System, capacity analysis information, reasons for the Expansion, identification of projects that will be required to provide increased capacity to meet increased demand, and estimated timing and volume trigger points for each project;
  - (ii) 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;
  - (iii) quantifies the impact on Capacity during construction and measures for ameliorating this impact; and
  - (iv) outlines alternatives considered and assessed during the evaluation and the reasons that these will not be progressed.
- (h) Without limitation to **clause 8.12(f)(i)**, as part of developing or reviewing a Network Development Plan and Aurizon Network's final stage of consultation with Access Holders, Access Seekers and other interested parties identified by Aurizon Network in relation to the proposed Network Development Plan, Aurizon Network will:
- (i) make available to those persons a draft Network Development Plan; and
  - (ii) give those persons 420 Business Days to respond to that draft, and will consider responses from those persons received within that time, prior to finalising the Network Development Plan for publication on the Website.
- (i) 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.
- (j) If, prior to a draft Network Development Plan being made available under **clause 8.12(h)(i)**, the Access Holders for at least 60% of the Train Paths or the Customers representing at least 60% of the Train Paths, Access Holders in relation to a Coal System notify Aurizon Network that they wish to have a peer review of Aurizon Network's capacity planning inputs and processes and capacity model outputs to the extent relevant to the preparation or review (as applicable) of the Network Development Plan by a consultant as part of Aurizon Network's consultation under **clause 8.12(f)(i)**, then Aurizon Network will:

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- (i) use reasonable endeavours to cooperate with a consultant jointly appointed by, and at the cost of, the Access Holders for the Coal System for such a peer review; and
- (ii) run a range of scenarios in the relevant capacity model, as requested by that consultant (acting reasonably).

Aurizon Network's obligations under this **clause 8.12(j)** do not include any obligation to provide the consultant with access to **the capacity analysis model**, confidential information **or any other information of thing in respect of which Aurizon Network has any intellectual property**<sup>2</sup> (unless the consultant agrees to execute a confidentiality agreement reasonably acceptable to Aurizon Network). Aurizon Network is not obliged to cooperate with more than one consultant for a review contemplated by this **clause 8.12(j)**.

### **8.13 Acceptance of capital expenditure projects by Interested Participants** [QRC Note: The QRC reserves comment on this clause until after review of the proposed Expansion pre-approval process which is contemplated as a part of the QCA's SUFA discussion paper]

#### **8.13.1 Purpose**

- (a) This **clause 8.13** sets out a voting process for relevant Access Holders, Customers and Access Seekers to accept the prudence of scope of a capital expenditure project.
- (b) The voting process is an alternative to seeking acceptance of those matters by the QCA under **clause 3** 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.

#### **8.13.2 Application**

- (a) This **clause 8.13** applies where Aurizon Network seeks acceptance of:
  - (i) the scope of a capital expenditure project; or

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<sup>2</sup> 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.

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- (ii) a change to the scope of a capital expenditure project where:
  - (A) Aurizon Network previously obtained the acceptance of Interested Participants for that scope; and
  - (B) that change is a material change, **(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 of a capital expenditure project under this **clause 8.13**; or
  - (ii) prevents Aurizon Network from seeking the QCA's acceptance of the scope of a capital expenditure project, even if a vote seeking the acceptance of the same under this **clause 8.13** has been unsuccessful.
- (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 of a capital expenditure project under this **clause 8.13**.
- (e) This **clause 8.13** must be read in conjunction with **clauses 2.2(h)** and **(i)** of **schedule E** (as though those provisions were part of this **clause 8.13**) to the extent that those provisions refer to this **clause 8.13**.

### **8.13.3 Identification of Interested Participants**

- (a) For a vote called by Aurizon Network regarding the acceptance of the scope 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.
- (b) A Customer who is an Interested Participant may notify Aurizon Network nominating its Access Seeker or Access Holder, as

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applicable, (**Nominee**) to vote on its behalf. If Aurizon Network receives such a nomination, then:

- (i) the Nominee is taken to be the Customer's agent for the purposes of the vote; and
  - (ii) where the Customer requests it, Aurizon Network will provide the Customer with a copy of notices given to the Nominee under this **clause 8.13** contemporaneously with the giving of that notice to the Nominee.
- (c) Despite **clause 8.13.3(a)**:
- (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 that Customer will not be treated as a Customer for each Access Seeker thereby effectively doubling its Affected Train Paths and consequential voting power; 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.

#### **8.13.4 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 including the amount of capital expenditure for the relevant capital expenditure project into the Regulatory Asset Base.
- (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.

#### **8.13.5 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, including comprehensive details of the proposed Expansion and the anticipated effect on Access Charges of that Expansion.
- (b) The period within which the vote will occur (**Voting Period**) will be:
- (i) the period specified in the notice under **clause 8.13.5(a)(i)**, being at least six weeks after the notice is given; or
  - (ii) where the Interested Participants for at least 60% of the aggregated Affected Train Paths for all Interested Participants notify Aurizon Network requesting a specified extension to the period specified in the notice under **clause 8.13.5(a)(i)**, the extended period as requested by those Interested Participants.
- (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' it is not required to give reasons on the basis that the capital expenditure project:

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- (i) ~~\_\_\_\_\_ is not technically and/or economically feasible or is inconsistent with the safe and reliable operation of the Rail Infrastructure;~~
- (ii) ~~\_\_\_\_\_ would materially adversely affect the Interested Participant's access rights, providing evidence of how those rights would be affected; or~~
- ~~(iii) is inefficient, including having regard to the System Operating Parameters referred to by Aurizon Network,~~

~~then that 'no' vote must be accompanied by detailed reasons in relation to those matters. For clarity, **clause 8.13.5(d)(i) to (iii)(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's vote is deemed to have accepted the relevant Voting Proposal—that is, voted 'yes' will be excluded from the outcome of the vote and will not be counted as either a 'yes' or a 'no' vote.

- (f) ~~\_\_\_\_\_ If an Interested Participant responds with a 'no' vote, but:~~
  - (i) ~~\_\_\_\_\_ that vote does not comply with **clause 8.13.5(d)8.13.5(d)**; or~~
  - (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) When determining whether to exclude an Interested Participant's vote under **clause 8.13.5(f)** Aurizon Network may will seek the QCA's approval to exclude any votes on the basis set out in **clause 8.13.5(f)**. The QCA will consult with the Interested Participant (including where **clause 8.13.3(b)8.13.3(b)** applies, both the relevant Nominee and Customer) in reaching a decision. The QCA will advise Aurizon Network and the Interested Participant of its decision within two weeks after receiving the request from Aurizon Network. If the QCA approves the exclusion of an Interested Participant's vote, then Aurizon Network is taken to have complied with **clause 8.13.5(f)** if it excludes that Interested Participant's vote.~~

- (h) (f) 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)8.13.5(f)**)~~ have, or are deemed to have, voted 'yes'.

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(g) 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.

#### 8.13.6 Information and materials relating to acceptance votes

- (a) Aurizon Network will make available information, when acting reasonably it considers it relevant, prudent 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 (unless the consultant agrees to execute a confidentiality agreement reasonably acceptable to Aurizon Network) or any other information or thing in respect of which Aurizon Network has any intellectual property<sup>3</sup>.
- (c) Aurizon Network will make available to Interested Participants comprehensive information on the capital expansion project where those Interested Participants have been asked to vote on the scope of that capital expenditure project, including a working paper the requirements for which are referred to in **clauses 8.13.6(d)**. For clarity, a working paper may relate to more than one capital expenditure project.
- (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) comprehensive 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;

<sup>3</sup> ~~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.~~

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- (C) the additional capacity expected to be delivered by the project;
  - (D) the project's **preliminary estimated** cost;
  - (E) the potential impact of project construction on Existing Capacity;
  - (F) the relevant System Operating Parameters;
  - (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) Without limitation to **clause 8.13.6(a)**, Aurizon Network will also provide to Interested Participants information that is relevant to the capital expenditure project's scope being voted on and is reasonably available to Aurizon Network, as soon as reasonably practical after receiving a written request from an Interested Participant for that information. **However, Aurizon Network is not obliged to provide that information if doing so would result in Aurizon Network failing to comply with this Undertaking or any contractual or other obligation to keep that information confidential.**

### 8.13.7 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

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- (ii) if it can remedy the concern in a way that achieves substantial compliance.<sup>4</sup>
- (c) An audit of Aurizon Network's compliance this **clause 8.13** in relation to a vote will be procured by **Aurizon Network** the QCA:
  - (i) prior to Aurizon Network relying on that vote for the purposes of the QCA's acceptance of prudency of scope of capital expenditure project; and
  - (ii) subject to **clauses 8.13.7(d) to (f)**, in accordance with **clauses ~~10.9~~10.9(a) to (d) and 10.9(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:**

<sup>4</sup> 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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~~(iii)~~(ii) Aurizon Network cannot remedy the flaw in a way that achieves substantial compliance with this **clause 8.13** (for example, as referred to under **clauses 8.13.7(b)** or **(e)**), ~~or~~

~~(A)~~ ~~the flaw would be expected to change the outcome of the vote,~~

then:

(iii) the vote will be invalid and ineffective; and

(iv) Aurizon Network may, but is not obliged to, re-run~~de~~ the voting process.

(g) In this **clause 8.13.7** substantial compliance occurs where viewed objectively:

(i) Aurizon Network's acts or omissions in relation to a vote under this **clause 8.13** do not ~~strictly~~ comply with this **clause 8.13**; and

(ii) that non-compliance could not ~~cannot reasonably be taken to~~ have changed the outcome of the vote under **clause 8.13.5(f)** from that which ~~would~~ could ~~reasonably~~ have been the case had there been ~~strict~~ compliance.

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## Part 12: Definitions and Interpretation

<u>Capacity Review</u>	<u>A review by Aurizon Network under <b>clause 8.11.3</b> of the Capacity of, and the difference between the Capacity and the Committed Capacity for, a Coal System.</u>
<u>Capacity Review Outcomes</u>	<u>The outcomes of a Capacity Review, including the specification of Capacity, differences between Committed Capacity and Capacity and the reasons for each of the above.</u>
<b>Existing Capacity</b>	The existing capability of Rail Infrastructure (in the absence of any Expansion that has not been constructed and completed) to accommodate Train Services, after taking into account:  (a) Aurizon Network’s reasonable requirements for the exclusive or partial utilisation of that Rail Infrastructure for the purposes of performing activities associated with the maintenance, repair, construction or other enhancement of Rail Infrastructure (including Expansions and Customer Specific Branch Lines), including the operation of work Trains; and  (b) Aurizon network’s allowances for “day of operations” losses, speed restrictions and other operational losses or restrictions applicable to the Rail Infrastructure <u>as set out in</u> the System Operating Parameters.
<b>Interested Participant</b>	The meaning given to the term in <b>clauses 8.13.3(a) and (a), as applicable.</b>
<b>Planned Capacity</b>	The increase in Existing Capacity that is expected to result from an Expansion that Aurizon Network is contractually committed to construct <u>or permit, or that Aurizon Network is required by this Undertaking to fund or has otherwise agreed to fund.</u>

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**System Operating Parameters**

Aurizon Network's assumptions on the operation of each element of the coal supply chain and the interfaces between those elements including:

- (a) the operating parameters specified in Access Agreements and in Operating Plans; and
- (b) assumptions about Aurizon Network's asset management and maintenance, Operational Constraints and~~in relation to the supply chain operating mode, seasonal variations and live run losses.~~