

# The 2014 Undertaking

## Contents

<b>Part 1 : Preamble</b>	<b>9</b>
1.1 Aurizon Network	9
1.2 Responsibilities	9
1.3 Access undertaking	9
1.4 Approval	9
1.5 Information	9
1.6 Negotiating Access	9
<b>Part 2 : Intent and Scope</b>	<b>10</b>
2.1 Duration	10
2.2 Objective	10
2.3 Interpretation of this Undertaking	12
2.4 Behavioural obligations	12
2.5 Scope	15
2.6 Aurizon Holdings to execute Deed	16
2.7 Electricity supply and sale	17
<b>Part 3 : Ringfencing</b>	<b>20</b>
Section A – General Provisions	20
3.1 Organisational structure	20
3.2 Purpose	20
3.3 Compliance declaration	21
Section B – Aurizon Network’s Functional Responsibility	22
3.4 Function of Aurizon Network in the Aurizon Group for the purpose of this Undertaking	22
3.5 Obligation of Aurizon Network to perform Below Rail Services	23
3.6 Staffing of Aurizon Network	24
3.7 Accounting separation <i>[Note: previously clause 10.1.1]</i>	26
3.7.1 Preparation of financial statements	26
3.7.2 Self Insurance	27
3.7.3 Audit of financial statements <i>[Note: UT3 clause 3.3.2 reinserted]</i>	28
Section C – Management of Aurizon Network	29
3.8 Independence of senior management	29
Section D – Confidential Information	30

<a href="#">3.9 No waiver or exclusion of Undertaking by voluntary agreement</a>	30
<a href="#">3.10 Request for Aurizon Network to enter confidentiality agreement</a>	30
<a href="#">3.11 Overarching commitment to information security</a>	30
<a href="#">3.12 Process for permitted disclosure of Confidential Information</a>	31
<a href="#">3.13 Disclosure of Confidential Information</a>	32
<a href="#">3.14 Confidential Information Register</a>	36
<a href="#">3.15 Mandatory Confidential Information training</a>	38
<a href="#">3.16 High-Risk Persons</a>	39
<a href="#">3.17 Exit certificates</a>	40
<a href="#">3.18 Security measures</a>	41
<a href="#">3.19 Decision making</a>	41
<a href="#">Section E – Complaints and Waiver</a>	42
<a href="#">3.20 Complaint handling</a>	42
<a href="#">Section F – Responsibility for Rail Infrastructure</a>	43
<a href="#">3.21 Line Diagrams</a>	43
<a href="#">3.22 Transfer of rail transport infrastructure from Aurizon Party</a>	45
<b><a href="#">Part 4 : Negotiation framework</a></b>	<b>48</b>
<a href="#">4.1 Overview</a>	48
<a href="#">4.2 Initial enquiries</a>	49
<a href="#">4.3 Access Application</a>	49
<a href="#">4.4 Acknowledgement of Access Application</a>	50
<a href="#">4.5 Revisions to an Access Application</a>	54
<a href="#">4.6 Indicative Access Proposal</a>	60
<a href="#">4.7 Notification of intent</a>	63
<a href="#">4.8 Multiple applications for the same Access</a>	63
<a href="#">4.9 Requirements for Customers, Customer Access Seekers and Train Operators</a>	64
<a href="#">4.9.1 Customers and Customer Access Seekers</a>	64
<a href="#">4.9.2 Train Operators</a>	66
<a href="#">4.10 Negotiation process</a>	67
<a href="#">4.10.1 Negotiation Period</a>	67
<a href="#">4.10.2 Issues to be addressed during negotiation</a>	70
<a href="#">4.11 Negotiation of Access Agreements and Train Operations Deeds</a>	73
<a href="#">4.12 Cessation of negotiations</a>	74

<b>Part 5 : Access Agreements</b>	<b>78</b>
5.1 Development of Access Agreement	78
5.2 Access Charges under Access Agreements	79
5.3 Development of Train Operations Deed	79
5.4 Review of Standard Access Agreement or Standard Train Operations Deed	80
<b>Part 6 : Pricing principles</b>	<b>83</b>
6.1 Application of pricing principles	83
6.2 Price differentiation	83
6.2.1 Limitations on price differentiation	83
6.2.2 Default application of Reference Tariff	84
6.2.3 Price differentiation where a Reference Tariff applies	84
6.2.4 Price differentiation where no Reference Tariff applies	85
6.2.5 Consequences if contravention of Part 6	86
6.3 Access Charges for new coal carrying Train Services	86
6.3.1 Determination of Access Charges	86
6.3.2 QCA approval of Private Incremental Costs	88
6.4 Access Charges for coal carrying Train Services that require an Expansion	89
6.4.1 Expansion pricing principles	89
6.4.2 Consensus Expansion	90
6.4.3 Pricing Proposal	91
6.4.4 Endorsed Expansions	93
6.4.5 Customised Expansions	96
6.4.6 Reference Tariffs	96
6.4.7 Allocation of Asset Replacement and Renewal Expenditure	97
6.4.8 Indicative Access Charge	97
6.4.9 Interaction with Access Charges for new or additional coal carrying Train Services that involve the use of Private Infrastructure	97
6.5 Process for acceptance of new Reference Tariff	97
6.5.1 Process	97
6.5.2 Access Charge review provisions	99
6.6 Pricing limits	100
6.6.1 Application of pricing limits	100
6.6.2 Setting price limits	100
6.6.3 Application of Maximum Allowable Revenue	100
6.7 Pricing objectives	102
6.7.1 Rail Infrastructure utilisation	102
6.8 Revenue adequacy	103
6.9 Reference Tariffs	103
6.9.1 Application of Reference Tariffs	103
6.9.2 Review of Reference Tariffs	104
6.9.3 Publishing updated Schedule F	104

<a href="#">6.10 Structure of non-Reference Tariff Access Charges</a>	104
<a href="#">6.11 QCA Levy</a>	105
<a href="#">6.12 Regulatory Asset Base</a>	105
<a href="#">6.13 Access Conditions</a>	105
<a href="#">6.13.1 Use of Access Conditions</a>	105
<a href="#">6.13.2 Approval of Access Conditions</a>	105
<a href="#">6.13.3 Prohibited Access Conditions</a>	108
<b><a href="#">Part 7 : Available Capacity allocation and management</a></b>	<b>110</b>
<a href="#">7.1 Application</a>	110
<a href="#">7.2 Capacity allocation and registers</a>	111
<a href="#">7.2.1 General requirement for allocation</a>	111
<a href="#">7.2.2 Capacity Notification Register</a>	112
<a href="#">7.2.3 Committed Capacity Register</a>	113
<a href="#">7.3 Renewals</a>	114
<a href="#">7.4 Dealing with Access Rights</a>	117
<a href="#">7.4.1 Assignments</a>	117
<a href="#">7.4.2 Transfers</a>	117
<a href="#">7.4.3 Relinquishments</a>	128
<a href="#">7.4.4 General provisions</a>	130
<a href="#">7.5 Mutually Exclusive Access Applications</a>	133
<a href="#">7.5.1 Notification and assistance</a>	133
<a href="#">7.5.2 Queuing mechanism</a>	133
<a href="#">7.5.3 Mutually Exclusive Access Application</a>	136
<a href="#">7.6 Capacity resumption</a>	137
<a href="#">7.7 Force majeure</a>	139
<a href="#">7.7.1 Suspension of obligations</a>	139
<a href="#">7.7.2 Duty to mitigate</a>	141
<a href="#">7.7.3 End of period of Force Majeure Event</a>	141
<a href="#">7.7.4 Reduction of Access Rights due to loss or damage to Nominated Network</a>	142
<b><a href="#">Part 7A : Baseline Capacity</a></b>	<b>144</b>
<a href="#">7A.1 Intent</a>	144
<a href="#">7A.2 Network Management Principles</a>	144
<a href="#">7A.2.1 Compliance with Network Management Principles</a>	144
<a href="#">7A.2.2 Nature of the System Rules</a>	144
<a href="#">7A.2.3 Making the initial System Rules for a Coal System</a>	145
<a href="#">7A.2.4 Reviewing and amending the System Rules</a>	145
<a href="#">7A.2.5 Approval of System Rules</a>	148
<a href="#">7A.2.6 General provisions</a>	150
<a href="#">7A.3 Supply Chain coordination</a>	150
<a href="#">7A.4 Capacity assessments</a>	151
<a href="#">7A.4.1 Baseline Capacity Assessment</a>	151
<a href="#">7A.4.2 Capacity Assessment</a>	156

7A.4.3 Capacity Deficit	160
7A.5 System Operating Parameters	163
7A.6 Network Development Plan	166
<b>Part 8 : Network development and Expansions</b>	<b>170</b>
8.1 Overview	170
8.2 General principles	170
8.2.1 Rights and obligations to fund, construct or permit the creation of new Rail Infrastructure	170
8.2.2 Disputes under Part 8	175
8.2.3 Interdependent and sequential nature of Expansions	177
8.2.4 Determination of sufficient demand for an Expansion	179
8.2.5 Participation of Customers	180
8.2.6 Compliance with obligations	181
8.3 Undertaking Concept Studies, Pre-feasibility Studies and Feasibility Studies	181
8.3.1 Concept Studies	181
8.3.2 Pre-feasibility Study	182
8.3.3 Feasibility Studies	183
8.3.4 General provisions	183
8.4 Funding Concept Studies, Pre-feasibility Studies and Feasibility Studies	186
8.4.1 Concept Studies	186
8.4.2 Pre-feasibility Studies	186
8.4.3 Feasibility Studies	188
8.4.4 General provisions	191
8.5 Provisional Capacity Allocation	193
8.6 Step-in where Aurizon Network fails to enter into Studies Funding Agreement or delay doing so	196
8.7 Funding an Expansion	199
8.7.1 General	199
8.7.2 Inclusion of Expansion cost in Regulatory Asset Base	200
8.8 User Funded Expansions	201
8.8.1 Process where Users intend to fund an Expansion	201
8.8.2 Inconsistency with a User Funding Agreement	202
8.8.3 Tax rulings	202
8.8.4 Development and review of the SUFA	206
8.9 Contracting for Capacity	208
8.9.1 Access Agreements conditional on an Expansion	208
8.9.2 Capacity analysis	208
8.9.3 Capacity shortfall	208
8.9.4 Funding a Shortfall Expansion	210
8.9.5 Reduction of Conditional Access Rights due to Capacity Shortfall	212
<b>Part 9 : Connecting Private Infrastructure</b>	<b>215</b>
9.1 Connecting Infrastructure	215

<b>Part 10 : Reporting, compliance and audits</b>	<b>220</b>
10.1 Overview [New Clause]	220
10.2 General Principles [New clause]	220
10.3 Network performance	220
10.3.1 Annual maintenance plan [Note: previously clause 10.1.3]	220
10.3.2 Quarterly maintenance cost report [Note: previously clause 10.1.4]	221
10.3.3 Annual maintenance cost report [Note: Previously clause 10.1.4]	221
10.3.4 Quarterly network performance report [Note: previously clause 10.1.5]	223
10.4 Reports	226
10.4.1 Annual financial report [Note: previously clause 10.1.1]	226
10.4.2 Public annual Regulatory Asset Base roll-forward report [Note: previously clause 10.1.6]	227
10.4.3 Conditions Based Assessment [Note: previously clause 10.4]	227
10.5 Compliance with this Undertaking	230
10.5.1 Compliance Officer [Note: previously clause 10.5]	230
10.5.2 Annual compliance report [Note: previously clause 10.1.2]	230
10.5.3 Breach reports to the QCA [Note: previously clause 10.2]	233
10.6 Audit	234
10.6.1 Report auditing [Note: previously clause 10.7]	234
10.6.2 Conflicts audit [Note: previously clause 10.9]	234
10.6.3 Compliance audit requested by the QCA [Note: previously clause 10.8]	235
10.6.4 Audit process [Note: previously clause 10.10]	236
10.7 General	238
10.7.1 Information provision [previously: clause 10.3.1 and 10.3.2]	238
10.7.2 Errors in reports [previously clause 10.1.7]	239
10.7.3 Certifications required from Aurizon Network's Executive Officer [previously clause 10.6]	239
<b>Part 11 : Dispute Resolution and Decision Making</b>	<b>241</b>
11.1 Dispute Resolution	241
11.1.1 Disputes	241
11.1.2 Chief executive resolution	242
11.1.3 Mediation	243
11.1.4 Expert determination	244
11.1.5 Determination by the QCA	248
11.1.6 Procedure	249
11.1.7 Application to Part 8 Disputes	249
11.2 QCA decision-making	249
<b>Part 12 Definitions and Interpretation</b>	<b>252</b>
12.1 Definitions	252
12.2 Interpretation	307
12.3 Notices	310
12.4 Transitional	311

<a href="#"><u>Schedule A</u></a>	<b>313</b>
<a href="#"><u>Schedule B</u></a>	<b>317</b>
<a href="#"><u>Schedule C</u></a>	<b>324</b>
<a href="#"><u>Schedule D</u></a>	<b>332</b>
<a href="#"><u>Schedule E</u></a>	<b>339</b>
<a href="#"><u>Schedule F</u></a>	<b>356</b>
<a href="#"><u>Schedule G</u></a>	<b>417</b>
<a href="#"><u>Schedule H</u></a>	<b>442</b>
<a href="#"><u>Schedule I</u></a>	<b>443</b>
<a href="#"><u>Schedule J</u></a>	<b>459</b>



## Part 1: Preamble

### **1.1 Aurizon Network**

Aurizon Network is a member of the Aurizon Group which operates as a leading integrated national transport provider.

### **1.2 Responsibilities**

Aurizon Network is responsible for providing, maintaining and managing the Rail Infrastructure and for providing and managing access to it.

### **1.3 Access undertaking**

This Undertaking governs the process by which Access will be negotiated and provided.

### **1.4 Approval**

Aurizon Network has developed this Undertaking in accordance with section 136 of the Act. This Undertaking has been approved by the QCA in accordance with the Act.

### **1.5 Information**

Information on obtaining Access is contained in this Undertaking. Further information can be found on the Website.

### **1.6 Negotiating Access**

To negotiate Access please email [access.services@aurizon.com.au](mailto:access.services@aurizon.com.au).

## Part 2: Intent and Scope

### 2.1 Duration

- (a) ~~Subject to clause 2.1(b), t~~This Undertaking is effective from the Approval Date to the Terminating Date.
- (b) ~~The Reference Tariffs, as approved in this Undertaking on the Approval Date, apply retrospectively and are effective from the Commencing Date.~~Following the Approval Date, Adjustment Charges will be calculated in respect of the period between the Adjustment Date and the Approval Date in accordance with Schedule F and will be payable in accordance with that Schedule. For clarity, the Adjustment Charges do not involve the retrospective application of this Undertaking, but are amounts payable under this Undertaking that have been calculated by reference to a period prior to the Approval Date.

### 2.2 Objective

The objective of this Undertaking is, without limitation, to:

- (a) ensure the service taken to be declared under section 250(1)(a) of the Act is provided in a manner that does not unfairly differentiate in a material way (as that term is defined in section 137(3) of the Act);
- (b) prevent Aurizon Network recovering, through the price of access to the service taken to be declared under section 250(1)(a) of the Act, any costs that are not reasonably attributable to the provision of that service;
- ~~(a)~~(c) facilitate the ~~non-discriminatory~~ negotiation of access agreements by Aurizon Network and Access Seekers;
- ~~(b)~~(d) apply the provisions of the Act through:
  - (i) the establishment of processes for Access negotiations and the utilisation of Capacity that are expeditious, efficient, timely, flexible, commercial and non-discriminatory;
  - (ii) the establishment of processes and principles to provide guidance in relation to the pricing, and the terms and conditions, of Access; and
  - (iii) the establishment of processes and principles for the planning and development of Expansions and the framework for the negotiation of terms for the funding of Pre-feasibility Studies, Feasibility Studies and Expansions;
- ~~(e)~~(e) provide an efficient, effective and binding Dispute resolution process;  
and
- ~~(d)~~(f) provide that actions under this Undertaking are consistent with the objectives for rail under section 2(2)(d) of the TIA and that such

actions and this Undertaking are also consistent with the objectives and provisions of the Act;

- ~~(e) — ensure Aurizon Network acts in a manner that is consistent with the unfair differentiation obligations under sections 100(2) to (4) and section 168C of the Act;~~
- ~~(f) — ensure Aurizon Network applies the provisions of this Undertaking consistently to all Access Seekers, Access Holders, Train Operators, Access Applications and negotiations for Access, except where this Undertaking expressly provides otherwise; and~~
- ~~(g) — ensure Aurizon Network does not, and procures that its Related Parties do not:
  - ~~(i) — engage in conduct for the purposes of preventing or hindering an Access Seeker's or Access Holder's Access (without derogating in any way from Aurizon Network's obligations under sections 104 or 125 of the Act); or~~
  - ~~(ii) — provide Access to:
    - ~~(A) — a Related Operator;~~
    - ~~(B) — a Related Competitor; or~~
    - ~~(C) — a Third Party that has commercial arrangements with a Related Competitor,~~  
  
~~on terms more favourable to the Related Operator, Related Competitor or Third Party than the terms on which Aurizon Network provides Access to competitors of Related Operators or Related Competitors, as applicable (having regard to all of the terms on, and circumstances in which, Access is provided including the Access Charges and differences in the Access Rights provided or utilised).~~~~~~
- ~~(h) — ensure that:
  - ~~(i) — all transactions between Aurizon Network and Related Operators in relation to Access are conducted on an arms-length basis;~~
  - ~~(ii) — all Access Seekers, irrespective of whether they are an Aurizon Party or a Third Party:
    - ~~(A) — are provided with a consistent level of service; and~~
    - ~~(B) — given an equal opportunity to obtain Access Rights;~~
    - ~~(C) — subject to the express provisions of the Act and this Undertaking; and~~~~
  - ~~(iii) — all decisions made under this Undertaking are made in a manner that is consistent between all Access Seekers and/or Access Holders in the same circumstances;~~~~

- ~~(i) — ensure that Aurizon Network does not engage in any activity or conduct (or agree to engage in such activity or conduct), either independently or with Related Operators, which has the purpose of, results in or creates, or is likely to result in or create:~~
  - ~~(i) — cost shifting;~~
  - ~~(ii) — cross-subsidies;~~
  - ~~(iii) — price or margin squeezing; or~~
  - ~~(iv) — a substantial lessening of competition or a situation that is otherwise anti-competitive;~~
- ~~(j) — achieve an appropriate balance between:~~
  - ~~(i) — the legitimate business interests of Aurizon Network;~~
  - ~~(ii) — the public interest, including the public interest in having competition in markets;~~
  - ~~(iii) — the interests of Access Seekers, including in being:~~
    - ~~(A) — treated in a fair, consistent and non-discriminatory manner; and~~
    - ~~(B) — provided Access on reasonable commercial terms;~~
  - ~~(iv) — cooperation between all elements of Supply Chains (in respect of which Access forms a part) to seek to maximise the performance of those Supply Chains; and~~
  - ~~(v) — to the extent applicable, the pricing principles set out in section 168A of the Act.~~

### 2.3 Interpretation of this Undertaking

This Undertaking must be interpreted in a manner that best achieves the objectives set out in **clause 2.2**, ~~but subject to the objective specified in section 69E of the Act.~~

- ~~(a) — This Undertaking must also be interpreted in a manner that best gives effect to the objective specified in section 69E of the Act.~~

### 2.4 Behavioural obligations ~~Non-discriminatory treatment~~

- ~~(a) — This Undertaking must be consistently applied to all Access Seekers, Access Applications and negotiations for Access.~~

In providing Access and in negotiations for Access, Aurizon Network:

- ~~(a) — must not unfairly differentiate between Access Seekers~~must act in a manner that is consistent with the unfair differentiation obligations under sections 100(2) to (4) and section 168C of the Act.
- ~~(b) — Without limiting clause 2.4(a), the steps that Aurizon Network must take to comply with this general obligation in clause 2.4(a) are set out in this Undertaking and include the following:~~

(i) this Undertaking must be consistently applied to all Access Seekers, Access Applications, negotiations for Access, Access Holders and Railway Operators;

~~(b)~~(ii) Aurizon Network must not unfairly differentiate between Access Seekers, Access Holders or Railway Operators in a way that has a material adverse effect on the ability of any of them to compete with any other of them in negotiations for the provision of Access or between Access Holders in providing Access, including in relation to:

~~(i)~~(A) any decision relating to whether Aurizon Network will undertake an Expansion;

~~(ii)~~(B) assessing, allocating and managing Capacity;

~~(iii)~~(C) providing scheduling and Train Network Control Services in accordance with the Network Management Principles;

~~(iv)~~(D) any decision relating to the source of funding for an Expansion; and

(E) assessing and selecting Access Seekers, and

~~(v)~~(F) any decision relating to the provision of Access to:

(1) a Related Operator;

(2) a Related Competitor; or

(3) a Third Party that has commercial arrangements with a Related Operator or Related Competitor.

except where there is an express provision to the contrary in:

~~(vi)~~(G) the this Undertaking or the Act; or

~~(A)~~(H) an Access Agreement and the relevant conduct would not contravene the requirements set out in **clause 3.1(g).**

(c) Aurizon Network must:

(i) not engage in conduct for the purpose of preventing or hindering an Access Seeker's access to the declared service within the meaning of sections 104 or 125(2) to (7) of the Act; and

(ii) ~~take all reasonable steps to~~ ensure that it does not unfairly differentiate in a material way (that is, in a way that has a material adverse effect on the ability of an entity to compete with another entity) between Access Seekers or Access Holders in the quality of the service taken to be declared under section 250(1)(a) of the Act. the technical and operational quality of the services that Aurizon Network

~~supplies to the Access Seekers and Access Holders, whether under an Access Agreement or otherwise, is no less favourable than the quality of equivalent services that Aurizon Network supplies to Related Operators.~~

- (d) Without limiting **clause 2.2(a)**, Aurizon Network must ensure that:
- (i) all transactions between Aurizon Network and any other party in relation to Access are conducted on an arms-length basis;
  - (ii) all Access Seekers, irrespective of whether they are an Aurizon Party or a Third Party:
    - (A) are provided with a consistent level of service; and
    - (B) given an equal opportunity to obtain Access Rights, subject to the express provisions of the Act and this Undertaking; and
  - (iii) all decisions made under this Undertaking are made in a manner that does not unfairly differentiate between any Access Seekers and/or Access Holders in a material way (that is, in a way that has a material adverse effect on the ability of an entity to compete with another entity);
- (e) Aurizon Network must not engage in any activity or conduct (or agree to engage in such activity or conduct), either independently or with Related Operators, which has the purpose of, results in or creates, or is likely to result in or create:
- (i) anti-competitive cost shifting;
  - (ii) anti-competitive cross-subsidies; or
  - (iii) anti-competitive price or margin squeezing.
- (f) For clarity, **clauses 2.4(c)(ii) and 2.4(d)(iii)** do not prevent Aurizon Network from engaging in conduct expressly permitted by section 100(3) of the Act (subject to section 100(4) of the Act).
- ~~(d)(g)~~ (g) If an Access Seeker or Access Holder considers that Aurizon Network has failed to comply with **clause 2.4(a)1.1.1(a) to (e)** or **clause 2.4(b)**, it may lodge a written complaint with Aurizon Network and must provide a copy of that complaint to the QCA.
- ~~(e)(h)~~ (h) Aurizon Network must:
- (i) advise the QCA, as soon as practicable, of any complaints it receives under **clause 2.4(g)2.4(d)**;
  - (ii) investigate complaints received under **clause 2.4(g)2.4(d)**; and
  - (iii) within twenty-eight (28) days after receiving such a complaint, advise the complainant and the QCA in writing of

the outcome of that investigation and Aurizon Network's proposed response, if any.

~~(f)~~(i) If the complainant is not satisfied with the outcome of Aurizon Network's investigation, the complainant may apply to the QCA requesting an audit of the conduct that is the subject of the complaint under **clause 2.4(g)**~~2.4(d)~~.

~~(g)~~(i) If a complainant applies to the QCA in accordance with **clause 2.4(i)**:

- (i) the QCA may request Aurizon Network to conduct an audit in accordance with **clause 10.6.3**~~10.3~~ in respect of Aurizon Network's compliance with **clause 2.4(a)**~~1.1.1(a)~~ ~~or to clause (e)~~~~2.4(a)~~ as it relates to the relevant complaint; and
- (ii) if the QCA makes such a request, **clause 10.8** applies.

(k) For clarity, the rights and obligations under clause 2.4(g) to (j) are in addition to, and do not replace or derogate in any way from, the QCA's investigative powers under the Act, including but not limited to section 150AA and Part 6 of the Act. Nothing in this Undertaking precludes an Access Seeker or Access Holder making any complaint or submission to the QCA.

## 2.5 Scope

- (a) ~~Except where expressly stated to the contrary, t~~his Undertaking provides only for the negotiation and provision of Access and is not applicable to the negotiation or provision of services other than Access. For clarity, "Access" in this clause 2.5 includes all aspects of access to the service taken to be declared under section 250(1)(a) of the Act.
- (b) Access Holders are responsible for:
  - (i) the provision of any services other than Access, including Above Rail Services, required for the operation of Train Services; and
  - (ii) the necessary approvals from the owners of the land upon which the Rail Infrastructure is situated if it is not owned by Aurizon Network and Aurizon Network does not have an existing legal right to authorise Access Holders to access that land.
- (c) Aurizon Network must promptly notify the Access Holder if Aurizon Network does not own the land upon which the Rail Infrastructure is situated or have an existing legal right to authorise the Access Holder to access that land.
- (d) Nothing in this Undertaking can require Aurizon Network to act in a way that is inconsistent with its Passenger Priority Obligations or Preserved Train Path Obligations.

- (e) Nothing in this Undertaking can require Aurizon Network or any other party to ~~an standard a~~Access ~~a~~Agreement, executed before the Approval Date, to vary that agreement or to act in a way that is inconsistent with the relevant agreement.
- (f) Except where expressly stated in this Undertaking to the contrary, this Undertaking will not apply to the extent that it is inconsistent with an Access Agreement or a Train Operations Deed.
- (g) Nothing in this Undertaking affects the rights of Aurizon Network or other parties under the Act.

## 2.6 Aurizon Holdings to execute Deed

- ~~(a)~~ Aurizon Network must:
  - ~~(b)~~~~(a)~~ request procure that its Ultimate Holding Company provides the Ultimate Holding Company Support Deed (**Deed**) in the form set out in **Schedule D**;
  - ~~(i)~~ ~~ensure the Deed is in full force and effect at all times; and~~
  - ~~(ii)~~ ~~ensure that the Ultimate Holding Company at all times complies with the requirements of the Deed.~~
- ~~(c)~~~~(b)~~ For ~~the avoidance of doubt~~clarity, the Deed is intended ~~must require the Ultimate Holding Company~~ to ensure:
  - (i) the Ultimate Holding Company, Aurizon Network and each other Aurizon Party complies with the arrangements prescribed in **Part 3** of this Undertaking;
  - (ii) the Ultimate Holding Company and each other Aurizon Party:
    - (A) takes all necessary steps to ensure Aurizon Network complies with arrangements prescribed in **Part 3** of this Undertaking;
    - (B) does not direct or request Aurizon Network to act in contravention of **Part 3** of this Undertaking; and
    - (C) does not otherwise engage in any conduct which may prevent or hinder Aurizon Network from complying with **Part 3** of this Undertaking;
  - (iii) without limiting **clause 2.6(b)(i)**, the Ultimate Holding Company and each other Aurizon Party does not use or disclose Confidential Information other than as permitted by this Undertaking;
  - (iv) that the Ultimate Holding Company, each other Aurizon Party and Aurizon Network has the authority to provide or authorise access to land which is owned by an Aurizon Party or which an Aurizon Party has authority to authorise access



to through a lease, licence or other arrangement with the owners of the land or in accordance with the TIA; and

- (v) Aurizon Parties ~~to~~ take the steps required to allow Aurizon Network to procure a sale or supply of electric energy.

~~(d) — Any contravention of a Deed by the Ultimate Holding Company is deemed to be a contravention of this Undertaking by Aurizon Network.~~

~~(e)~~ (c) If:

- (i) Aurizon Network fails to procure a Deed in the form required by **clause 2.6(a)1.1.1(a)**;
- (ii) the Deed, if obtained, is not~~the Ultimate Holding Company fails to maintain~~ed in force ~~a Deed in the form required by clause 2.6(a)(i)~~; or
- (iii) ~~the Ultimate Holding Company fails to comply with~~ the requirements of the Deed are not complied with,

then this Undertaking ceases to permit:

- (iv) use of Confidential Information by; or
- (v) disclosure of Confidential Information to,

any person or entity in the Aurizon Group but outside Aurizon Network (and any authorisation provided under this Undertaking permitting such use or disclosure is immediately withdrawn and of no effect) until:

- (vi) Aurizon Network obtains a current Deed from the Ultimate Holding Company ~~provides a current Deed of the type required by clause 2.6(a)(i)~~; or
- (vii) the failure to comply with the requirements of the Deed is ~~the Ultimate Holding Company~~ rectified ~~its failure to comply with the Deed~~ to the satisfaction of the QCA,

as applicable.

## 2.7 Electricity supply and sale

- (a) To the extent that Aurizon Network sells or supplies a Related Operator with electric energy in connection with Access, Aurizon Network cannot refuse to sell or supply electric energy to another Access Seeker or Access Holder (or, if applicable, a Nominated Railway Operator). ~~However, the sale or supply of electric energy is not part of Access and, except as expressly referred to in this Undertaking, is not subject to the provisions of this Undertaking.~~
- (b) Despite any other provision of this Undertaking, Aurizon Network will not be obliged to sell or supply electric energy to an Access Seeker or Access Holder (or, if applicable, a Nominated Railway Operator) or to agree to do so:

- (i) if Aurizon Network is not lawfully entitled to sell or supply electric energy to the relevant Access Seeker, Access Holder or, if applicable, Nominated Railway Operator under any Law, including the *Electricity Act 1994* (Qld) and the National Electricity Rules (as defined under the National Electricity Law set out in the schedule to the *National Electricity (South Australia) Act 1996* (SA)); or
  - (ii) on terms that would be unreasonable or uncommercial.
- (c) For ~~the avoidance of doubt~~ clarity, if a Dispute arises between an Access Holder, a Nominated Railway Operator or an Access Seeker and Aurizon Network regarding a refusal by Aurizon Network to sell or supply electric energy (or procure such a sale or supply from an Aurizon Party), or the proposed terms and conditions on which Aurizon Network (or an Aurizon Party) offers to sell or supply electric energy to the Access Holder, Nominated Railway Operator or Access Seeker, any party may require the Dispute to be resolved in accordance with **clause 11.1**.

## **2.8 Incentive mechanism**

- ~~(a) Following the Approval Date, Aurizon Network may develop an incentive mechanism to provide Aurizon Network with an incentive to:~~
  - ~~(i) operate, and invest in, the Rail Infrastructure efficiently; and~~
  - ~~(ii) do so in a way that promotes efficiency of Supply Chains, and, once developed, may submit to the QCA draft amendments to this Undertaking to establish the incentive mechanism.~~
- ~~(b) The incentive mechanism must include, as a minimum:~~
  - ~~(i) performance metrics and key performance indicators that are linked to performance and contracted entitlements;~~
  - ~~(ii) linkages to individual Train Operators; and~~
  - ~~(iii) symmetry between incentives linked to over-performance and under-performance;~~

~~and must:~~

  - ~~(iv) be simple and relatively inexpensive to administer;~~
  - ~~(v) be based on properly developed baselines to measure performance against;~~
  - ~~(vi) be transparent to all parties;~~
  - ~~(vii) ensure equity amongst Access Holders, Access Seekers, and Train Operators;~~
  - ~~(viii) not increase or decrease Allowable Revenues by more than 5%;~~

- ~~(ix) — promote efficient operation of the Rail Infrastructure and of Supply Chains;~~
- ~~(x) — be linked to the reporting requirements contained in this Undertaking, including the maintenance performance incentive; and~~
- ~~(xi) — operate effectively within the regulatory framework established by this Undertaking.~~
- ~~(c) — The QCA may approve incentive mechanism amendments only if the QCA considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act and **clause 2.8(b)**.~~
- ~~(d) — If the QCA refuses to approve incentive mechanism amendments, the QCA will give Aurizon Network a notice:
  - ~~(i) — stating the reasons for its refusal and the way in which the QCA considers the incentive mechanism amendments should be amended; and~~
  - ~~(ii) — requiring Aurizon Network to amend the incentive mechanism amendments in a way the QCA considers appropriate and resubmit them to the QCA within sixty (60) days of that notice.~~~~
- ~~(e) — If Aurizon Network complies with a notice given under **clause 2.8(d)(ii)**, the QCA may approve the resubmitted incentive mechanism amendments in accordance with **clause 2.8(e)**.~~

## Part 3: Ringfencing

### Section A – General Provisions

#### 3.1 Organisational structure

- (a) Aurizon Network is part of the Aurizon Group and a Subsidiary of Aurizon Holdings.
- (b) Being a Subsidiary of Aurizon Holdings, Aurizon Network's financial performance, capital expenditure program and business plan are, consistent with good corporate governance, subject to oversight by the board and senior management of Aurizon Holdings.
- (c) Aurizon Network provides a regulated access service, together with providing unregulated services in competitive markets.
- (d) Aurizon Holdings, amongst other matters, provides Above Rail Services through a Related Operator.
- (e) Within the Aurizon Group, there are functional groups that provide shared support services and core corporate functions to different functional areas and parts of the Aurizon Group that include both Related Operators and Aurizon Network.
- (f) Aurizon Network is required by the TIA to maintain an independent board of directors which supervises arm's-length dealings in respect of Access between Aurizon Network and any Related Operators.
- (g) The Act:
  - (i) requires Aurizon Network to negotiate in good faith with Access Seekers to reach an Access Agreement;
  - (ii) obliges Aurizon Network in such negotiations not to unfairly differentiate between Access Seekers in a way that materially adversely affects the ability of one or more Access Seekers to compete with other Access Seekers;
  - (iii) prohibits Aurizon Network from engaging in conduct for the purpose of preventing or hindering an Access Seeker's or Access Holder's Access; and
  - (iv) deems certain types of specified conduct where Aurizon Network provides Access to itself or a Related Operator to constitute conduct that prevents or hinders an Access Seeker's or Access Holder's Access.

#### 3.2 Purpose

- (a) The purpose of this **Part 3** is to aid Aurizon Network's compliance with the statutory obligations referred to above and to ensure that Access provided by Aurizon Network is managed and supplied independently from other members of the Aurizon Group who

compete in the upstream and downstream markets that depend on Access to the service utilising the Rail Infrastructure.

### ~~3.3~~ **No waiver**

~~Aurizon Network may not seek a waiver from the QCA of all or any of Aurizon Network's obligations under this Part 3.~~

### 3.43.3 **Compliance declaration**

- (a) As part of the compliance report required under clause 10.5.2, Aurizon Network must give the QCA a compliance declaration ~~every six (6) Months following the Approval Date~~ which must either:-
- ~~(b)~~ ~~The compliance declaration given under clause 3.4(a) must either:~~
- (i) include a statement with the following effect: "There have been no breaches of the ringfencing arrangements set out in **Part 3** of the Undertaking and none of the matters set out in clause 2.6(b) have occurred during the six (6) Month period commencing from the date of the last declaration given under **clause 3.3(a)** of the Undertaking ending up until the day prior to the date of this declaration"; or
  - (ii) if there have been any breaches of this **Part 3** or any of the matters set out in clause 2.6(b) have occurred during the period for the compliance declaration, provide the following details in relation to each breach or matter:
    - (A) the nature and circumstances of the breach or matter;
    - (B) whether the breach or matter is under investigation or has been resolved; and
    - (C) any remedial actions taken or being considered in relation to the breach or matter.
- ~~(e)~~(b) The compliance declaration given under **clause 3.3(a)** must be signed by Aurizon Network's Executive Officer and the other member of the senior management team at Aurizon Network who is most directly responsible for ensuring compliance with the ringfencing arrangements in this **Part 3**.
- ~~(e)~~(c) Giving a compliance declaration under **clause 3.3(a)** that is false or misleading will constitute a breach of this Undertaking by Aurizon Network.

## Section B – Aurizon Network’s Functional Responsibility

### 3.53.4 **Function of Aurizon Network in the Aurizon Group for the purpose of this Undertaking**

- (a) The primary function of Aurizon Network for the purpose of this Undertaking is to supply the declared services contemplated by section 250(1)(a) of the Act.
- (b) Aurizon Network intends to give effect to this function by supplying the Below Rail Services.
- ~~(c) Aurizon Network undertakes to supply the Below Rail Services to Access Seekers and Access Holders in accordance with the terms of this Undertaking and to otherwise comply with this Undertaking.~~
- ~~(d)~~(c) For ~~the avoidance of doubt~~clarity, the supply of Below Rail Services includes:
  - (i) the primary function described in **clause 3.4(a)**;
  - (ii) negotiating Access Agreements with Access Seekers and managing Access Agreements with Access Holders;
  - (iii) negotiating and managing Train Operations Deeds with Train Operators;
  - (iv) receiving, assessing and responding to Access Applications;
  - (v) providing or procuring appropriate levels of maintenance for, and renewal of, the Rail Infrastructure to ensure that the Rail Infrastructure is provided to the standard required to meet Aurizon Network’s obligations to Access Holders and, where applicable, Train Operators, the DTMR, and its infrastructure lessors;
  - (vi) assessing, allocating and managing Capacity;
  - (vii) providing scheduling and Network Control Services for Rail Infrastructure in accordance with the Network Management Principles;
  - (viii) providing electric transmission infrastructure on electrified sections of the Rail Infrastructure to enable Access Holders or Train Operators to run electric Train Services, and (subject to **clause 2.72.6**) procuring electric energy for traction on electrified sections of the Track, including managing electric energy supply from other parties, where an Access Seeker, an Access Holder or Train Operator requests Aurizon Network to provide that electric energy; and
  - (ix) the administration of the process for network development, planning, studies and Expansions in accordance with **Part 8**.

~~(e)~~(d) Aurizon Network must not:

- (i) undertake any Above Rail Services in respect of the Rail Infrastructure; or
- (ii) undertake the operation or marketing of Train Services on the Rail Infrastructure, unless for the purpose of providing a Below Rail Service or the provision of services in respect of Private Infrastructure. ~~For the avoidance of doubt, nothing in this clause 3.5(e)(ii) allows Aurizon Network to compete with Rail Operators in the market for Above Rail Services on the Rail Infrastructure;~~

(e) If Aurizon Network either:

- ~~(iii)~~(i) provides any services associated with the loading of vessels at a port services (including providing access to those services a port service) or holds any direct or indirect interest in any port connected to the Rail Infrastructure ~~in Queensland~~, whether as ~~or in any~~ owner, lessee, trust unit holder, operator, manager or otherwise and whether alone or together with others; or
- (ii) holds any direct or indirect interest in, operates or manages any coal mine or coal-extraction project connected to the Rail Infrastructure, whether as owner, lessee, trust unit holder, operator, manager or otherwise and whether alone or together with others.

then as part of the compliance report required under clause 10.5.2 Aurizon Network must:

- (iii) confirm that its activity has not resulted in the service taken to be declared under section 250(1)(a) of the Act being provided in a manner that unfairly differentiates in a material way (as that term is defined in section 137(3) of the Act); and
- (iv) provide supporting evidence that may be requested by the QCA.

### **3.63.5 Obligation of Aurizon Network to perform Below Rail Services**

- (a) The Below Rail Services must not be transferred or delegated to, contracted out to, or otherwise undertaken, by a Related Operator or Related Competitor unless the Below Rail Service relates to:
  - (i) maintenance for or renewal of the Rail Infrastructure;
  - (ii) project delivery, engineering or rail construction services in relation to the procurement, construction or design of Rail Infrastructure;
  - (iii) the safe operation of the Rail Infrastructure (including any incident investigations);

(iv) environmental related services (including any incident investigations); or

(v) normal corporate governance arrangements and management reporting, including assessing the credit risk of counterparties or otherwise assessing the implications of an arrangement on Aurizon Network's access to funds or the taxation consequences of that arrangement.

- (b) Subject to **clause 3.4(d)**, and the restrictions on Aurizon Network employees undertaking certain activities in **clause 3.6**, nothing in this Undertaking:
- (i) requires Aurizon Network to perform a function that is not associated with or in respect of the provision of Below Rail Services; or
  - (ii) prevents Aurizon Network from undertaking any function which is not associated with or in respect of the provision of Below Rail Services.
- (c) Notwithstanding **clause 3.5(a)**, Aurizon Network may contract with Related Operators for the provision of Network Control Services referred to in **clause 3.4(c)(vii)** to the extent that they comprise:
- (i) Field Incident Management; or
  - (ii) Yard Control services at yards other than Major Yards.

### **3.73.6 Staffing of Aurizon Network**

- (a) Aurizon Network must ensure that an employee engaged to work for Aurizon Network and whose duties primarily involve the provision of Below Rail Services, will:
- (i) work only for Aurizon Network; and
  - (ii) not undertake any work at the direction of a Related Operator.
- (b) Nothing in **clause 3.6(a)** restricts or prevents:
- (i) an employee from performing functions that are required to negotiate for, or provide Access to, a Related Operator in accordance with the terms of this Undertaking;
  - (ii) secondments of employees, subject to the requirements in this Undertaking on the handling of Confidential Information;
  - (iii) an employee ceasing to work for Aurizon Network and commencing to work for a Related Operator, subject to the requirements in this Undertaking on the handling of Confidential Information;
  - (iv) an employee undertaking any function or activity:
    - (A) required or compelled by any Law;



- (B) required or compelled by any order of a court;
  - (C) required or compelled by notice validly issued by any Authority;
  - (D) necessary for the conduct of any legal proceedings, dispute resolution process or audit under this Undertaking, the Act or a Standard Agreement; or
  - (E) in the course of responding to an emergency or natural disaster [or for clearing an incident or emergency that is preventing or impeding the operation of Train Services on the Rail Infrastructure](#);
- (v) an employee undertaking work providing services that do not relate, whether directly or indirectly, to the provision of Below Rail Services; or
  - (vi) an employee engaged in undertaking:
    - (A) asset construction, maintenance, renewal, or repair; or
    - (B) support services and/or corporate functions, from undertaking work for any Aurizon Group business unit or corporate functional area, subject to the requirements in this Undertaking on the handling of Confidential Information.
- (c) Subject to compliance with Aurizon Network's obligations under this **Part 3**, Aurizon Network may obtain assistance in the performance by Aurizon Network of Below Rail Services and to comply with its obligations in this Undertaking from staff employed within the Aurizon Group in the provision of shared services and corporate functions to different functional areas and parts of the Aurizon Group.
- ~~(i)~~ If the activities of a project working group (whose members include staff from a Related Operator or Related Competitor) [associated with the operation of a Supply Chain](#); ~~or a Related Operator or Related Competitor~~;
  - ~~(d)~~ affect or could affect the Access of Third Party Access Holders or Third Party Access Seekers, then Aurizon Network must ~~ensure~~ [enter into the Confidential Information Register the details \(including the change in role or circumstances and the anticipated duration of that change\) of ~~no any~~ Aurizon Network employee who :](#)
  - ~~(i)~~ works in such a working group; ~~or~~
  - ~~(ii)~~ ~~is temporarily transferred to such a Related Operator or Related Competitor (whether as a secondee, advisor or otherwise)~~;
  - ~~(e)~~ [\(d\) if that employee](#) ~~unless Aurizon Network is satisfied the employee~~ has ~~not~~ had access, as an employee of Aurizon Network, to any Confidential Information ~~regarding the operations of a Third Party~~

~~Access Holder or Third Party Access Seeker (whose Access will or could be affected by the activities of the working group, Related Operator or Related Competitor) which, if disclosed to the relevant Related Operator or Related Competitor, could provide that Related Operator or Related Competitor with an advantage over the Third Party Access Holder or Third Party Access Seeker.~~

~~(f)~~(e) In addition to the requirements in ~~clause 3.7(d)~~, Aurizon Network may not permit any secondments or other temporary transfers of employees between Aurizon Network and an Aurizon Party if the employee has had (or will have in the new role) access to Confidential Information, unless Aurizon Network:

- (i) has given prior notice to the QCA of the details of the secondment or transfer identifying:
  - (A) the extent to which the relevant employee has, or may have, received or accessed, Confidential Information, and the nature of such information; and
  - (B) the level of risk, in terms of Aurizon Network's compliance with this ~~Part 3 of the Undertaking~~, posed by the proposed secondment or temporary transfer; ~~and~~

(ii) takes all reasonable measures to minimise conflicts ~~if of~~ interest for the relevant employee and the potential for misuse of Confidential Information; ~~and~~

~~(ii)~~(iii) enters into the Confidential Information Register the details (including the change in role or circumstances and the anticipated duration of that change) of the relevant employee.

~~(g)~~(f) Aurizon Network must:

- (i) at all times directly employ a ~~self-contained~~ regulatory affairs advisor, who will be deemed a High-Risk Person; and
- (ii) not assign, transfer, delegate or contract out to any Aurizon Party any regulatory function or position related to the development, application and interpretation of this Undertaking in relation to Aurizon Network.

### **3.83.7 Annual financial report Accounting separation [Note: previously clause 10.1.1]**

#### **3.7.1 Preparation of financial statements**

(a) Unless otherwise approved by the QCA, Aurizon Network must develop, on an annual basis:

- (i) general purpose financial statements for Aurizon Network in accordance with relevant legislation and applicable Australian accounting standards; and
- (ii) a supplementary set of financial statements which:
  - (A) separately identifies Aurizon Network's business in respect of the supply of the declared services contemplated by section 250(1)(a) of the Act from other business conducted by Aurizon Group;
  - (B) identifies costs common to both Aurizon Network and Aurizon Group and the way in which such costs are allocated; and
  - (C) are otherwise developed in accordance with the methodology and format set out in the Costing Manual.
- (b) The QCA may request Aurizon Network to prepare (or Aurizon Network may prepare) a Costing Manual. The processes set out in section 159 of the Act apply to that Costing Manual.
- (c) The financial statements must:
  - (i) include the information referred to in **clause 3.7.2**;
  - (ii) be certified by Aurizon Network's Executive Officer as being in accordance with this Undertaking; and
  - (iii) audited in accordance with **clause 10.6.4**.

### 3.7.2 Self Insurance

- ~~(a) Aurizon Network must produce financial statements for Aurizon Network:~~
  - ~~(i) on an annual basis;~~
  - ~~(ii) in accordance with relevant legislation and applicable Australian accounting standards;~~
  - ~~(iii) in accordance with the Costing Manual and any applicable requirements in this Undertaking;~~
  - ~~(iv) which includes the information referred to in **clause 10.1.1(c)**; and~~
  - ~~(v) audited by an independent auditor who must prepare an audit report that specifies:~~
    - ~~(A) the scope of the audit;~~
    - ~~(B) the level of access that the auditor was provided to Aurizon Network's financial information, including the relevant information systems;~~

~~(C) — whether the financial statements have been developed in accordance with the requirements of this **clause 10.1.1(a)**; and~~

~~(D) — information regarding non-compliance or inconsistency with the requirements of this **clause 10.1.1(a)**.~~

~~(b)~~(a) The financial statements referred to in **clause 3.7.1** ~~10.1.1(a)~~ must include details of Self-Insurance including at least the following:

- (i) Aurizon Network's level of Self-Insurance as at the end of the relevant Year;
- (ii) the number and type of claims (and quantum of each claim) made on the Self-Insurance in the relevant Year; and
- (iii) the number of claims made on Self-Insurance successfully resolved in the relevant Year (and quantum of each payment).

~~(iii)~~(b) Claims made on Self-Insurance for an amount that is equal to or less than \$50,000 may be reported on an aggregated basis.

### 3.7.3 Audit of financial statements *[Note: UT3 clause 3.3.2 reinserted]*

(a) An audit of the financial statements referred to in **clause 3.7.1** will be conducted:

- (i) within six (6) Months of the end of the Year to which the financial statements relate, or such longer time as agreed by the QCA;
- (ii) subject to this **clause 3.7.3**, in accordance with **clause 10.6.4**; and
- (iii) by an Auditor who should be, or have the assistance of, a person with expertise and experience in the area of costing of railway activities.

(b) Aurizon Network acknowledges that, in order to facilitate finalisation of the audit within the required timeframe, certain aspects of the audit may be undertaken by the Auditor at different times throughout the relevant Year.

(c) The Auditor will:

- (i) examine whether the financial statements referred to in **clause 3.7.1** have been developed in all material respects in accordance with this Undertaking and consistent with the format specified in the Costing Manual; and
- (ii) prepare an audit report that specifies:
  - (A) the scope of the audit;

- (B) the level of access that the Auditor was provided to Aurizon Network's financial information, including the relevant information systems;
- (C) whether or not the financial statements have been developed in all material respects in accordance with this Undertaking and consistent with the format specified in the Costing Manual; and
- ~~(A)~~(D) if the Auditor identifies that the financial statements have not been developed in all material respects in accordance with this Undertaking and processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual, information regarding the relevant non-compliance or inconsistency.

## Section C – Management of Aurizon Network

### **3.93.8 Independence of senior management**

- (a) Aurizon Network must:
  - (i) ensure that Aurizon Network is managed independently from:
    - (A) Related Operators; and
    - (B) Related Competitors; and
  - (ii) take whatever steps it can reasonably take to ensure that Related Operators and Related Competitors do not participate in the process for the appointment or supervision of the executive management of Aurizon Network.
- (b) Aurizon Network must ensure that the executive management of Aurizon Network does not have any management responsibility for:
  - (i) a Related Operator; or
  - (ii) any Related Competitor.
- (c) Aurizon Network must not act on directions from a Related Operator in respect of the grant or exercise of Access Rights to, by or for the benefit of:
  - (i) any Related Operator; or
  - (ii) a Third Party Access Seeker, Third Party Access Holder or Third Party Train Operator, otherwise than with the consent of the Third Party,

provided that nothing prevents a Related Operator exercising a right or requiring Aurizon Network to comply with an obligation under an

[Access Agreement between Aurizon Network and that Related Operator, or under this Undertaking or the Act, as applicable.](#)

## Section D – Confidential Information

### Section D1 – General provisions

#### **3.103.9 No [waiver or exclusion of Undertaking by voluntary agreement](#)**

- (a) Aurizon Network must not request or require any Access Seeker, Access Holder or Train Operator to waive or agree to waive any requirement or obligation on Aurizon Network under this **Part 3**.
- (b) Any purported waiver of, or agreement to waive, any requirement or obligation on Aurizon Network under this **Part 3** has no effect.
- (c) If Aurizon Network and a Third Party Access Seeker or Third Party Access Holder enter into a confidentiality agreement or deed or an Access Agreement containing confidentiality obligations in relation to the negotiation or provision of Access Rights, that agreement or deed ~~must~~[does](#) not ~~exclude, reduce or derogate in~~ any [way from any](#) requirement or obligation [imposed](#) on Aurizon Network under this **Part 3** except that if the agreement or deed prescribes an obligation or standard for performance of an act that is higher or more stringent than under this **Part 3**, the [more stringent standard in that](#) agreement or deed [must be met by Aurizon Network in addition to](#) ~~will prevail over~~ the provisions of this **Part 3** in respect of that particular obligation or standard but not otherwise.

#### **3.113.10 [Request for Aurizon Network to enter confidentiality agreement](#)**

At any time [prior to or](#) during the Negotiation Period:

- (a) [an Access Seeker, Third Party Access Seeker](#) or Train Operator (as applicable) may require Aurizon Network; [or](#)
- (b) [Aurizon Network may require an Access Seeker, Third Party Access Seeker or Train Operator \(as applicable\).](#)

to enter into a confidentiality agreement in relation to the Confidential Information, in which case Aurizon Network and the Access Seeker, [Third Party Access Seeker](#) or Train Operator (as applicable) must enter into a confidentiality agreement [which must be](#) in the form set out in **Schedule I** [unless otherwise agreed by the parties.](#)

#### **3.123.11 [Overarching commitment to information security](#)**

- (a) Notwithstanding any other provision in this Undertaking, Aurizon Network must:
  - (i) keep Confidential Information confidential and secure;

- (ii) not disclose Confidential Information, unless in accordance with this Undertaking; and
  - (iii) use or disclose Confidential Information only in connection with the supply of Below Rail Services, as permitted in accordance with this Undertaking but only to the extent necessary for that purpose.
- (b) Notwithstanding any other provision in this Undertaking, Aurizon Network must not use or disclose Confidential Information if the purpose or likely result of such use or disclosure is to unfairly advantage a Related Operator or Related Competitor ~~obtaining an unfair commercial advantage~~ in a way that constitutes a breach of Aurizon Network's obligations under sections 100, 104, 125 or 168C of the Act.

## Section D2 - Control framework for Confidential Information

### **3.13.12 Process for permitted disclosure of Confidential Information**

~~(a)~~ Subject to clause 3.13, if access to, or disclosure of, Confidential Information is to be made to a Recipient, whether the Recipient is within Aurizon Network, another Aurizon Party or a Third Party, Aurizon Network must ensure that:

- ~~(i)~~ (a) the access or disclosure is permitted under this Undertaking;
- ~~(ii)~~ (b) the Recipient ~~has a legitimate business purpose for~~ requiring access to the relevant Confidential Information for the purpose of assisting Aurizon Network to comply with any of its obligations under this Undertaking and access to that Confidential Information is limited so that disclosure to the Recipient is only to the extent necessary for that purpose;
- ~~(iii)~~ (c) the Recipient is advised that the information is Confidential Information and the information is clearly identified as Confidential Information;
- ~~(iv)~~ (d) ~~except where if required by clause 3.13 clause 3.12(b) or 3.12(e) applies,~~ prior to the access or disclosure being granted, all information relevant to that access or disclosure ~~(as required in clause 3.13(b))~~ is recorded in the Confidential Information Register;
- ~~(v)~~ (e) ~~except where clause 3.12(b) or 3.12(d) applies~~ if required by clause 3.13, the Recipient has signed a declaration confirming its awareness and understanding of the Aurizon Group's obligations regarding Confidential Information;
- ~~(b)~~ (f) ~~except where clause 3.12(b) or 3.12(d) applies, if required by clause 3.13 and~~ if the Recipient is not within Aurizon Network, ~~or an Aurizon Party or within an Aurizon Party,~~ Aurizon Network enters into a legally enforceable agreement with the Recipient (with the same effect as the confidentiality agreement in the form set out in **Schedule I**) and on terms that are enforceable by the owner of the

Confidential Information and Aurizon Network, requiring the Recipient (and any of its employees) to keep the Confidential Information confidential, and to only use it for the purpose for which it was disclosed;

~~(f)(g)~~ except where clause 3.12(b) or 3.12(c) applies, if required by clause 3.13 and if the Recipient is not within Aurizon Network and ongoing access to Confidential Information is to be provided, a review date is recorded in the Confidential Information Register at which access or disclosure under ~~this clause 3.13~~ **3.12** expires; and

~~(h)~~ except where clause 3.12(b), 3.12(d) or 3.12(e) applies, if required by clause 3.13, the prior written consent of the owner of the Confidential Information is provided for the access or disclosure to the Recipient for the nominated purpose.

### **3.13 Disclosure of Confidential Information**

~~(e)(a)~~ If Aurizon Network complies with clauses 3.12(b) and (c), Disclosure of Confidential Information by Aurizon Network to a Recipient is permitted ~~without observing the process in clauses 3.12(a)(iv) or 3.12(a)(vii)~~ when the disclosure is:

- (i) required or compelled by any Law;
- (ii) required or compelled by any order of a court;
- (iii) required or compelled by notice validly issued by any Authority;
- (iv) necessary for the conduct of any legal proceedings, including dispute resolution ~~process~~ or audit processes under this Undertaking, the Act, ~~or~~ a Standard Agreement or other agreement;
- (v) if the process in **clause 3.13(g)** is observed, required under any stock exchange listing requirement or rule (including disclosure to any Aurizon Group company so as to allow compliance with any such listing requirement or rule);
- (vi) for the purpose of facilitating Network Control directions where the disclosure of information is by Aurizon Network in the usual course of undertaking Network Control Services;
- (vii) necessary for the effective response to an emergency or natural disaster or for clearing an incident or emergency that is preventing the operation of Train Services on the Rail Infrastructure;
- (viii) to the Safety Regulator; or
- (ix) to ~~employees within~~ Aurizon Network Personnel to the extent necessary ~~for those employees~~ to perform their duties.

~~(d)(b)~~ If Aurizon Network complies with clauses 3.12(b) and (c) and the Recipient has signed a declaration confirming its awareness and



understanding of the Aurizon Group's obligations regarding Confidential Information, then D disclosure of Confidential Information by Aurizon Network to a Recipient is permitted ~~without observing the process in clauses 3.12(a)(iv) or 3.12(a)(vii)~~ when the disclosure is:

- (i) to a Railway Manager, but only to the extent required for the purpose of negotiating or providing Access, or for managing interfaces between the railways (including scheduling and other interface issues), provided that the Railway Manager has undertaken in a legally binding way (with the same effect as the confidentiality agreement in the form set out in Schedule I) and on terms that are enforceable by the owner of the Confidential Information and Aurizon Network, to keep the Confidential Information disclosed to it by Aurizon Network confidential; or
- (ii) to an infrastructure provider for infrastructure forming part of the Supply Chain for the purpose of facilitating the coordination of the capacity allocation process, provided that the infrastructure provider has undertaken, in a legally binding way (with the same effect as the confidentiality agreement in the form set out in Schedule I) ~~an agreement and~~ on terms that are enforceable by the relevant Access Seeker, Access Holder or Train Operator and Aurizon Network, to keep the information disclosed to it by Aurizon Network confidential and to only use that information for the purpose for which it was disclosed.

~~(e)~~ (c) If Aurizon Network complies with clauses 3.12(b) and (c) and the information to be accessed or disclosed and a review date at which access or disclosure of that information expires is recorded in the Confidential Information Register in accordance with clause 3.12(d) and 3.12(g), then D disclosure of Confidential Information by Aurizon Network to a Recipient is permitted ~~without observing the process in clauses 3.12(a)(v), 3.12(a)(vi) or 3.12(a)(viii)~~ when the disclosure is to either an external legal, accounting or financial -advisers or consultants to Aurizon Network (Advisor) or a banker, financier or other financial institution (Financier), and:

- ~~(A)~~ (i) the Advisor's or Financier's ~~whose~~ role in advising or providing services to Aurizon Network requires the disclosure to be made;
- ~~(B)~~ (ii) the Advisor or Financier is ~~who are~~ under an obligation of confidentiality to Aurizon Network; and
- ~~(ii)~~ (iii) the Advisor or Financier has ~~who have~~ been advised of the Aurizon Group's obligations under this Undertaking regarding Confidential Information.

(d) If:

- (i) Aurizon Network complies with **clauses 3.12(b) and (c)**;
- (ii) the information to be accessed or disclosed and, if the Recipient is not within Aurizon Network and ongoing access to Confidential Information is to be provided, a review date at which access or disclosure of that information expires is recorded in the Confidential Information Register in accordance with **clause 3.12(d) and clause 3.12(g)**;
- (iii) the Recipient has signed a declaration confirming its awareness and understanding of the Aurizon Group's obligations regarding Confidential Information; and
- (iv) to the extent that the Recipient is not within Aurizon Network, Aurizon Network has entered into a legally enforceable agreement with the Recipient (with the same effect as the confidentiality agreement in the form set out in **Schedule I**) and on terms that are enforceable by the owner of the Confidential Information and Aurizon Network, requiring the Recipient (and any of its employees) to keep the Confidential Information confidential and to only use it for the purpose for which it was disclosed.

then Disclosure of Confidential Information by Aurizon Network to a Recipient is permitted ~~without observing the process in **clause 3.12(a)(viii)**~~ if:

- ~~(iii)~~(v) the disclosure has been authorised by the owner of the Confidential Information providing its prior written consent to such disclosure or alternative use; or
- ~~(iv)~~(vi) subject to the restrictions in **clause 3.13(f)**, the disclosure is to an employee of a Related Operator or Related Competitor solely for the purpose of undertaking Below Rail Services, to the extent permitted by this Undertaking, and that employee is not involved in the marketing or negotiation of Above Rail Services;
- ~~(v)~~(vii) subject to the restrictions in **clause 3.13(f)**, the disclosure is to:
  - (A) the Aurizon Holdings board of directors;
  - (B) the Aurizon Network board of directors;
  - (C) the Chief Executive Officer of the Aurizon Group;
  - (D) the Chief Financial Officer of the Aurizon Group;
  - (E) the Company Secretary of Aurizon Network or the Aurizon Group or any assistant Company Secretary;
  - (F) the General Counsel of the Aurizon Group;

- (G) the Chief Internal Auditor of the Aurizon Group;
- (H) the Chief Information Officer of the Aurizon Group; and
- (I) any person providing clerical or administrative assistance to the individuals or business units identified in **clauses 3.13(d)(vii)(A) to 3.13(d)(vii)(H)**.

~~(f)~~(e) Subject to the restrictions in **clause 3.13(f)**, disclosure of Confidential Information by Aurizon Network is permitted to any Recipient (whether within the Aurizon Group or a Third Party) if Aurizon Network observes the process in **clause 3.123.12(a)**.

~~(g)~~(f) Aurizon Network may not disclose Confidential Information to a Recipient that is a Related Operator~~functional unit within the Aurizon Group or an Aurizon Party~~ or an employee of a Related Operator~~either of them~~ for the purpose of obtaining advice regarding:

- (i) the ~~development~~ amendment of this Undertaking or any Standard Agreements~~s or replacement of any of them~~; or
- (ii) the interpretation of this Undertaking or any Standard Agreements.

~~(h)~~(g) Prior to any disclosure to satisfy a stock exchange listing requirement or rule under **clause 3.13(a)(v)3-12(b)(v)**, Aurizon Network must:

- (i) consult with the owner of the Confidential Information as to the nature and extent of the disclosure of the Confidential Information;
- (ii) accept any requests made by the owner of the Confidential Information (acting reasonably) to limit the disclosure of the Confidential Information; and
- (iii) to the extent reasonably possible, coordinate the disclosure of the Confidential Information with any similar disclosure by the owner of the Confidential Information that is required under any relevant stock exchange listing requirement or rule~~relating to that owner~~.

~~(i)~~(h) If consent is sought under **clause 3.12(h)**:

- (i) such consent must not be unreasonably delayed or refused;
- (ii) during the process of responding to an Access Application or negotiating an Access Agreement:
  - (A) where such consent has been sought during the Negotiation Period and the owner of the Confidential Information fails to ~~provide consent~~ respond to Aurizon Network's request for consent within five (5) Business Days of its receipt of Aurizon Network's written request (referred to as

the **Consent Response Date**), then all relevant timeframes applicable to Aurizon Network under **Part 4** will be extended by the same number of days as the day on which ~~consent~~ the response is given exceeds the Consent Response Date; or

- (B) where such consent has been sought during the Negotiation Period and the owner of the Confidential Information unreasonably refuses its consent to the disclosure of that Confidential Information, or fails to respond to Aurizon Network's request for consent within twenty (20) Business Days of its receipt of Aurizon Network's written request, then Aurizon Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with **clause 4.12**; or
- (iii) during the process of administering an Access Agreement or a Train Operations Deed, if the owner of the Confidential Information fails to respond to Aurizon Network's request for consent within twenty (20) Business Days of its receipt of Aurizon Network's written request, then consent is deemed to be given.

### *Section D3 – Compliance monitoring and safeguards*

#### **3.14 Confidential Information Register**

- (a) ~~The Compliance Officer is responsible for~~ Aurizon Network must establishing and maintain~~ing~~ a Confidential Information Register.
- (b) Following consultation with Access Holders and Railway Operators, Aurizon Network must develop and, within four (4) Months after the Approval Date, provide the QCA with its proposed:
  - (i) structure of; and
  - (ii) level of detail of information to be included in,the Confidential Information Register. The QCA may approve Aurizon Network's proposal or require changes to ensure the information contained in the Confidential Information Register is transparent and accessible.
- (c) The Confidential Information Register will contain, as a minimum:
  - (i) the identity of persons or entities who request access to Confidential Information;
  - (ii) in respect of each Recipient:
    - (A) the identity of the Recipient who has been approved in accordance with **clause 3.13(d)**~~3.12(f)~~ to have access to the Confidential Information, and

- the identity of the Aurizon Network Personnel who approved that access;
  - (B) the period for which the Recipient had access to the Confidential Information;
  - (C) the defined category of Confidential Information to which the Recipient has access (with sufficient details to enable the Confidential Information to be accurately identified);
  - (D) the purpose for which the Confidential Information is to be used by the Recipient, including the decision made using the Confidential Information ~~and how these decisions were made~~; and
  - (E) confirmation that the Recipient has signed a declaration signifying its awareness and understanding of Aurizon Network's obligations regarding Confidential Information under this Undertaking;
- (iii) a record of any confidentiality agreement, or confidentiality provisions contained in another arrangement, entered [into](#) by Aurizon Network in respect of Confidential Information;
  - (iv) a record of persons and entities that have signed a declaration signifying their awareness and understanding of Aurizon Network's obligations regarding Confidential Information in accordance with **clause 3.12(e)**;
  - (v) a record of the signing of an exit certificate by Aurizon Network Personnel working within Aurizon Network [and with access to Confidential Information](#) at the time that Aurizon Network Personnel leaves the employment of, <sup>or</sup> engagement with, Aurizon Network (whether to another business unit within the Aurizon Group on a temporary or permanent basis or a Third Party); [and](#)
  - (vi) details of any compliance issues in relation to Confidential Information where an investigation revealed a breach of Aurizon Network's obligations [under this Undertaking](#).
- (d) An Access Seeker, Access Holder or Train Operator may, upon request, view information in the ~~register~~ [Confidential Information Register](#) which relates to Confidential Information that it has disclosed to Aurizon Network.
  - (e) Aurizon Network must provide the QCA with access to the Confidential Information Register:
    - (i) each twelve (12) Months on and from the Approval Date; and
    - (ii) upon the QCA's request,

- ~~(iii)~~ to view the Confidential Information Register.
- (f) The QCA may require the Confidential Information Register to be subject to an audit:
  - (i) in accordance with **Part 10** to confirm the Confidential Information Register complies with the requirements of this Undertaking; and
  - (ii) to confirm the processes and procedures underpinning the collection of information for the Confidential Information Register is fit for purpose, being complied with and is used in a consistent manner.

### 3.15 Mandatory Confidential Information training

- (a) Aurizon Network must ensure that:
  - (i) all Aurizon Network Personnel; and
  - (ii) all Aurizon Group employees, ~~receiving, or having access to, in the course of performing their duties, Confidential Information,~~  
receiving, or having access to, Confidential Information in the course of performing their duties are made fully aware of the Aurizon Group's obligations relating to the management of Confidential Information, and complete training for this purpose as contemplated in **clauses 3.15(b)** and **3.17(a)**.
- (b) Aurizon Network must create, maintain and conduct, as a minimum, the following training sessions in order to promote awareness of Aurizon Network's obligations under this **Part 3**:
  - (i) a briefing session which outlines Aurizon Network's statutory obligations under the Act and Aurizon Network's obligations under this **Part 3**:
    - (A) for employees of an Aurizon Group entity at the commencement of this Undertaking whose role requires access to Confidential Information, within three (3) Months of the commencement of this Undertaking;
    - (B) for all new employees of Aurizon Group entities whose role requires access to Confidential Information, within one (1) Month after employment commences; and
    - (C) notwithstanding **clauses 3.15(b)(i)(A)** or **3.15(b)(i)(B)**, for all employees of Aurizon Group entities, at least once in every two (2) ~~Y~~y years of continuous employment;
  - (ii) detailed training sessions in respect of Aurizon Network's statutory obligations under the Act, Aurizon Network's

obligations under this **Part 3** (including regarding the management of Confidential Information) and Aurizon Holdings' obligations under the Ultimate Holding Company Support Deed:

- (A) for persons who are High-Risk Personnel at the commencement of this Undertaking, within three (3) Months of the commencement of this Undertaking;
  - (B) for all persons who are added to the High-Risk Personnel Register following the commencement of this Undertaking, within one (1) Month after they are added to the High-Risk Personnel Register; and
  - (C) notwithstanding **clause 3.15(b)(ii)(A)** and **3.15(b)(ii)(B)**, for all High-Risk Personnel, at least once in every two (2) Yyears of continuous status as a High-Risk Person.
- (c) Aurizon Network must ensure that the Compliance Officer establishes and maintains a record of training attendances (as a yearly percentage of Aurizon Group employees) for publication in the annual compliance report prepared under **Part 10**.

### 3.16 **High-Risk Aurizon personnel** Persons

- (a) ~~The Compliance Officer is responsible for~~ Aurizon Network must establishing and maintaining a High-Risk Personnel Register.
- (b) The High-Risk Personnel Register must contain:
  - (i) the identity of persons who have access to Confidential Information and ~~is~~ are either:
    - (A) in a position to use that Confidential Information for purposes other than the supply of Below Rail Services; or
    - (B) in a position to influence or control the decisions of any Aurizon Group company that is not Aurizon Network,
  - ~~(ii)~~ such persons being "High-Risk Persons" or "High-Risk Personnel";
  - ~~(iii)~~ (ii) the position the High-Risk Person holds; and
  - ~~(iv)~~ (iii) detailed explanation of the reason why that person is listed as a High-Risk Person ~~is listed on the High-Risk Personnel~~.
- (c) The following persons are deemed to be High-Risk Personnel for the purposes of this **clause 3.16**:
  - (i) all directors of Aurizon Network; ~~and~~

- (ii) ~~the~~ Aurizon Network's Executive Officer and Chief Financial Officer;
- (iii) any employee of a Related Operator or Related Competitor accessing Confidential Information for the purpose of undertaking Below Rail Services, to the extent permitted by this Undertaking;
- (iv) Aurizon Network Personnel who manage the:
  - (A) negotiation and maintenance of Access Agreements and Train Operations Deeds;
  - (B) receiving, assessing and responding to Access Applications; and
  - (C) assessing, allocating and managing Capacity; and
- (v) any person referred to in **clause 3.6(f)**.

**[Drafting Note: The QCA would be interested in stakeholders' views as to whether other persons should be listed here.]**

- (d) On the Approval Date and at any time requested by the QCA, Aurizon Network must provide the QCA with a copy of the High-Risk Personnel Register.
- (e) The QCA may, from time to time, declare by notice to Aurizon Network that additional persons are High-Risk Personnel, and in doing so, the QCA must provide Aurizon Network with an explanation of why each of those persons are High-Risk Personnel.

### 3.17 Exit certificates

- (a) Where an Aurizon Network Personnel that has had access to Confidential Information:
  - (i) leaves Aurizon Network to work for another Aurizon Group business unit, including for temporary secondments; or
  - (ii) leaves Aurizon Network to work for another employer outside the Aurizon Group,

Aurizon Network must use its best endeavours to (but in the case of High-Risk Personnel, must):

  - (iii) have that Aurizon Network Personnel undergo a debriefing session provided by Aurizon Network to remind the employee (or other person) of Aurizon Network's and its own obligations relating to the management of Confidential Information; and
  - (iv) obtain an exit certificate (that includes an acknowledgement of having undergone such a debriefing process) signed by that person.



- (b) The Confidential Information Register must include a record of signed exit certificates and persons who are requested to but do not sign an exit certificate.
- (c) It must be a condition of employment or engagement of Aurizon Network Personnel to attend the debriefing session and provide an exit certificate.

### 3.18 Security measures

- (a) Aurizon Network must ensure that adequate security measures (physical, electronic and otherwise) are in place to ensure that only persons permitted by this Undertaking have access to Confidential Information in Aurizon Network's possession or control (whether in electronic or tangible form) and the access is only to the extent permitted for that person by this Undertaking.
- (b) Aurizon Network must ensure that all Aurizon Network Personnel are employees are issued with, and use at all relevant times in their capacity as Aurizon Network Personnel, email addresses that clearly identified them as Aurizon Network Personnel in their dealings with Third Parties, and distinguish them from Personnel of Aurizon Parties.
- (c) Aurizon Network must ensure that its premises have in place adequate security measures to ensure that persons who are not Aurizon Network Personnel ~~(including staff of Aurizon Parties)~~ are unable to access the Aurizon Network offices where Confidential Information is located or stored, unless:
  - (i) access to those Aurizon Network offices is authorised by an Aurizon Network employee whose level of authority includes the right to authorised access to Aurizon Network's premises; and
  - (ii) the person is accompanied by an Aurizon Network employee at all times while in those premises.
- (d) Aurizon Network must maintain a record, including reasonable details, of all persons (other than Aurizon Network Personnel) who have accessed each premises where Confidential Information is located or stored.
- (e) For the purposes of this **clause 3.18**, at any time an employee of Aurizon Network is on secondment to an Aurizon Party, that person will be considered to be staff of the Aurizon Party.
- (f) **Clause 3.18(c)** does not require that Aurizon Network be located in a different building to a Related Operator.

### 3.19 Decision making

- (a) Subject to **clause 3.19(b)**, Aurizon Network must comply with the following decision making process when making a decision under this Undertaking that will, or has the potential to, materially and adversely

affect an Access Seeker's or Access Holder's rights under this Undertaking or an Access Holder's Access:

- (i) the decision is made by an identified decision maker responsible for the relevant type of decision;
  - (ii) the decision is made in a manner that does not unfairly differentiate~~is consistent~~ between Access Seekers and/or Access Holders ~~in the same circumstances in a way that has a material adverse effect on the ability of one or more of the Access Seekers or Access Holders to compete with other Access Seekers or Access Holders~~; and
  - (iii) either:
    - (A) the decision is required in order to comply with:
      - (1) a Law;
      - (2) this Undertaking;
      - (3) the Access Agreements of adversely affected Access Holders; or
      - (4) an access code made under the Act; or
    - (B) the decision is made in accordance with Aurizon Network's documented policies and procedures; or
    - (C) the reasons for the decision are documented by Aurizon Network.
- (b) Decisions made in relation to or to prevent an emergency are exempt from the decision making process prescribed by **clause 3.19(a)**.

## Section E – Complaints and Waiver

### 3.20 Complaint handling

- (a) If an Access Seeker, Access Holder, ~~or~~ Train Operator or Third Party Access Seeker (**Complainant**) considers that:
  - (i) Aurizon Network has breached one or more of its obligations under this **Part 3**;
  - (ii) the Ultimate Holding Company has breached the Ultimate Holding Company Support Deed; or
  - (iii) any of:
    - (A) Aurizon Network's Personnel; or
    - (B) an Aurizon Party or an employee, officer, agent or contractor of an Aurizon Party, ~~or~~
  - ~~(iv)~~ has breached a confidentiality deed or confidentiality provisions contained in another arrangement with Aurizon

Network under which Confidential Information was disclosed to it,

the Complainant may lodge a written complaint with Aurizon Network [or the QCA or both of them and may provide a copy of any complaint lodged with Aurizon Network to the QCA.](#)

- (b) If information and documents are provided to the QCA by a Complainant for the purposes of its complaint, Aurizon Network waives any and all rights in relation to confidentiality that would otherwise prevent the disclosure of that information (or documents which contain such information) to the QCA.
- (c) Subject to **clause 3.20(b)** and unless otherwise agreed in writing by Aurizon Network or the Complainant, the written complaint and any accompanying information (whether documentary or otherwise) will not be Confidential Information.
- (d) Aurizon Network must advise the QCA, as soon as practicable, of any complaints it receives pursuant to **clause 3.20(a)**~~Error! Reference source not found.~~.
- (e) Aurizon Network must:
  - (i) promptly investigate complaints received under **3.20(a)**~~Error! Reference source not found.~~; and
  - (ii) advise the Complainant and the QCA in writing of the outcome of that investigation and Aurizon Network's proposed response, if any, no later than twenty (20) Business Days after receiving such a complaint.
- (f) Where the Complainant is not satisfied with the outcome of Aurizon Network's investigation, the Complainant may apply to the QCA seeking an audit of the relevant subject of the complaint. The QCA will consider such a request and determine whether to request Aurizon Network to conduct an audit in accordance with **clause 10.6.3**~~10.8~~.
- (g) Aurizon Network must ensure that the Compliance Officer establishes and maintains a record of Aurizon Network's Complaint handling times under this **clause 3.20** for publication in the annual compliance report prepared under **Part 10** of this Undertaking.

## Section F – Responsibility for Rail Infrastructure

### 3.21 Line Diagrams

- (a) The Line Diagrams indicate those parts of the Queensland rail network that are Rail Infrastructure.
- (b) During the Term, Aurizon Network must, as necessary but at intervals of no greater than six (6) Months:

- (i) review and amend the Line Diagrams to reflect changes that have been made to the configuration or ownership of the Rail Infrastructure; and
  - (ii) publish on Aurizon Network's website:
    - (A) the current version of the Line Diagrams; and
    - (B) a description of the changes made since the immediately preceding version of the Line Diagrams.
- (c) ~~Unless approved by the QCA, if~~ Aurizon Network ~~must not~~:
- (i) assigns or transfers ownership of existing or new Rail Infrastructure from Aurizon Network to an Aurizon Party; or
  - (ii) removes existing Rail Infrastructure (except where such Rail Infrastructure is already identified in the Line Diagrams for future removal) or amends the Line Diagrams to identify any existing Rail Infrastructure for future removal, except where the change:
    - (A) is minor or administrative in nature; or
    - (B) does not reflect a permanent reduction in Existing Capacity that would affect an Access Holder's Access other than in accordance with an Access Agreement or this Undertaking (for example, where level crossings are removed or reconfigurations of ~~track~~ Track are undertaken),

this Undertaking ceases to apply to that Rail Infrastructure.
- (d) If the QCA or an Access Seeker or Access Holder is reasonably of the opinion that Line Diagrams prepared and published in accordance with **clause 3.21(b)**:
- (i) do not indicate those parts of the Queensland rail network that are Rail Infrastructure; or
  - (ii) reflect a change to Rail Infrastructure that contravenes **clause 3.21(c)**,
- ~~(e)~~ (e) If the QCA or that Access Seeker or Access Holder may request in writing that Aurizon Network review and, if necessary, amend the Line Diagrams in accordance with **clause 3.21(b)**.
- ~~(f)~~ (e) If Aurizon Network receives a request under **clause 3.21(d)** ~~3.20(d)~~, Aurizon Network must:
- (i) if the QCA made the request, within thirty (30) days after receiving that request, ~~and~~ make any necessary amendments to the Line Diagrams; and

- (ii) if an Access Seeker or Access Holder made the request:
  - (A) promptly notify the QCA of that request;
  - (B) review the Line Diagrams;
  - (C) within thirty (30) days after receiving the request, give the QCA and the Access Seeker or Access Holder notice of whether Aurizon Network accepts the matters set out in the request and, if so, the action that Aurizon Network proposes to take; and
  - (D) make any required amendments to the Line Diagrams within fourteen (14) days after:
    - (1) where Aurizon Network has accepted the matters set out in the request, the giving of the notice under **clause 3.21(e)(ii)(C)**; or
    - (2) if there is a Dispute, the resolution of the Dispute in favour of the Access Seeker or Access Holder.

~~(g)~~(f) An Access Seeker or Access Holder may only refer a matter in relation to the Line Diagrams to be resolved under **Part 11**:

- (i) after Aurizon Network has notified that party in accordance with **clause 3.20(f)(ii)(C)3.21(e)(ii)(C)**; or
- (ii) if Aurizon Network fails to comply with **clause 3.20(f)(ii)3.21(e)(ii)**.

### **3.22 Transfer of rail transport infrastructure from Aurizon Party**

- (a) If an Access Seeker or Access Holder is reasonably of the opinion that rail transport infrastructure (as defined under the TIA) owned by an Aurizon Party is required for the performance of the Below Rail Services, then the Access Seeker or Access Holder may request Aurizon Network ~~that Aurizon Network~~ obtain ownership of the relevant rail transport infrastructure and amend the Line Diagrams accordingly.
- (b) In considering a request made under **clause 3.22(a)3.21(a)**, Aurizon Network must use reasonable endeavours to obtain ownership of the relevant rail transport infrastructure and amend the Line Diagrams accordingly if, in Aurizon Network's reasonable opinion, this is appropriate having regard to the following principles:
  - (i) subject to **clauses 3.22(b)(iv) and 3.22(b)(v)**, the ownership of rail transport infrastructure (as defined under the TIA), as between Aurizon Network and an Aurizon Party, should enable Aurizon Network to operate as a stand alone provider of the Below Rail Services;

- (ii) the existing market shares of Related Operators should not be a factor in the allocation of ownership of rail transport infrastructure (as defined under the TIA) between Aurizon Network and an Aurizon Party;
  - (iii) subject to **clauses 3.22(b)(iv)**~~3.21(b)(iv)~~ and **3.22(b)(v)**~~3.21(b)(v)~~, the ownership of rail transport infrastructure (as defined under the TIA), as between Aurizon Network and an Aurizon Party, should reasonably allow for Access Seekers or Access Holders to undertake activities associated with Access Rights;
  - (iv) any Private Infrastructure should connect directly to Rail Infrastructure, unless the agreement between an Aurizon Party and the owner of the Private Infrastructure expressly accepts that the Private Infrastructure connects to track managed by the Aurizon Party; and
  - (v) any facility that is owned or leased by a Third Party and is accessible from track managed by an Aurizon Party (**Private Facility**) should be accessible from Rail Infrastructure, unless the agreement between the Aurizon Party and the owner of the Private Facility expressly accepts that the Private Facility is accessible from track managed by the Aurizon Party.
- (c) Aurizon Network is not required to obtain ownership of the relevant rail transport infrastructure unless:
- (i) the use of the rail transport infrastructure would form part of the Below Rail Services if the infrastructure is owned by Aurizon Network;
  - (ii) if the rail transport infrastructure is not required to operate a Train Service directly between an origin and a destination, access to the rail transport infrastructure satisfies the criteria in section 76(2) of the Act;
  - (iii) if the rail transport infrastructure relates to a Coal System, the value of the rail transport infrastructure is included in the Regulatory Asset Base at the DORC value; and
  - (iv) if the rail transport infrastructure relates to a Coal System, it is included in that Coal System and the System Forecasts, System Allowable Revenue, Reference Tariffs and any other relevant matters for that Coal System are reviewed and amended to take account of the rail transport infrastructure (including taking into account any Incremental Costs associated with the rail transport infrastructure).
- (d) If an Access Seeker or Access Holder disagrees with the results of Aurizon Network's consideration of its request under **clause 3.22(a)**, it may refer the matter to be resolved under **Part 11**.



## Part 4: Negotiation Framework

### 4.1 Overview

- (a) The granting of Access will be underpinned by an Access Agreement that will be developed and finalised as part of the negotiation framework.
- (b) **Part 4** addresses the process by which a prospective Access Seeker may apply for, negotiate and develop an Access Agreement. In particular, under **Part 4**:
  - (i) ~~A~~a prospective Access Seeker may obtain Preliminary Information prior to submitting an application for Access from the Website or, if Capacity Information is required, by lodging a request with Aurizon Network (**clause 4.2**).
  - (ii) ~~An~~A Access Application by an Access Seeker must be provided in the appropriate form. By submitting an Access Application, the Access Seeker agrees to be bound by this Undertaking. Aurizon Network will provide notice of any incorrectly completed sections or missing information and may request additional evidence regarding the use of Access Rights and to assess Capacity ~~Allocation~~allocation (**clause 4.3**).
  - (iii) Aurizon Network will provide an Acknowledgement Notice and confirm preparation of an IAP once additional information or a properly completed Access Application is received. In specified circumstances, the negotiation process may be suspended (**clause 4.4**).
  - (iv) Aurizon Network will develop an appropriate IAP for the Access Rights sought. The Access Seeker may notify Aurizon Network regarding concerns about the IAP (**clause 4.6**).
  - (v) ~~a~~An Access Seeker must ~~provide notification to~~notify Aurizon Network if it intends to progress its Access Application, based on the arrangements within the IAP (**clause 4.7**).
  - (vi) ~~w~~Where multiple Access Applications for the same Access Rights are made, **clause 4.8** provides a mechanism for determining who shall be treated as the Access Seeker. In these circumstances, Aurizon Network may disclose certain information without breaching its confidentiality obligations (**clause 4.8**).
  - (vii) The Negotiation Period commences once the notification of intent to progress an Access Application is provided by the Access Seeker. Specific issues are to be addressed during



the Negotiation Period. Aurizon Network may provide Additional Information to the Access Seeker (**clause 4.10**).

(viii) Aurizon Network may issue a Negotiation Cessation Notice to an Access Seeker in certain circumstances (**clause 4.12**).

(c) A diagrammatic representation of the negotiation framework is set out in **Schedule H**.

(d) **Part 4** must be read in conjunction with the processes outlined in **Part 7** and **Part 8**.

(e) Any Dispute regarding a decision made, or notice given, by Aurizon Network under this **Part 4** must be referred to the QCA and notified to Aurizon Network within ten (10) Business Days after the Access Seeker or its Train Operator receives notice of Aurizon Network's decision or notice.

(f) If a Dispute arises between the parties under this Part 4, the time between the issuing of a Dispute Notice and the date of the finding (or such longer time as may be determined by the QCA in the resolution of the Dispute) will be added to the original period that applies under this Undertaking for the period during which the Dispute arose. ~~of negotiation for the purpose of determining the nine (9) Month period referred to in clause 4.10.1(c)(iv)(A) or 4.10.1(f)(iv), as applicable.~~

## 4.2 Initial enquiries

- (a) Prior to submitting an Access Application, a prospective Access Seeker may meet with Aurizon Network to discuss the Access Application process and to seek clarification of the process as outlined in this Undertaking.
- (b) Aurizon Network must promptly provide prospective Access Seekers with information regarding the Access Application process. All Preliminary Information and the application form(s) for Access Applications must be displayed on the Website.
- (c) A prospective Access Seeker may lodge a request for Capacity Information with Aurizon Network and Aurizon Network must provide that Capacity Information within ten (10) Business Days after receiving that request.
- (d) Aurizon Network must keep the Preliminary Information and the Capacity Information current and accurate.

## 4.3 Access Application

- (a) Requests for Access must be submitted to Aurizon Network in the form of an Access Application.
- (b) By submitting an Access Application, the prospective Access Seeker agrees to be bound by all the provisions of this Undertaking as they relate to Access Seekers.

- (c) If applicable, Aurizon Network must, within ten (10) Business Days after receipt of a purported Access Application, notify the prospective Access Seeker that:
  - (i) the purported Access Application has not been properly completed and specify the information required to make the application complete and compliant; or
  - (ii) Aurizon Network requests more evidence or information, to the extent reasonably required;
    - (A) regarding the prospective Access Seeker's ability to utilise the requested Access Rights (on the basis of the factors listed in **clause 4.12(c)**); or
    - (B) to assess the allocation of Capacity allocation related issues and to prepare an IAP in accordance with Part 7 and, if applicable, Part 8.
- (d) A person receiving a notice under ~~any of clauses 4.3(c)(i) or 4.3(c)(ii) to 4.3(c)(iv)~~ must provide:
  - (i) \_\_\_\_\_ the revised Access Application; ~~;~~
  - (ii) \_\_\_\_\_ the requested evidence or information; or
  - (iii) \_\_\_\_\_ a notice that satisfies the Non-availability Requirements, within twenty (20) Business Days of Aurizon Network's notice or request, as applicable, or such other period as may be agreed.
- (e) If the revised Access Application, evidence or information, or notice satisfying the Non-availability Requirements referred to in **clause 4.3(d)** is not provided to Aurizon Network within the required time period, Aurizon Network may notify the relevant person that Aurizon Network will take no further action in relation to the request for Access and that the request for Access is deemed to be withdrawn. A notice under this **clause 4.3(e)** does not prevent a person from submitting a new request for Access.
- (f) Without otherwise affecting Aurizon Network's discretion to give a notice under **clause 4.3(e)**, Aurizon Network must provide notice to the relevant person that it will not take any further action in relation to a request for Access if that request for Access relates to a Transfer and the evidence referred to in ~~clause 6(g)~~ of **Schedule B** has not been provided.
- (g) A person does not fail to comply with a request under **clause 4.3(c)** if the Non-availability Requirements are satisfied.

#### 4.4 Acknowledgement of Access Application

- (a) Within ten (10) Business Days ~~after of~~ receiving:
  - (i) \_\_\_\_\_ a properly completed Access Application; or

(ii) ~~the any~~ further evidence or information requested under clause 4.3(c); or

(iii) a notice satisfying the Non-availability Requirements, ~~as applicable~~,

whichever is the later. Aurizon Network will give the relevant prospective Access Seeker a notice (**Acknowledgement Notice**):

~~(i)~~(iv) acknowledging receipt of the Access Application;

~~(ii)~~(v) confirming that Aurizon Network will prepare an IAP for the requested Access; and

(vi) confirming the date Aurizon Network received the later of:

(A) the properly completed Access Application; or

(B) any ~~the~~ further evidence or information requested under clause 4.3(c); or

(C) a notice satisfying the Non-availability Requirements,

as applicable.

(b) Subject to confirmation under the Acknowledgement Notice:

(i) the prospective Access Seeker's Access Application will be deemed to have been received for the purposes of this Undertaking; and

(ii) if relevant, the Access Seeker will be deemed to have joined the Queue in respect of the Access Rights sought,

on the later of the date the Access Seeker:

(iii) submits a ~~substantially compliant~~ properly completed Access Agreement Application; or

(iv) provides ~~the further information~~ to Aurizon Network;

(A) any further evidence or information requested under clause 4.3(c)(ii); or

(B) a notice satisfying the Non-availability Requirements; or

(v) notifies Aurizon Network under clause 4.4(c)(ii).

(c) If an Access Application is received by Aurizon Network which is, in part, for Access Rights which cannot be provided in the absence of an Expansion and:

(i) Aurizon Network can satisfy part of the Access Rights sought by the Access Seeker without an Expansion, then within ten (10) Business Days after receipt of the Access Application Aurizon Network will notify the Access Seeker of

the portion of the Access Rights being sought which can be provided without an Expansion; and

- (ii) the Access Seeker notifies Aurizon Network it requires the Access Application to be separated (for clarity, the Access Seeker must, upon receipt of notice from Aurizon Network under **clause 4.4(c)(i)**, notify Aurizon Network whether it requires the Access Application to be separated or treated as one application for all Access Rights sought in order for the process under this Undertaking for the Access Application(s) to continue (and if applicable join the Queue)), then:

- (A) ~~in respect of~~ the Access Rights that can be provided without an Expansion will be deemed to be the subject of one Access Application made, the negotiation process outlined in this Part 4 will commence from on the date of the Access Seeker's notice under this **clause 4.4(c)(ii)**; in respect of these Access Rights as one Access Application;
- (B) the Access Rights that can be provided only with an Expansion will be deemed to be the subject of a second Access Application made on the date of the Access Seeker's notice under this **clause 4.4(c)(ii)**;
- (C) the separation of the Access Application into two Access Applications will occur automatically and without reference to the process under **clause 4.5**; and
- (D) **clause 4.4(b)** applies to both Access Applications.

- (d) If an Access Application is received by Aurizon Network and ~~either~~:

- (i) Aurizon Network cannot satisfy any part of the Access Rights sought by the Access Seeker without an Expansion;
- (ii) on receipt of a notice under **clause 4.4(c)(i)**, the Access Seeker notifies Aurizon Network it requires the Access Application to be treated as one application for all Access Rights sought; or
- (iii) on receipt of a notice under **clause 4.4(c)(i)**, an Access Application for Access Rights that requires an Expansion is deemed to be lodged in accordance with **clause 4.4(c)(ii)(B)**,

then:

- (iv) **clauses 8.2 to 8-10-8.9** will apply;
- (v) the negotiation process for Access can be suspended (before or after the provision of an IAP) by either Aurizon Network or the relevant Access Seeker giving notice to the

- other (provided that a notice given under this clause must give reasons for the suspension); and
- (vi) a suspension of the negotiation process under **clause 4.4(d)(v)** continues until ~~either~~the date that:
- (A) Aurizon Network and the Access Seeker enter into an agreement as to ~~have agreed on~~ how an Expansion is to be funded in accordance with **clause 8.8.18-8**; ~~or~~
  - (B) a determination of a relevant Dispute specifies what Expansion is required and how that Expansion is to be funded; or
  - (C) Aurizon Network and the Access Seeker agree to restart or continue negotiations for Access in parallel with any negotiations over funding of the required Expansion.
- (e) If an Access Application is received by Aurizon Network and Aurizon Network considers (acting reasonably) that the Capacity is constrained, within ten (10) Business Days of receipt of the Access Application, Aurizon Network ~~it~~ must advise the Access Seeker and, to the extent that the relevant information is available at the relevant time, provide reasons why such constraint cannot be mitigated except through an Expansion.
- (f) Where a Provisional Capacity Allocation (as defined under **clause 8.5(b)(ii)**) has been granted to an Access Seeker, Aurizon Network may, acting reasonably and in good faith, suspend negotiations with other Access Seekers for ~~corresponding~~ Access Rights which, if the holder of the Provisional Capacity Allocation executes an Access Agreement in respect of the Provisional Capacity Allocation, cannot be provided in the absence of an Expansion, pending the outcome of negotiations with the holder of the Provisional Capacity Allocation.
- (g) Subject to **clause 4.4(c)**, if Aurizon Network receives an Access Application for Access Rights which commence on a date more than five (5) years after the date on which the relevant Access Application would be deemed to have been received by Aurizon Network under **clause 4.4(b)**, then Aurizon Network may reject the Access Application. Rejection of the Access Application does not restrict the relevant Access Seeker from submitting a new Access Application for the same Access Rights at a later date.
- (h) Where Aurizon Network notifies an Access Seeker that Aurizon Network is rejecting the Access Seeker's Access Application under **clause 4.4(g) (Rejection Notice)**:
- (i) the rejection will take effect ten (10) Business Days after Aurizon Network gives the Rejection Notice; and

- (ii) all time periods and obligations relating to the Access Application are suspended.
- (i) When Aurizon Network suspends the negotiation process in accordance with **clause 4.4(d)**, Aurizon Network:
  - (i) may request at intervals not more than every six (6) Months that the Access Seeker confirm, in writing:
    - (A) the Access Seeker's ongoing requirement for the Access Rights;
    - (B) the reasonable likelihood that the Access Seeker will be able to utilise the requested Access Rights at the proposed date of commencement of those Access Rights (on the basis of the factors listed in **clause 4.12(c)**) and provide any relevant information or evidence requested by Aurizon Network (acting reasonably); and
    - (C) any material change to the information contained in their Access Application or provided in respect of the matters referred to in **clause 4.3(d)**; and
  - (ii) must, ~~within 10 Business Days of becoming aware of a change, inform as soon as practicable, notify~~ the Access Seeker ~~in writing~~ of any changes to an Expansion that will impact the Access Seeker's Access Application.
- (j) If the document or information referred to in **clause 4.4(i)(i)** is not provided to Aurizon Network within ~~the required time period, twenty~~ (20) Business Days of Aurizon Network's request, Aurizon Network may notify the relevant person that Aurizon Network will take no further action in relation to the request for Access and that the request for Access is deemed to be withdrawn. A notice under this **clause 4.4(j)** does not prevent a person from submitting a new request for Access.
- (k) The Access Seeker does not fail to comply with a request under **clause 4.4(i)(i)** if the Non-availability Requirements are satisfied.

#### 4.5 Revisions to an Access Application

- (a) An Access Seeker may, by written request to Aurizon Network (acting reasonably ~~and in good faith~~), vary its Access Application at any time after receipt of an Acknowledgement Notice in accordance with this **clause 4.5**.
- (b) If the requested variation to the Access Application is not a Material Variation, then the Access Application is varied as requested by the Access Seeker and the process under this Undertaking for the Access Application will continue provided that:

- (i) if a variation under **clause 4.5(a)** is received prior to Aurizon Network giving an IAP to the relevant Access Seeker; and
- (ii) Aurizon Network has already commenced preparing the IAP, Aurizon Network may, by notice to the Access Seeker, extend the date by which it must give the IAP to the Access Seeker by a period of no more than ten (10) Business Days.
- (c) ~~Subject to **clause 4.5(h)** and **4.5(i)**, if~~ Aurizon Network considers a requested variation is a Material Variation, then Aurizon Network must, within ten (10) Business Days of receipt of the proposed variation under **clause 4.5(a)**, ~~give notice to~~ notify the Access Seeker of:
- (i) its reasons for considering the variation is a Material Variation;
- (ii) the extent to which it is possible to separate the Access Application (as varied) so that one Access Application may proceed without ~~an Expansion or otherwise not~~ containing a Material Variation;
- (iii) the extent to which the Material Variation causes or contributes to the Access Application relating to Access Rights which cannot be provided in the absence of an Expansion;
- (iv) the extent that Available Capacity exists which can satisfy part of the Access Rights sought by the Access Application with the proposed Material Variation; and
- ~~(iii)(v) if an IAP has previously been issued for the relevant Access Application,~~ the date by when Aurizon Network (acting reasonably) estimates that it will issue an IAP or revised IAP (as applicable) to accommodate the Material Variation.
- (d) If, within five (5) Business Days after receipt of a notice under **clause 4.5(c)**, the Access Seeker:
- (i) notifies Aurizon Network that it wishes to continue with the Material Variation, subject to **clause 4.5(e)**, Aurizon Network will use reasonable endeavours to accommodate the Material Variation including by issuing an IAP or a revised IAP (as applicable) in accordance with this **clause 4.5** within a reasonable time following receipt of any information requested under **clause 4.5(f)(ii)** and having regard to all relevant circumstances including:
- (A) the nature and extent of the Material Variation; and
- (B) the effect that the Material Variation has, or would have had, on any processes already carried out, or to be carried out, by Aurizon Network or the Access Seeker in accordance with this **Part 4** (including the

extent of inconsistency with any parameters or other information upon which a relevant Capacity Analysis has been based) or any other provision of this Undertaking,

except that if:

~~(C) — the Material Variation causes or contributes to the Access Application relating to Access Rights which cannot be provided in the absence of an Expansion; and~~

~~(D) — Available Capacity exists which can satisfy part of the Access Rights sought by the Access Application with the proposed Material Variation;~~

~~the IAP or revised IAP (as applicable) to be prepared under this **clause 4.5(d)(i)** will be prepared only in relation to that portion of the Access Rights that can be provided in the absence of an Expansion (based on an Initial Capacity Assessment); or~~

(ii) notifies Aurizon Network that it requires the Access Application to be separated (so that one Access Application may proceed without a Material Variation), then:

(A) in respect of the Access Rights that can be provided without being a Material Variation, the Access Application will be taken to be varied to that extent and the process under this Undertaking for that Access Application will continue in accordance with **clause 4.5(b)**; and

(B) the Access Rights that cannot be provided without a Material Variation will be deemed to be the subject of a second Access Application and the process set out in **clause 4.5(d)(i)** will apply; or

(iii) either:

(A) notifies Aurizon Network that it does not wish to continue with any variation to the Access Application; or

(B) does not give Aurizon Network a notice under this **clause 4.5(d)**,

~~(C) then the request for variation (including the Material Variation) is deemed to be withdrawn and negotiations for Access Rights outlined in this **Part 4** will proceed without the variation.~~

~~(e) — Subject to **clause 4.5(h)**, the negotiation process under this **Part 4** is suspended for the period:~~



- ~~(i) from (and including) the time that the Access Seeker requested the Material Variation; and~~
- ~~(ii) until (and including) the time when:
 
  - ~~(A) the request for Material Variation is deemed to be withdrawn under **clause 4.5(d)(iii)** or **clause 4.5(f)(iv)(B)**; or~~
  - ~~(B) following the issue of a revised IAP, Aurizon Network is notified under **clause 4.5(g)**;~~~~

~~**(Suspension Period)**~~

~~(e) If a Material Variation causes or contributes to the Access Application relating to Access Rights which cannot be provided in the absence of an Expansion and the Access Seeker notifies Aurizon Network under **clauses 4.5(d)(i) or 4.5(d)(ii)**, then:~~

- ~~(i) to the extent that Available Capacity exists which can satisfy part of the Access Rights sought by the Access Application with the proposed Material Variation, the IAP or revised IAP (as applicable) to be prepared under **clause 4.5(d)(i) or clause 4.5(d)(ii)(B)** (as applicable) will be prepared only in relation to that portion of the Access Rights that can be provided in the absence of an Expansion (based on an Initial Capacity Assessment); or~~
- ~~(ii) if Aurizon Network cannot satisfy any part of the Access Rights sought by the Access Seeker without an Expansion, **clause 4.5(j)** will apply.~~

(f) If an IAP or revised IAP (as applicable) must be prepared by Aurizon Network under this **clause 4.5**, then:

- (i) it must be accompanied by or include a statement drawing to the Access Seeker's attention the requirements under **clause 4.5(h)** and the potential consequence under **clause 4.5(j)**;
- (ii) Aurizon Network may request the Access Seeker to provide more evidence or information, to the extent reasonably required:
  - (A) regarding the Access Seeker's ability to utilise the requested Access Rights (on the basis of the factors listed in **clause 4.12(c)**); or
  - (B) to assess the allocation of Capacity ~~allocation related issues and to prepare the IAP or the revised IAP (as applicable)~~ in accordance with Part 7 and, if applicable, Part 8;
- (iii) the Access Seeker must provide any requested evidence or information, or a notice that satisfies the Non-availability

Requirements as soon as reasonably practicable (but within no more than twenty (20) Business Days of Aurizon Network's request for that evidence or information or such other period as may be agreed); and

- (iv) if the evidence or information ~~or a notice referred to in clause 4.5(f)(ii)~~ is not provided to Aurizon Network within the required time period under clause 4.5(f)(ii), then:
  - (A) Aurizon Network's obligations in relation to preparing the IAP or the revised IAP (as applicable) in response to the Material Variation cease;
  - (B) the Material Variation is deemed to be withdrawn; and
  - (C) negotiations for Access Rights outlined in this **Part 4** will proceed without the Material Variation.
- (g) A person does not fail to comply with a request under **clause 4.5(f)(ii)** if the Non-~~a~~ Availability Requirements are satisfied.
- (h) ~~If the Access Seeker wishes to continue negotiations on the basis of the IAP or revised IAP issued to it by Aurizon Network under this clause 4.5, then t~~he Access Seeker must, within ten (10) Business Days after being given the IAP or revised IAP (as applicable) issued by Aurizon Network under this clause 4.5 in response to a Material Variation, notify Aurizon Network that it intends to continue to negotiate for Access Rights in accordance with this Undertaking either:
  - (i) on the basis of the IAP or the revised IAP (as applicable) issued by Aurizon Network under this clause 4.5 in response to a Material Variation; or
  - (ii) without the Material Variation to the Access Application.
- (i) If an Access Seeker notifies Aurizon Network in accordance with clause 4.5(h)(ii), the Material Variation is deemed to be withdrawn and negotiations for Access Rights outlined in this Part 4 will proceed without the Material Variation.
- ~~(+)(i)~~ If:
  - ~~(i) under clause 4.5(d)(i), there is a portion of the Material Variation that cannot be provided in the absence of an Expansion (based on an Initial Capacity Assessment);~~
  - ~~(ii) 4.5(f)(iv)(B) applies;~~
  - (i) a request to vary an Access Application was made after the relevant Access Seeker has given Aurizon Network a notification of intent under clause 4.7 in respect of that Access Application and Aurizon Network notifies the Access

Seeker under **clause 4.5(c)** that it considers all or a portion of the requested variation is a Material Variation;

- (ii) Aurizon Network has received a notice under **clause 4.5(h)(i)** and there was a portion of the Material Variation that could not be provided in the absence of an Expansion (based on an Initial Capacity Assessment) under **clause 4.5(e)(i)**, then to the extent that the Material Variation causes or contributes to the Access Application requesting Access Rights which cannot be provided in the absence of an Expansion;
- (iii) **clause 4.5(e)(ii)** applies; or
- (iv) the Access Seeker does not notify Aurizon Network in accordance with **clause 4.5(h)**,

then the following apply:

(v) where **clause 4.5(j)(i)**, applies the Material Variation is deemed to be withdrawn by the Access Seeker and, for clarity, the negotiation process under this **Part 4** will cease in respect of that Material Variation;

~~(v)~~ (vi) the relevant Access Application (including the Material Variation) or, in the case of **clause 4.5(j)(ii)**, the relevant portion of the Access Application (including the relevant portion of the Material Variation), is deemed to be withdrawn by the Access Seeker and, for clarity, the negotiation process under this **Part 4** will cease in respect of that ~~Material Variation~~ Access Application or, in the case of **clause 4.5(j)(ii)**, the relevant portion of the Access Application; and;

~~(vi)~~ (vii) except where that Access Seeker has notified Aurizon Network to the contrary, a new request for Access in respect of the whole or any part of the Material Variation or Access Application (as applicable) withdrawn under **clause 4.5(j)(v)** or (vi) (~~comprised of the withdrawn Material Variation~~) is deemed submitted to Aurizon Network and on the date of Aurizon Network's notice given under **clause 4.5(c)**, and the negotiation process for that new request for Access will start at the beginning of that process under this **Part 4**;

~~(A)~~ that new request for Access is deemed received by Aurizon Network on the day immediately after the expiry of the five Business Day period under **clause 4.5(j)** (~~New Request Date~~);

~~(B)~~ the negotiation process for that new request for Access will start at the beginning of that process under this **Part 4**; and

~~(G) — the New Request Date will be deemed to be the date that the relevant Access Seeker joined the Queue in respect of that new request for Access.~~

(k) If a change described in **clause 4.9.1(c)(ii)** or **4.9.1(c)(iii)** constitutes a Material Variation, references in this **clause 4.5** to Access Seeker will be taken to refer to the incoming Access Seeker from the date when the incoming Access Seeker replaces the existing Access Seeker in accordance with **clause 4.9.1(c)(ii)** or **4.9.1(c)(iii)** as applicable.

(l) Subject to **clause 4.5(j)**, the negotiation process under this **Part 4** is suspended for the period:

(i) from (and including) the time that the Access Seeker requested the Material Variation; and

(ii) until (and including) the time when:

(A) the request for Material Variation is deemed to be withdrawn under **clauses 4.5(d)(iii)**, **4.5(f)(iv)(B)** or **4.5(i)**; or

(B) following the issue of an IAP or revised IAP in response to the Material Variation under this **clause 4.5**, Aurizon Network is notified under **clause 4.5(h)**.

(Suspension Period).

~~(j) — If the Access Seeker gives notice to Aurizon Network under **clauses 4.5(d)(iii)(A)** or **4.5(g)(ii)**, the time within which Aurizon Network is required to provide an IAP or a revised IAP (as the case may be) to the Access Seeker is extended by the period from (and including) the date on which Aurizon Network notified the Access Seeker under **clause 4.5(e)** to (and including) the date on which the Access Seeker gives Aurizon Network notice under **clauses 4.5(d)(iii)(A)** or **4.5(g)(ii)** (as applicable).~~

~~(k) — If a notice is not given by Aurizon Network under **clause 4.5(e)**, then the process under this Undertaking in respect of that request for Access will continue with the Access Application as varied by the Access Seeker, provided that, where Aurizon Network has already commenced preparing the IAP or a revised IAP (as the case may be), Aurizon Network may, by notice to the Access Seeker, extend the date by which it must give the IAP or a revised IAP (as the case may be) to the Access Seeker by a period of no more than five (5) Business Days.~~

## 4.6 Indicative Access Proposal

(a) Aurizon Network will review the information received and assess the Access Application to develop an IAP for the type of Access Rights

being sought and having regard to the appropriate form of Access Agreement referred to in **clause 5.1(c)**.

- (b) The IAP will outline:
- (i) the Rollingstock and Rollingstock Configuration;
  - (ii) the relevant operating characteristics;
  - (iii) an Initial Capacity Assessment (which is subject to confirmation by a Capacity Analysis prepared in accordance with **clause 4.10.2(a)(v)**) together with Aurizon Network's assumptions regarding Rollingstock, section run times and loading and unloading times used in preparing that assessment (but, for clarity and efficiency, Aurizon Network may use all or part of any pre-existing Capacity assessment to the extent that it is appropriate to do so);
  - (iv) whether any other requests for Access exist that, if approved, would affect Aurizon Network's ability to grant the Access Rights sought by the Access Seeker;
  - (v) an initial estimate of the Access Charge applicable to the Train Service proposed and details of how the initial estimate has been calculated, including where **clauses 6.2.1(b), 6.2.2** or **6.2.3** apply details of how those clauses have been applied in calculating the initial estimate;
  - (vi) details of any further information reasonably required from the Access Seeker in preparation for the negotiation stage; and
  - (vii) where the grant of Access Rights will require the construction of an Expansion, information identifying the likely need for an Expansion and identifying the Expansion, including likely timeframes, to the extent that this information exists and is reasonably available to, and can lawfully be provided by, Aurizon Network.
- (c) The IAP contains indicative arrangements only and does not oblige Aurizon Network to provide Access.
- (d) ~~Subject to clause 4.5(j),~~ Subject to any suspension of the negotiation process under clauses 4.4(d) or 4.5(l) occurring before the IAP is provided to the Access Seeker, or an extension of the relevant date under clause 4.5(b), Aurizon Network will provide the IAP to the Access Seeker within twenty (20) Business Days of the date of the Acknowledgement Notice. However, where, due to the complexity of the Access Application or other extenuating circumstances, it is not reasonable to provide an IAP within that period, Aurizon Network may, by notice to the Access Seeker (to be given as soon as practicable and in any case no later than fifteen (15) Business Days after the Acknowledgement Notice), extend the period for the giving of an IAP by up to a further twenty (20) Business Days. This period may

be further extended by agreement between Aurizon Network and the Access Seeker.

- (e) Unless otherwise agreed by Aurizon Network and the Access Seeker, the IAP expires sixty (60) Business Days after the later of:
- (i) the date of its provision to the Access Seeker; and
  - (ii) the date of issue of a revised IAP (if any) under **clause 4.6(g)**,

provided that where:

- (iii) the negotiation process has been suspended under **clauses 4.4(d) or clause 4.5(l); 4.1(e)(ii), or clause 4.4(d)(v) or clause 4.5(e)**; and
- (iv) Aurizon Network provided the IAP to the Access Seeker prior to that suspension commencing,

the expiry date is extended by the period during which the negotiation process was suspended.

- (f) If the Access Seeker believes, acting reasonably, that the IAP has not been prepared in accordance with this Undertaking and would therefore not be an appropriate basis for continuing with the negotiation process under this Undertaking, the Access Seeker will notify Aurizon Network of its concerns in writing within twenty (20) Business Days of being provided with the IAP, or such other timeframe as Aurizon Network and the Access Seeker agree.

- (g) Aurizon Network will respond to the concerns of any Access Seeker notified under **clause 4.6(f)** including, where appropriate, by making revisions to the IAP:

- (i) within ten (10) Business Days after being notified under **clause 4.6(f)**; or

(ii) if due to the complexity of the concerns or other extenuating circumstances it is not reasonable to provide a response within that ten (10) Business Day period, a reasonable period notified by Aurizon Network to the Access Seeker within five (5) Business Days after the Access Seeker's notice to Aurizon Network under **clause 4.6(f)**.

- (h) If a Dispute arises in relation to this Part 4 within a timeframe prescribed under this **clause 4.6**, including (but not limited to):

(i) the twenty (20) Business Day time period outlined in **clause 4.6(d)** (or, if extended in accordance with that clause, such extended timeframe); and

(ii) the sixty (60) Business Day time period outlined in **clause 4.6(e)** (or, if extended in accordance with that clause, such extended timeframe).

such timeframe will be extended by the time between the issuing of a Dispute Notice and the date of the finding (or such longer time as may be determined by the QCA in the resolution of the Dispute).

Aurizon Network has no obligation to produce an IAP for an Access Seeker that notifies Aurizon Network that the Access Seeker no longer wishes to proceed with its Access Application.

#### **4.7 Notification of intent**

- (a) If an Access Seeker intends to progress its Access Application on the basis of the arrangements outlined in the IAP, the Access Seeker must notify Aurizon Network of its intention, prior to the expiry of the IAP in accordance with **clause 4.6(e)**. Notification must be in the form set out in the IAP.
- (b) Where an Access Seeker does not notify Aurizon Network under **clause 4.7(a)**, the Access Application and the IAP are deemed to be withdrawn on the IAP's expiry date.

#### **4.8 Multiple applications for the same Access**

- (a) If more than one party has submitted an Access Application for the same Access Rights and:
    - (i) one of the parties that has applied for Access is the Customer Access Seeker:
      - (A) this Undertaking and Aurizon Network will treat the Customer Access Seeker as the sole Access Seeker and the other relevant Access Seekers' Access Applications for the same Access Rights as having been withdrawn; and
      - (B) Aurizon Network must negotiate solely with that Customer Access Seeker; or
    - (ii) the only parties that applied for Access are Railway Operators then, to the extent that each Railway Operator is either:
      - (A) currently engaged in negotiations with a Customer in respect of a potential haulage agreement in respect of the Access Rights being sought; or
      - (B) a party to an existing haulage agreement with the Customer in respect of the Access Rights being sought;
- then:
- (C) this Undertaking and Aurizon Network will treat the Railway Operators as Access Seekers; and
  - (D) Aurizon Network will negotiate with each of those Railway Operators until an alternative Railway

Operator is (or Railway Operators are) nominated in writing by the Customer to Aurizon Network.

- (b) Notwithstanding any other provision in this Part 4, if # ~~clause 4.8(a)(ii) applies, and the relevant Customer nominates a relevant Railway Operator prior to Aurizon Network preparing an IAP for each of the relevant Railway Operators,~~ Aurizon Network ~~may prepare an IAP only for the~~ is not obliged to enter into an Access Agreement with a Railway Operator until a nomination for a Railway Operator is received from ~~nominated by~~ the relevant Customer.
- (c) Aurizon Network may, for the purpose of **clause 4.8(a)**, disclose to the Customer that an Access Application by an Access Seeker in respect of that Customer has been received (that disclosure will not constitute a breach of the confidentiality obligations owed by Aurizon Network under **Part 3**).
- (d) Access Applications that constitute Mutually Exclusive Access Applications will be dealt with in accordance with **clause 7.5**.

## 4.9 Requirements for Customers, Customer Access Seekers and Train Operators

### 4.9.1 *Customers and Customer Access Seekers*

- (a) A Customer Access Seeker may (in its absolute discretion) give written notice to Aurizon Network nominating a ~~Train~~ Railway Operator (**Nominee Operator**) to act on its behalf for the purpose of assisting the Customer Access Seeker with its Access Application including in negotiations with Aurizon Network for the requested Access. Unless the Customer Access Seeker's nomination expressly indicates otherwise or the nomination is revoked by notice to Aurizon Network:
  - (i) the Nominee Operator will, for the purpose of this Undertaking, be taken to be the Customer Access Seeker's agent in relation to the Access Application including for the giving of any notices that may or are required to be given under this Undertaking (but not for the execution of any Access Agreement or other agreement); and
  - (ii) despite any other provision ~~to the contrary in this~~ Undertaking, any information disclosed to the Nominee Operator by Aurizon Network or disclosed to Aurizon Network by the Nominee Operator will be treated as though it was disclosed to or by the Customer Access Seeker, as applicable.
- (b) If Aurizon Network receives notices from both the Nominee Operator and the Customer Access Seeker in respect of the same requirement under this Undertaking or the same subject matter, the Nominee Operator's notice is of no effect and will be disregarded by Aurizon Network.



- (c) At any time during negotiations under this **Part 4**:
- (i) a Customer Access Seeker may withdraw any nomination made under **clause 4.9.1(a)** or replace that nomination by nominating a different ~~Train~~ Railway Operator to act on its behalf;
  - (ii) a person may take over an Access Seeker's Access Application where that person is the Customer for that Access Seeker; or
  - (iii) a Customer Access Seeker may nominate a ~~Train~~ Railway Operator under clause 4.9.1(a) ~~to take over that Customer Access Seeker's Access Application provided that the Train Operator will continue to seek Access Rights for the benefit of that Customer,~~
- by notice to Aurizon Network and to the relevant Railway Operator or Access Seeker (as applicable).
- (d) From the date on which Aurizon Network is given a notice under:
- (i) **clause 4.9.1(c)(i)** withdrawing a nomination, the relevant Railway Operator will cease to be a Nominee Operator for the purpose of **clause 4.9.1(a)** and Aurizon Network must immediately cease providing the Railway Operator with any information in respect of the relevant Access Application;
  - (ii) **clause 4.9.1(c)(i)** nominating a different Railway Operator, that Railway Operator will become the Nominee Operator (replacing the Railway Operator who was previously nominated) for the purpose of **clause 4.9.1(a)** and Aurizon Network must immediately cease providing the exiting Railway Operator with any information in respect of the relevant Access Application;
  - (iii) **clause 4.9.1(c)(ii)**, the Customer will become the Access Seeker (replacing the existing Access Seeker) for the relevant Access Application; or
  - (iv) **clause 4.9.1(c)(iii)** and a notice from the relevant Railway Operator accepting the Customer Access Seeker's nomination, the Railway Operator will become the Access Seeker (replacing the existing Customer Access Seeker) for the relevant Access Application.
- (e) If a person becomes the Access Seeker for an Access Application (replacing the existing Access Seeker) under **clause 4.9.1(d)(iii)** or **(iv)** (as applicable), that person by doing so agrees to be bound by all the provisions of this Undertaking as they relate to Access Seekers.
- (f) If a transfer of an Access Application occurs in accordance with **clause -4.9.1(d)(iii)** or **(iv)**, then:

- (i) Aurizon Network must provide the incoming Access Seeker with a copy of:
  - (A) the Access Application;
  - (B) notices and other documents (including any IAP) given to or by the outgoing Access Seeker by or to Aurizon Network as expressly required to be given in accordance with this Undertaking; and
  - (C) any other documents exchanged between Aurizon Network and the outgoing Access Seeker that are material to the Access Application and any related negotiations,

except to the extent that providing that information would:

(D) be in breach of Aurizon Network's confidentiality obligations under **Part 3**; or

~~(D)~~(E) disclose information to the incoming Access Seeker that is commercially sensitive to the outgoing Access Seeker or that is not required to be disclosed to the incoming Access Seeker in order to progress the Access Application (or both); and

- (ii) on Aurizon Network's written request, the incoming Access Seeker must provide to Aurizon Network or procure for Aurizon Network:
  - (A) appropriate replacement information to the extent reasonably required; or
  - (B) authority from the outgoing Access Seeker that Aurizon Network may continue to use the relevant information provided by the outgoing Access Seeker, in relation to the Access Application and any related negotiations.

#### **4.9.2 Train Operators**

- (a) A request by a prospective Train Operator for Aurizon Network to enter into a Train Operations Deed must be provided in writing and:
  - (i) identify the relevant Access Holder (or Access Seeker) and, if that Access Holder (or Access Seeker) is the Train Operator, also identify the relevant Customer; and
  - (ii) contain the information required by an Access Application and any other information reasonably required by Aurizon Network to assess the request and complete the Train Operations Deed.
- (b) A negotiation process will apply to the prospective Train Operator as specified in **clause 4.10**.

- (c) By submitting a request under **clause 4.9.2(a)**, the prospective Train Operator agrees to be bound by all the provisions of this Undertaking as they relate to Train Operators.

## **4.10 Negotiation process**

### **4.10.1 *Negotiation Period***

- (a) A Negotiation Period in respect of:
  - (i) an Access Seeker's Access (including negotiation of the terms and conditions of the relevant Access Agreement in accordance with **Part 5**) commences on the date on which the Access Seeker notifies Aurizon Network in accordance with **clause 4.7**; ~~or~~ and
  - (ii) a Train Operator's Train Operations Deed commences on the date that Train Operator has provided to Aurizon Network all of the relevant information referred to in **clause 4.9.2** ~~4.9.1~~.
- (b) Once the Negotiation Period has commenced, the Access Seeker or Train Operator, as applicable, and Aurizon Network will begin negotiations as soon as reasonably possible in relation to an Access Agreement or Train Operations Deed (as applicable).
- (c) An Access Seeker's Negotiation Period ceases on:
  - (i) the execution of an Access Agreement in respect of the Access sought by the Access Seeker;
  - (ii) Aurizon Network receiving notification by the Access Seeker that it no longer wishes to proceed with its Access Application;
  - (iii) Aurizon Network issuing a Negotiation Cessation Notice to the Access Seeker under **clause 4.12(a)**;
  - (iv) the date:
    - (A) nine (9) Months after the commencement of the Negotiation Period ~~-except where~~ **clause 4.10.1(c)(iv)(B)** applies; or
    - (B) where the negotiation process has been suspended in accordance with **clause 4.5(e)** ~~4.5(l)~~, nine (9) Months, plus the number of days of the Suspension Period, after the commencement of the Negotiation Period,unless:
    - (C) both parties agree to extend the Negotiation Period, in which case the Negotiation Period will continue until the expiry of the agreed extended period; or

(D) a Dispute arises between the parties in relation to this **Part 4** within the Negotiation Period, in which case, the Negotiation Period will, subject to clause 4.12, be extended by the time between the issuing of a Dispute Notice and the date of the finding (or such longer time as may be determined by the QCA in the resolution of the Dispute); ~~continue until the Dispute's resolution;~~ or

- (v) subject to **clause 4.10.1(d)**, Aurizon Network no longer being able to offer Access to the Access Seeker under the terms of the IAP, either because of:
- (A) Available Capacity being reduced; or
  - (B) Infrastructure Enhancements subsequently committed to adversely impacting the ability to develop Infrastructure Enhancements contemplated by the IAP; or

~~(G)(vi)~~ or as otherwise provided in accordance with this Undertaking.

(d) If:

- (i) Aurizon Network can no longer offer Access to the Access Seeker under the terms of the relevant IAP because of a reason set out in **clause 4.10.1(c)(v)(A)** or **4.10.1(c)(v)(B)**; and
- (ii) either the remaining Available Capacity can satisfy part of the Access Rights sought by the Access Seeker or the contemplated Infrastructure Enhancements can be altered to provide all or part of the Access Rights sought,

Aurizon Network will notify the Access Seeker of that event and the portion of the Access Rights being sought which can be provided and:

- (iii) in that notice, provide (to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed) the Access Seeker with an objective, evidence-based explanation as to why Available Capacity is being reduced or Infrastructure Enhancements subsequently committed to adversely impacting the ability to develop Infrastructure Enhancements contemplated by the IAP;
- (iv) if requested by the Access Seeker within ten (10) Business Days after the Access Seeker is given such a notice, prepare and issue to the Access Seeker a revised IAP in accordance with **clause 4.6** in relation to that portion of the Access Rights that can be provided; and

- (v) if, within ten (10) Business Days after being given the revised IAP, the Access Seeker notifies Aurizon Network that it intends to continue to negotiate for Access Rights on the basis of the revised IAP, the negotiation process outlined in this **Part 4** will recommence from that point.

Aurizon Network's obligation under this **clause 4.10.1(d)**, to the extent that it relates to Infrastructure Enhancements, is subject to Aurizon Network's obligations under **Part 8** and Aurizon Network is not required to do anything in accordance with this **clause 4.10.1(d)** that would cause or contribute to it failing to comply with **Part 8**.

- (e) For ~~the avoidance of doubt~~ clarity:
  - (i) to the extent that all or part of the Access Rights sought by the Access Seeker cannot be provided due to there being insufficient remaining Available Capacity or the contemplated Infrastructure Enhancements cannot be sufficiently altered as contemplated by **clause 4.10.1(d)(ii)**; or
  - (ii) the negotiation process is not recommenced under **clause 4.10.1(d)(v)** in respect of all or part of the Access Rights sought by the Access Seeker,

then the Negotiation Period in respect of those relevant Access Rights will have ceased and any future request by the Access Seeker in respect of those Access Rights will be treated as a new Access Application.

- (f) A Train Operator's Negotiation Period ceases on:
  - (i) the execution of the Train Operations Deed;
  - (ii) Aurizon Network receiving notification by the Train Operator that it no longer wishes to negotiate or enter into the Train Operations Deed;
  - (iii) Aurizon Network issuing a Negotiation Cessation Notice to the Train Operator under **clause 4.12**;
  - (iv) the expiration of nine (9) Months from the date that the Train Operator is nominated by the relevant Access Holder or Access Seeker, as the case may be, unless:
    - (A) both parties agree to extend the Negotiation Period, in which case the Negotiation Period will continue until the expiry of the agreed extended period; or
    - (B) a Dispute arises between the parties in relation to this **Part 4** within the Negotiation Period, in which case, the Negotiation Period will, subject to **clause 4.12**, be extended by the time between the issuing of a Dispute Notice and the date of the finding (or such longer time as may be determined

by the QCA in the resolution of the Dispute);  
~~continue until the Dispute's resolution;~~

- (v) the Access Seeker being given a Negotiation Cessation Notice in respect of its Access Application; or
- (vi) a notice is given by Aurizon Network under **clause 4.11(d)**.

#### **4.10.2 *Issues to be addressed during negotiation***

- (a) During the Negotiation Period, Aurizon Network and the Access Seeker or Train Operator, as applicable, will negotiate and endeavour to agree on the elements comprising, for an Access Seeker, the relevant form of Access Agreement referred to in **clause 5.1(c)** for the type of Access Rights being sought or, for a Train Operator, the matters to be completed in the relevant Train Operations Deed. In order to facilitate this process:
  - (i) an Access Seeker must (if it has not done so already) nominate its Train Operator by notice to Aurizon Network;
  - (ii) Aurizon Network must provide to the Access Seeker Additional Information (together with any requested Capacity Information) relevant to the rail corridor applicable to the Access Seeker's Access Application and that information must be the most current available to Aurizon Network and be provided within a reasonable timeframe;
  - (iii) ~~the Access Seeker (or its Nominated Train Operator) must prepare an Operating Plan-~~;
  - (iv) Aurizon Network must provide an Access Charge, determined in accordance with the pricing principles set out in **Part 6**, including advice as to whether Aurizon Network has applied **clause 6.21.1(a)** or **clause 6.36.4** in determining the Access Charge and if so:
    - (A) the factor associated with the Access Seeker's proposed Access that results in a different cost or risk to Aurizon Network;
    - (B) the impact that the factor has on the Access Charge; and
    - (C) how that impact on the Access Charge was determined;
  - (v) Aurizon Network must undertake a Capacity Analysis and an investigation of operational impacts and any Expansions necessary to accommodate Access by the Access Seeker are to be advised by Aurizon Network except to the extent that Aurizon Network considers that such matters are not required;

- (vi) Aurizon Network must provide the definition of the relevant Train Service Entitlement and, where applicable, the initial timetable for the proposed Train Services; and
  - (vii) the Access Seeker (or its nominated Train Operator) must demonstrate that the Rollingstock and Rollingstock Configurations for which the Access Rights are applicable are subject to certificates of compliance or a Compliance Statement (as that term is defined in the ~~Standard Access Agreement~~ [Train Operations Deed](#)), as applicable, with the Rollingstock Interface Standards.
- (b) Without limiting the matters that an Access Seeker -or a Train Operator and Aurizon Network may address during the Negotiation Period, Aurizon Network (jointly with the Access Seeker or Train Operator) will, or will commence to, conduct an Interface Risk Assessment and prepare an IRMP during the Negotiation Period in accordance with the provisions set out in a Standard Access Agreement [or a Standard Train Operations Deed \(as applicable\)](#) in respect of such matters:
- (i) if requested by the Access Seeker or Train Operator; and
  - (ii) it is reasonably necessary to do so prior to the Access Seeker or Train Operator and Aurizon Network executing an Access Agreement or Train Operations Deed, as applicable.
- (c) It would be reasonably necessary to conduct an Interface Risk Assessment for the purposes of **clause 4.10.2(b)** ~~where there are material differences between proposed and existing operations and~~ [in the following circumstances](#):
- (i) the relevant Access relates to the transportation of coal from a new mine or load out facility;
  - (ii) the Access Seeker (or, the relevant Train Operator) is seeking to operate new Rollingstock, is not an Access Holder or is not currently operating Rollingstock on the Rail Infrastructure; or
  - (iii) the proposed operation, movement, provisioning or other operational aspects of the Train Services; or proposed Rollingstock; relating to the requested Access Rights will differ from existing Train Services operated on the Rail Infrastructure by the Access Seeker (or the relevant Train Operator) including where:
    - (A) there are reversing or special shunting movements that will be necessary for the proposed Train Services;
    - (B) there is a different driver methodology that applies to, or number of train drivers for, the Trains for the proposed Train Services;

- (C) the Trains for the proposed Train Services will have a different operating direction (including loading or unloading direction) from that which the relevant Rail Infrastructure, loading or unloading facility or other relevant infrastructure was designed for (for example, entering a balloon loop in the opposite direction to what the balloon loop was designed for);
  - (D) the Trains for the proposed Train Services are proposed to operate at a speed greater than any speed limit or speed restriction that applies at any point on the Rail Infrastructure to be used by the Train Services;
  - (E) the proposed Train Services will not be able to meet nominated section running times for the relevant Reference Train Service or, if there is no relevant Reference Train Service, the section running times that typically apply to the relevant Rail Infrastructure;
  - (F) the Rail Infrastructure is required to be extended, enhanced, expanded, augmented, duplicated or replaced in order for the relevant Access Rights to be used – for example, the installation of open door sensors; and
  - (G) there has been a change in the Access Seeker's (or relevant Train Operator's) or Aurizon Network's accreditation or ~~s~~Safety ~~m~~Management ~~s~~System under the Rail Safety Act.
- (d) During the Negotiation Period, Aurizon Network may seek further information that is reasonably required to address any matters referred to in this **clause 4.10.2** or information or evidence of the Access Seeker's ability to utilise the requested Access Rights (on the basis of the factors listed in **clause 4.12(c)**) and from other providers of infrastructure to be used as an entry or exit point to the Rail Infrastructure, such as owners or operators of unloading facilities. The Access Seeker must provide the information and evidence requested within twenty (20) Business Days of the request (or such other period as may be agreed with Aurizon Network) and facilitate the provision of such information from Third Parties, as applicable.
  - (e) The Access Seeker does not fail to comply with a request by Aurizon Network under **clause 4.10.2(d)** where the Non-availability Requirements are satisfied.
  - (f) In respect of the details required to be developed by the parties in accordance with **clauses 4.10.2(a)** and **4.10.2(b)**, the parties may agree, for example:



- (i) to finalise certain aspects after the execution of the Access Agreement or the Train Operations Deed, as applicable;
- (ii) to make the commencement of Train Services under the Access Agreement or the Train Operations Deed, as applicable, subject to the satisfaction of conditions (including, for example, the completion of schedules to the Access Agreement or the securing of access rights to an unloading facility or the securing of access to adjoining infrastructure); or
- (iii) to include mechanisms in the Access Agreement or the Train Operations Deed, as applicable, to address any subsequent cost or operating impacts arising in connection with the matters referred to in **clauses 4.10.2(f)(i)**~~4.10.1(f)(i)~~ and **4.10.2(f)(ii)**~~4.10.1(f)(iii)~~ that have not been expressly addressed either as part of the relevant Reference Train Service or in the negotiation of the relevant Access Agreement or Train Operations Deed.

#### 4.11 Negotiation of Access Agreements and Train Operations Deeds

- (a) Each Access Holder or Access Seeker:
  - (i) may be present and participate in any negotiation between Aurizon Network and a Train Operator for a Train Operations Deed (and ~~subsequent~~ Operating Plan) in respect of the Access Holder's Access Rights (or Access Seeker's Access Rights) when the relevant Access Agreement is entered into);
  - (ii) may not participate in negotiations between Aurizon Network and a Train Operator that relate to Access Rights for a different Access Holder or Access Seeker; and
  - (iii) may require Aurizon Network to permit ~~its~~ ~~their~~ Train Operator to be present at and participate in all negotiations between Aurizon Network and the Access Holder or Access Seeker for Access Rights proposed to be wholly or partially utilised by that Train Operator.
- (b) In negotiating an Access Agreement and for the purposes of this **Part 4** if the Access Holder or Access Seeker does not provide required information regarding Rollingstock and Rollingstock Configurations for the required Train Services, Aurizon Network may assume:
  - (i) a Reference Train Service in respect of the Rollingstock and Rollingstock Configurations; and
  - (ii) such other Above Rail operational matters as are reasonably necessary (having regard to any existing standard manner of conducting Above Rail Services on the relevant parts of the Rail Infrastructure).

- (c) If one or more Train Operations Deeds are negotiated between Aurizon Network and the relevant Train Operator(s), the Train Operations Deed(s) must not (alone, or in aggregate if there is more than one) grant rights to utilise the Rail Infrastructure that exceed the corresponding Access Rights granted, or to be granted, to the relevant Access Holder or Access Seeker.
- (d) If, for whatever reason (except by reason of execution of the Access Agreement):
  - (i) negotiations in respect of the Access Agreement expire or are terminated; or
  - (ii) the Access Seeker ceases to be an Access Seeker in respect of the Access Rights that relate to the relevant Train Operations Deed; or
  - (iii) where the Access Holder has already executed an Access Agreement, the Access Holder ceases to be an Access Holder in respect of the Access Rights that relate to the relevant Train Operations Deed,

then Aurizon Network will, by notice to the Train Operator, terminate its negotiations in respect of the corresponding Train Operations Deed.

#### 4.12 Cessation of negotiations

- (a) At any time during a Negotiation Period, Aurizon Network (acting reasonably):
  - (i) may give a Negotiation Cessation Notice to an Access Seeker or a Train Operator, as applicable, if:
    - (A) the Access Seeker or Train Operator, as applicable, fails [to comply \(after being issued with any notices required under this Undertaking\)](#) with the relevant obligations and processes contained in this Undertaking, and such non-compliance is material;
    - (B) there is no reasonable likelihood that the Access Seeker or the Train Operator will comply with the terms and conditions of an Access Agreement or Train Operations Deed, as applicable, in a material way;
    - (C) the Access Seeker or [its](#) Train Operator, as applicable, fails to comply with **clause 4.4(i)**;
    - (D) the Access Seeker or Train Operator, as applicable, has no genuine intention of obtaining Access Rights or has no reasonable likelihood of utilising Access at the level sought;

- (E) subject to **clause 11.1.4(e)**, the Access Seeker or Train Operator, as applicable, does not comply with a determination of an expert in accordance with **clause 11.1.4**; or
  - (F) the Access Seeker or the Train Operator, as applicable, does not comply with a determination of the QCA under **clause 11.1.5** in relation to a Dispute, and
- (ii) must give a Negotiation Cessation Notice to an Access Seeker where:
- (A) the Access Seeker's Customer notifies Aurizon Network that they no longer agree to the Access Seeker negotiating an Access Agreement based on the transport of their coal; or
  - (B) if the relevant Access Application relates to a Transfer, either the ~~Transferor's~~ Customer of the Access Holder that holds the Transferred Access Rights (if any) or the Transferee's Customer (if any) notifies Aurizon Network that they no longer agree to the Transfer.

For ~~the avoidance of doubt~~ clarity, an Access Holder's or Access Seeker's negotiations of an Access Agreement are not affected if negotiations of a Train Operations Deed between Aurizon Network and a Train Operator nominated by the Access Holder or Access Seeker under **clause 4.8(a)(ii)(D)** cease.

- (b) Without limitation to **clause 4.12(a)(i)(B)**, **clause 4.12(a)(i)(B)** is deemed, if:
- (i) the Access Seeker or the Train Operator, as applicable, is subject to an Insolvency Event; or
  - (ii) the Access Seeker or the Train Operator, as applicable, or a Related Party of the Access Seeker or Train Operator, is currently, or has in the previous two years been, in Material Default of:
    - (A) any Access Agreement or Train Operations Deed, as applicable; or
    - (B) any other agreement where its performance under that other agreement is relevant to its likely performance under any proposed Access Agreement or Train Operations Deed, as applicable.

- (c) Without limitation to **clause 4.12(a)(i)(D)**:
- (i) **clause 4.12(a)(i)(D)** is deemed satisfied in relation to an Access Seeker or Train Operator (as applicable) in relation to coal carrying Train Services, where:
- (A) for an Access Seeker in respect of the negotiation of an Access Agreement, the Access Seeker:
- (1) is seeking Access Rights that will be used for a person other than the Access Seeker (that is, a person who will be a Customer); and
- (2) has no reasonable likelihood of having a Customer for those Access Rights (provided that any consideration of reasonable likelihood must disregard the effect of granting the Access Rights to the Access Seeker on the Access Seeker's ability to attract a Customer in the future); or
- (B) for a Train Operator in respect of the negotiation of a Train Operations Deed, the Train Operator ceases to be a Train Operator for the relevant Access Seeker or Access Holder; or
- (ii) where **clause 4.12(c)(i)** does not apply, the following factors must be considered in relation to whether **clause 4.12(a)(i)(D)** is satisfied:
- (A) whether the Access Seeker (or its Customer) has secured, or is reasonably likely to secure, Supply Chain Rights;
- (B) ~~except where the Access Seeker is a Railway Operator,~~ whether the Access Seeker, if not a Railway Operator, has secured, or is reasonably likely to secure, a rail haulage agreement for the operation of the Train Services the subject of the Access Application or if a Railway Operator has entered into, or is reasonably likely to enter into, a rail haulage agreement with a Customer for the use of Access Rights sought;
- (C) whether the Access Seeker or ~~a its~~ Railway Operator is reasonably likely to have facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Services to utilise the Access Rights sought;

- (D) whether the Train Operator no longer meets the criteria outlined in **clauses 4.8(a)(ii)(A) and 4.8(a)(ii)(B)**~~4.8(a)(i)(B)~~; and
  - (E) where the Access Rights are sought to transport the output of a mine, whether the anticipated output of the mine is reasonably likely to support utilisation of the Access Rights sought and all relevant existing Access Rights relevant to that mine.
- (d) If a party disputes the giving of a Negotiation Cessation Notice, it will be deemed to have been issued only if and when the Dispute is resolved in Aurizon Network's favour.

## Part 5: Access Agreements

### 5.1 Development of Access Agreement

- (a) The granting of Access will be underpinned by an Access Agreement that will be developed and finalised under **Part 4** of this Undertaking (**Negotiation Process**).
- (b) The parties to the Access Agreement will be Aurizon Network and the Access Holder. The Access Holder need not be the Railway Operator for the relevant Train Services.
- (c) The terms of an Access Agreement must be:
  - (i) for coal-carrying services, the Standard Access Agreement; and
  - (ii) for non-coal carrying services, an Access Agreement consistent with the Standard Access Agreement amended to reflect the fact that the Access is for non-coal carrying services.
- (d) Despite **clause 5.1(c)**, the Access Seeker may agree with Aurizon Network during the Negotiation Process to vary the terms of the Standard Access Agreement [and any provision of this Undertaking incorporated by reference into the Standard Access Agreement \(including clauses 7.4.2 \(Transfers\), 7.4.3 \(Relinquishments\), 7.6 \(Capacity resumption\) and 7.7 \(Force majeure\)\)](#), in which case, any amendments proposed to those terms must be negotiated by both Aurizon Network and the Access Seeker acting reasonably and in good faith.
- (e) Where the terms of an Access Agreement cannot be agreed within the time set out in **clause 4.10.1(c)(iv)**, [and the matter is referred for dispute resolution under Part 11](#), any ~~d~~Dispute will be resolved by the QCA or an expert, as applicable, by completion of:
  - (i) where Access is required for coal-carrying services, the Standard Access Agreement; and
  - (ii) where Access is required for non-coal-carrying services, an Access Agreement which is consistent with the Standard Access Agreement, amended to reflect the fact that the Access is for non-coal carrying services.
- (f) Aurizon Network must not agree to include in an Access Agreement a term that limits its ability to require the Access Holder to disclose to Aurizon Network all information required by Aurizon Network (acting reasonably) to prepare [and publish](#) the MTP.
- (g) Once the Access Seeker notifies Aurizon Network that it is satisfied with the terms and conditions of the Access Agreement provided to it, Aurizon Network must, as soon as reasonably practicable, provide the

Access Agreement (or, where appropriate, an amendment to an existing Access Agreement) in final form, [which reflects the agreement reached between Aurizon Network and the Access Seeker](#), to the Access Seeker for execution.

~~(h)~~ \_\_\_\_\_ The parties ~~will use reasonable endeavours to duly~~ must execute the final [form of the](#) Access Agreement:

(i) \_\_\_\_\_ [produced by the QCA or an expert in resolving a Dispute referred to in clause 5.1\(e\); or](#)

(ii) \_\_\_\_\_ [accepted by the Access Seeker under clause 5.1\(g\),](#)

as soon as [reasonably](#) practicable after [resolution of the Dispute or](#) Aurizon Network delivers it to the Access Seeker [\(as applicable\)](#).

~~(h)~~ (i) \_\_\_\_\_ Aurizon Network ~~will~~ must execute an Access Agreement with an Access Seeker up to two (2) years prior to the commencement of Train Services under the Access Agreement or such longer period as may be agreed.

~~(i)~~ (j) \_\_\_\_\_ Where an Access Seeker is seeking Access Rights that are additional rights to, or a variation of, an existing Access Agreement [to which the Access Seeker is a party](#), nothing in this Undertaking obliges Aurizon Network to agree to terms in respect of those Access Rights that are consistent with that existing Access Agreement.

## 5.2 Access Charges under Access Agreements

- (a) An Access Holder's Train Service Entitlement may be comprised of various different types of Train Services described by reference to the characteristics set out in Part A, Schedule 2 of the Standard Access Agreement ~~(Operator) (or an equivalent schedule under another applicable Standard Access Agreement)~~. The Standard Access Agreements refer to each type of Train Service as a "Train Service Type".
- (b) In the circumstances described in **clause 5.2(a)**, the Access Charges may be calculated by reference to each type of Train Service.

## 5.3 Development of Train Operations Deed

- (a) To use the Access Rights granted under an Access Agreement, the Access Holder must procure a Train Operations Deed negotiated as part of the Negotiation Process.
- (b) The parties to the Train Operations Deed will be Aurizon Network and the Train Operator for the relevant Train Services.
- (c) The terms of the Train Operations Deed must be the Standard Train Operations Deed.
- (d) Despite ~~this~~ **clause 5.3(c)**, the Train Operator may agree to vary the terms of the Train Operations Deed, in which case any amendments

proposed to those terms must be negotiated by both Aurizon Network and the Train Operator acting reasonably and in good faith.

- (e) Where the terms of a Train Operations Deed cannot be agreed, and the matter is referred for dispute resolution under Part 11 any Dispute will be resolved by the QCA or an expert, as applicable, by completion of (and incorporating amendments agreed by Aurizon Network and the Train Operator and not in dispute in respect of) a Standard Train Operations Deed.
- (f) Once the Train Operator and, if different, the Access Holder, has notified Aurizon Network in writing that it is satisfied with the terms and conditions of the Train Operations Deed provided to it, Aurizon Network will, as soon as reasonably practicable, provide the Train Operations Deed (or, where appropriate, an amendment to an existing Train Operations Deed) in final form, which reflects the agreement between Aurizon Network and the Train Operator (and, if different, the Access Holder), to the Train Operator for execution.
- (g) The parties ~~will use reasonable endeavours to duly~~ must execute the final form of the Train Operations Deed:
  - (i) produced by the QCA or an expert in resolving a Dispute referred to in clause 5.3(e); or
  - (ii) accepted by the Access Seeker under clause 5.3(f),as soon as reasonably practicable after resolution of the Dispute or Aurizon Network delivers it to the Train Operator (as applicable).
- ~~(g)~~(h) Aurizon Network ~~will~~ must execute a Train Operations Deed with a Train Operator at any time after the related Access Agreement has been entered into but, in any event, prior to the commencement of relevant Train Services under the related Access Agreement. For clarity, this clause 5.3(h) does not restrict the execution of subsequent Train Operations Deeds that relate to different Train Services.

#### 5.4 Review of Standard Access Agreement or Standard Train Operations Deed

- (a) Subject to **clause 5.4(b)**, Aurizon Network must, within three (3) Months of the date of a written request from the QCA, and may otherwise ~~if Aurizon Network chooses to do so~~:
  - (i) ~~—~~ undertake a review of the Standard Access Agreement and or Standard Train Operations Deed in respect of its workability;
  - ~~(ii)~~(i) ~~consult with~~ having regard to the reasonable views of Access Holders, Access Seekers and Train Operators ~~about the workability of the Standard Access Agreement and Standard Train Operations Deed~~; and



~~(iii) — submit to the QCA either:~~

~~(iv) — submit to the QCA a proposal outlining what proposed amendments to the Standard Access Agreement and/or Standard Train Operations Deed that Aurizon Network (acting reasonably) considers ~~necessary to improve the workability of the Standard Access Agreement and Standard Train Operations Deed; or~~ are appropriate to enhance the workability of the document, accompanied~~

~~(v)(ii) by detailed written reasons for the position ~~for not making amendments to the Standard Access Agreement and Standard Train Operations Deed.~~~~

(b) The QCA may submit a request to Aurizon Network, and Aurizon Network may provide a proposal, notice, under **clause 5.4(a)**, only once every two (2) Years, provided that no more than two (2) reviews of the Standard Access Agreement ~~or and~~ Standard Train Operations Deed are undertaken in any rolling two (2) Year period.

(c) The QCA must assess any proposal submitted under clause 5.4(a) ~~Aurizon Network's submission~~ and, ~~if deemed appropriate,~~ seek submissions from stakeholders on that proposal, in respect of ~~Aurizon Network's submission.~~

(d) If, having regard to the factors in section 138(2) of the Act, the QCA agrees with Aurizon Network's proposal submitted under clause 5.4(a), ~~approves the amendments proposed by Aurizon Network,~~ it must give notice to Aurizon Network and relevant stakeholders of its approval, specifying a date upon which the proposed amendments will take effect.

(e) If ~~the QCA approves the amendments proposed by Aurizon Network,~~ it:

(i) Aurizon Network does not make any submission under **clause 5.4(a)(ii) 1.1.1(a)(i)** within the applicable timeframe; or

~~(ii) — the QCA:~~

~~(iii)(ii) having regard to the factors in section 138(2) of the Act, the QCA does not agree with the proposal ~~refuses to approve the proposed amendments~~ submitted by Aurizon Network under **clause 5.4(a)(ii) 1.1.1(a)(i);** or~~

~~(A) — disagrees with Aurizon Network's reasons provided under **clause 5.4(a)(iii)(B);**~~

then:

~~(iv)(iii) the QCA must notify Aurizon Network and relevant stakeholders of the reasons for its ~~refusal or~~ disagreement ~~(as applicable);~~ and~~

~~(v)~~(iv) where the review has been initiated by the QCA under **clause 5.4(a)**, the QCA may ~~develop~~ impose amendments to the Standard Access Agreement and/or Standard Train Operations Deed that it considers appropriate to enhance the workability of the document and must give notice to Aurizon Network specifying a date upon which the proposed amendments will take effect. ~~to improve their workability.~~

(f) Nothing in this **clause 5.4** prevents Aurizon Network from seeking amendments to the Standard Access Agreement or Standard Train Operations Deed it considers necessary to improve ~~their a~~ workability issue, even if the QCA has previously refused to approve proposed amendments submitted in accordance with clause 5.4(a)(ii) in relation to the Standard Access Agreement or Standard Train Operations Deed.

~~(f)~~(g) In this **clause 5.4**, “workability” means an issue that affects the ability of the Standard Access Agreement and/or Standard Train Operations Deed to function effectively, including with each other and other relevant access agreements and train operations deeds, or affects the safe operation of trains. “Workability” does not include an issue that requires a change that materially impacts the commercial position of, or the risk allocation amongst, the parties to those agreements.

## Part 6: Pricing principles

### 6.1 Application of pricing principles

- (a) Aurizon Network will apply the pricing principles set out in this **Part 6** in developing Access Charges and Reference Tariffs.
- (b) To the extent that any of those pricing principles conflict, Aurizon Network will apply the pricing principles in the order of precedence identified ~~below~~ ~~above~~ (from highest to lowest):
  - (i) **clause 6.2 to 6.5** (price differentiation, including ~~expansions~~ Expansions);
  - (ii) **clause 6.6** (pricing limits);
  - (iii) **clause 6.7** (Rail Infrastructure utilisation);
  - (iv) **clause 6.8** (revenue adequacy); and
  - (v) all remaining provisions of **Part 6**.
- (c) In this **Part 6**, where Access Rights have been, or are to be ~~granted~~, under an Access Agreement, the relevant Access Holder and all of that Access Holder's Train Operators will be treated as a single entity so that a reference to:
  - (i) an Access Seeker is a reference to the Access ~~Holder~~ Seeker and its Train Operators collectively; and
  - (ii) an Access Holder is a reference to the Access Holder and its Train Operators collectively.
- (d) ~~To avoid doubt~~ For clarity, all references in this Undertaking to Access Seekers and Access Holders include Related Operators (where applicable).

### 6.2 Price differentiation

#### 6.2.1 *Limitations on price differentiation*

- (a) Aurizon Network will not differentiate Access Charges between any combination of Access Seekers and Access Holders, including combinations involving only Access Seekers or only Access Holders, except as permitted by this **Part 6**.
- (b) Aurizon Network is not permitted to set charges that discriminate in favour of any:
  - (i) Related Operator;
  - (ii) Related Competitor; or
  - (iii) Third Party that has commercial arrangements with a Related Competitor,

and must ensure that its Access Charges for such parties:

- (iv) comply with this **Part 6**;
- (v) are equivalent to its Access Charges for other Access Seekers or Access Holders (as applicable) in similar circumstances; and
- (vi) do not have the purpose of preventing or hindering an Access Seeker's or Access Holder's Access (without derogating in any way from Aurizon Network's obligations under sections 104 or 125 of the Act).

### **6.2.2** *Default application of Reference Tariff*

Subject to **clause 6.2.3**, where there is an applicable Reference Tariff, the Access Charge formulated by Aurizon Network for an Access Seeker will be the Reference Tariff.

### **6.2.3** *Price differentiation where a Reference Tariff applies*

- (a) Subject to **clause 6.13** (Access Conditions), and only with the prior written approval of the QCA, Aurizon Network may seek to commercially negotiate and agree a reasonable Access Charge with an Access Seeker at any time that varies from the applicable Reference Tariff to recognise a material increase in cost or risk associated with the provision of Access to a Train Service that has substantially different characteristics to the Reference Train Service. However, the applicable Reference Tariff will apply unless and until any such Access Charge has been approved by the QCA.
- (b) If, after the Commencing Date, Aurizon Network enters into an agreement separate from the Access Agreement for a Customer Specific Branch Line which provides for Aurizon Network to earn revenue that is in addition to the ongoing Access Charge (for example, an upfront contribution or Access Facilitation Charge), Aurizon Network must exclude the cost components separately funded through the additional revenue (for example, the value of any relevant Customer Specific Branch Line to the extent supported by the additional revenue) from the cost base (including the asset base) used to determine:
  - (i) that ongoing Access Charge for Train Services using that Customer Specific Branch Line; and
  - (ii) the applicable Reference Tariff.
- (c) The rtp for a Train Service will be calculated in accordance with the following principles:
  - (i) rtp is deemed to equal one where:
    - (A) the maximum number of proposed Train Services at full utilisation exceeds the maximum number of Reference Train Services at full utilisation; and

(B) the scheduled section running times of the proposed Train Service are the same as the nominated section running times for the Reference Train Service; and

(ii) where **clause 6.2.3(c)(i)**~~6.2.2(e)(i)~~ does not apply, the number of reference Train Paths used by the proposed Train Service will be determined as follows:

$$rtp = \max[(A/B), (B/A)]$$

where:

A is the maximum number of Reference Train Services at full utilisation; and

B is the maximum number of the proposed Train Services at full utilisation;

(iii) the maximum number of Train Paths available for a Reference Train Service and for the proposed Train Service will be determined using a readily available simulation package; and

(iv) for the purpose of **clauses 4.6(b)(v)** and **4.10.2(a)(iv)** (as applicable), Aurizon Network will advise the Access Seeker how it has determined the value of rtp,

unless the QCA approves an alternative methodology for the purpose of this clause, in which case rtp will be calculated in accordance with that approved alternative methodology.

#### **6.2.4 Price differentiation where no Reference Tariff applies**

If there is no applicable Reference Tariff (for example, because the relevant Train Service is a non-coal carrying Train Service), the Access Charge formulated by Aurizon Network for an Access Seeker may vary from the Access Charges for other Access Seekers or Access Holders. However, such variation may only be in respect of other Train Services that provide the same type of transport service (for example, transporting passengers (where the relevant Access Seeker's proposed Train Services transport passengers) or transporting the same commodity (where the relevant Access Seeker's proposed Train Services transport a commodity)) in the same geographical area as that Access Seeker's proposed Train Services, on a unit rate basis to reasonably reflect, over time:

- (a) material changes or differences in the cost or risk relevant to Aurizon Network providing Access; or
- (b) Changes in Market Circumstances; or
- (c) material limitations on Available Capacity in accordance with **clause 6.7.1(b)**.

### 6.2.5 *Consequences if contravention of Part 6*

- (a) If an Access Holder (**Aggrieved Access Holder**) can demonstrate to the QCA's reasonable satisfaction that after entering into an Access Agreement with the Aggrieved Access Holder, Aurizon Network has subsequently entered into an Access Agreement with another Access Holder for a like Train Service (where a like Train Service is one that transports the same specified commodity in the same specified geographic area), and the subsequent Access Agreement contains an Access Charge in contravention of **Part 6**, then:
  - (i) the QCA may direct Aurizon Network to offer the Aggrieved Access Holder either:
    - (A) the same Access Charge; or
    - (B) if the QCA considers appropriate, a particular Access Charge that in the QCA's view neutralises the effect of the contravention; and
  - (ii) Aurizon Network must immediately make a legally binding offer to the Aggrieved Access Holder to give effect to the QCA's direction.
- (b) Aurizon Network agrees to promptly provide the QCA with all information requested by the QCA to enable the QCA to determine whether any contravention of **Part 6** has occurred.

### 6.3 **Access Charges for new ~~or additional~~ coal ~~carrying~~ Train Services ~~that do not require an Expansion~~**

#### 6.3.1 ~~General principles for Access Charges~~ Determination of Access Charges

- (a) ~~This clause 6.3 applies w~~here an Access Seeker ~~or Access Holder~~ seeks Access Rights for new or additional coal carrying Train Services, ~~that do not require an Expansion~~this clause 6.3 (subject to clause 6.4) applies to determine the Access Charges payable by the Access Seeker or Access Holder. ~~and will commence after the Commencing Date.~~
- ~~(b) In determining the Access Charges to be paid by the Access Seeker, the following principles shall apply:~~
  - ~~(i) where the Minimum Revenue Contribution is the same or less than the applicable existing Reference Tariff (on a \$/NT Basis), the Access Charge will be determined based on that existing Reference Tariff; and~~
  - ~~(ii) where the Minimum Revenue Contribution is more than the applicable existing Reference Tariff (on a \$/NT Basis), the Access Charge will be determined based on a varied Reference Tariff that is equivalent to that Minimum Revenue Contribution.~~

- ~~(e) The “Minimum Revenue Contribution” under **clause 6.3.1(b)(ii)** in relation to a new or additional coal carrying Train Service is calculated as:~~
- ~~(i) the AT<sub>4</sub> input for the relevant Reference Tariff; plus~~
  - ~~(ii) other incremental costs (to the extent not covered by the AT<sub>4</sub> input or recovered by Aurizon Network under other agreements between Aurizon Network and the Access Seeker) of providing Access;~~
  - ~~(iii) calculated on the basis of the forecast volume in nt for the new or additional Train Service, and excluding any reference to mine-specific spur line costs irrespective of infrastructure ownership.~~
- ~~(d) Where an Access Seeker has requested Access Rights (other than as a Renewal) that do not require an Expansion and two or more Reference Tariffs are expressed to apply in relation to the Access Rights in the relevant Coal System, then the Reference Tariff used to formulate the relevant Access Charges is that Reference Tariff which is the highest on a \$/NT Basis. For clarity:~~
- ~~(i) for a Cross System Train Service, this clause would be applied separately in relation to each relevant Coal System; and~~
  - ~~(ii) for a Renewal, the relevant Reference Tariff will be the Reference Tariff that applied or would have applied in relation to the Access Seeker’s existing Access Agreement.~~
- (b) The Access Charges applicable for a new coal carrying Train Service will be calculated under **clause 6.3.1(c)** separately for non-electric Access Charges (tariffs AT<sub>1</sub> to AT<sub>4</sub> collectively) and electric Access Charges (tariff AT<sub>5</sub>).
- (c) The Access Charges applicable for a new coal carrying Train Service will be the higher of (on a \$/NT basis):
- (i) the relevant Reference Tariff (including any Reference Tariff determined in accordance with **clause 6.4**) applied to that Train Service, less the Approved PIC (if any); and
  - (ii) the Minimum Revenue Contribution, calculated as the sum of the Incremental Costs of using any Rail Infrastructure specifically for the new coal carrying Train Service and the higher of:
    - (A) any applicable Expansion Costs (as determined in accordance with **clause 6.4**); and
    - (B) as applicable:
      - (1) for non-electric Access Charges, the sum of:

- the relevant AT<sub>2</sub> component of the relevant Reference Tariff (adjusted for any variation that will be made in accordance with Schedule F for that Train Service for a Cross System Train Service); and
- fifty percentage points (50%) of the AT<sub>3</sub> component of the relevant Reference Tariff (adjusted for any variation that will be made in accordance with Schedule F for that Train Service for a Cross System Train Service) for the distance that the Train Service will travel on the mainline of that Coal System; or

(2) for electric Access Charges, zero.

(d) Where an Access Seeker has requested Access Rights (other than as a Renewal) that do not require an Expansion and two or more Reference Tariffs are expressed to apply in relation to the Access Rights in the relevant Coal System, then the Reference Tariff used to formulate the relevant Access Charges is that Reference Tariff which is the highest on a \$/NT Basis. For clarity:

- (i) for a Cross System Train Service, this clause would be applied separately in relation to each relevant Coal System; and
- (ii) for a Renewal, the relevant Reference Tariff will be the Reference Tariff that applied or would have applied in relation to the Access Seeker's existing Access Agreement.

### 6.3.2 QCA approval of Private Incremental Costs

- (a) Without limitation, the QCA may approve the capital expenditure associated with Private Infrastructure, on request from an Access Seeker, if the QCA is satisfied that capital expenditure is for the prudent and efficient value of the assets that are used to provide the relevant Train Services over Private Infrastructure.
- (b) In determining the prudence and efficiency of capital expenditure, the QCA may have regard to the following (without limitation and in the QCA's absolute discretion):
  - (i) the scope of works for a capital expenditure project (including whether the requirement for the works is prudent and efficient);



- (ii) the standard of works for a capital expenditure project (including whether the standard could be expected to deliver the requirements for that capital expenditure project without it being overdesigned or likely to deliver a capital works project which is beyond the requirements of its scope); and
  - (iii) whether the costs of the capital expenditure project are prudent and efficient, having regard to the scope and standard of work undertaken or to be undertaken for the capital expenditure project.
- (c) When determining the amount of the Approved PIC, the QCA may make such adjustments to the Private Incremental Costs as it considers appropriate to be satisfied under **clause 6.3.2(a)**.

## 6.4 Access Charges for coal carrying Train Services that require an Expansion

### 6.4.1 *Expansion pricing principles*

- (a) Where an Access Seeker or Access Holder seeks Access Rights for coal carrying Train Services that require an Expansion (**Expanding User**)(~~Expansion Seeker~~), this **clause 6.4** ~~shall apply~~ applies to determine the Access Charges payable by the Expanding User.
- ~~(a)~~(b) This **clause 6.4** is intended to be read in conjunction with **Part 8** of this Undertaking and is subject to **clause 6.3** (use of Private Infrastructure).
- (c) The ~~Expansion Tariff determined under methodology set out in~~ this **clause 6.4** will apply ~~instead of the System Reference Tariff for that on an individual~~ Coal System basis.
- (d) The remainder of this **clause 6.4** articulates the following principles (applying the definitions set out below), known as the “**Expansion Pricing Principles**”:
- (i) Expanding Users should generally pay an Access Charge that reflects at least the full incremental costs (capital and operating) of providing additional Capacity;
  - (ii) Non-Expanding Users should not experience a material increase in tariffs due to an Expansion triggered by Expanding Users;
  - (iii) if Expanding Users face a higher cost than Non-Expanding Users, a zero contribution to Aurizon Network’s Common Costs from Expanding Users is generally acceptable; and
  - (iv) an allocation of the Expansion Costs to Non-Expanding Users may be appropriate where an Expansion has clear benefits to those users.
- (e) For the purposes of this **clause 6.4**:

- (i) “**Consensus**” means all Expansion Stakeholders have indicated in writing to Aurizon Network that they consider that a particular draft Pricing Proposal from Aurizon Network for an Expansion represents an acceptable distribution of Expansion Costs and apportionment of Volume Risk that is consistent with the Expansion Pricing Principles;
- (ii) “**Consensus Expansion**” means an Expansion for which Consensus has been achieved by Aurizon Network under **clause 6.4.2**;
- (iii) “**Customised Expansion**” means an Expansion that is not a Consensus Expansion and that involves Substitutable TSEs;
- (iv) “**Endorsed Expansion**” means an Expansion that is not a Consensus Expansion and that does not involve Substitutable TSEs;
- (v) “**Expansion Cost**” has the meaning given by **clause 6.4.3(a)(ii)**;
- (vi) “**Expansion Stakeholders**” means all Expanding Users and all Non-Expanding Users for an Expansion;
- (vii) “**Non-Expanding Users**” means Access Seekers and Access Holders within a Coal System that are not Expanding Users for an Expansion to that Coal System;
- (viii) “**Socialisation**” means the full or partial aggregation of the Expansion Costs of a new Expansion with the costs associated with one or more existing Reference Tariffs for the same Coal System in order to determine a common Reference Tariff; and
- (ix) “**Substitutable Train Service Entitlements**” or “**Substitutable TSEs**” means that an Access Holder has one or more existing Train Service Entitlements in a Coal System that can be used as an alternative to the one or more Train Service Entitlements with the same origin created by the Expansion.

#### **6.4.2 Consensus Expansion**

- (a) Before Aurizon Network submits a Pricing Proposal to the QCA under **clause 6.4.3**, Aurizon Network must approach Expansion Stakeholders in good faith to seek to facilitate a Consensus. Aurizon Network must provide reasonable information as requested by each Expansion Stakeholder to facilitate a Consensus. The QCA may participate in any consultation processes undertaken by Aurizon Network with Expansion Stakeholders at the QCA’s absolute discretion.
- (b) Aurizon Network must keep the QCA informed of progress in facilitating a Consensus, including providing copies of all

correspondence and a summary of all verbal communications with Expansion Stakeholders as requested by the QCA.

(c) If a Consensus has not been concluded by the completion of the Feasibility Study, or Aurizon Network or any Expansion Stakeholder can otherwise evidence to the QCA that a Consensus will not be achieved by that date, or any further time period has lapsed under **clause 6.4.2(d)**, then:

(i) Aurizon Network (or the Expansion Stakeholder, if applicable, copying Aurizon Network) will consult with the QCA whether further time should be allocated to facilitate a Consensus; and

(ii) unless the QCA responds to Aurizon Network within ten (10) Business Days requesting further time to be allocated, the Expansion must be treated by Aurizon Network as either a Customised Expansion or Endorsed Expansion (as applicable).

~~(b)~~(d) If the QCA requires an extension of time under **clause 6.4.2(c)(ii)**, then Aurizon Network must continue to seek a Consensus until that time has lapsed, at which point Aurizon Network will consult with the QCA again under **clause 6.4.2(c)**. For clarity, the QCA may require multiple extensions of time to occur.

#### **6.4.26.4.3 Pricing Proposal**

(a) If an ~~Expansion Seeker~~ Expanding User seeks Access Rights for coal carrying Train Services that require an Expansion, Aurizon Network will, as part of its Feasibility Study for that Expansion, submit to the QCA a proposal with the following elements:

(i) a determination whether the Expansion involves any Substitutable TSEs;

(ii) a proposed allocation of costs<sup>1</sup> arising from the Expansion (including a detailed breakdown of the estimated capital, maintenance and operating costs for the Expansion) (**Expansion Costs**) between the ~~relevant~~ Expansion Stakeholders ~~Seekers and, if applicable, existing Access Holders~~ (including on a Coal System basis if the Expansion relates to more than one Coal System);

(iii) any proposed allocation of future renewal costs for the relevant Coal System between Expansion Stakeholders;

~~(iii)~~(iv) a proposed apportionment of volume risk arising from the Expansion (e.g. arising from differences between forecasted and actual railings) (**Volume Risk**) between the Expansion Stakeholders (including on a Coal System basis if the

<sup>1</sup> The costs arising from the Expansion will include Asset Replacement and Renewal Expenditure to the extent that it is necessary for the Expansion.

Expansion relates to more than one Coal System) if applicable;

~~(iii)(v)~~ if applicable, all calculations made in applying this clauses 6.4.3 and 6.4.3;

~~(iv)(vi)~~ if the Expansion is an Endorsed Expansion, a determination as to which of the following clauses will apply:

(A) **clause 6.4.4(c)** – the Coal System has no existing Expansion Tariff;

(B) **clause 6.4.4(e)(ii)** – the Coal System has an Expansion Tariff, but no Socialisation will occur;

(C) **clause 6.4.4(e)(vi)** – the Coal System has one or more existing Expansion Tariffs and Socialisation will occur to the extent determined under **clause 6.4.4(e)**;

(vii) if the Expansion is a Customised Expansion or Endorsed Expansion, an identification of the extent to which consultation by Aurizon Network with Expansion Stakeholders has occurred and an explanation of the position of each Expansion Stakeholder with a copy of relevant correspondence;

(viii) if the Expansion is a Consensus Expansion, all relevant details of the Consensus and copies of all correspondence with Expansion Stakeholders confirming the Consensus; and

~~(v)(ix)~~ if the Expansion is a Consensus Expansion or a Customised Expansion, submission(s) by the Expanding User(s) explaining the manner in which the Pricing Proposal is consistent with the Expansion Pricing Principles and the factors set out in section 138(2) of the Act (including the conditions for any Socialisation),

and the resulting indicative ~~new or varied~~ Reference Tariffs that are ~~consistent with the determination pursuant to clause 6.4.2(a)(iii); and any supporting arguments or information for the QCA's consideration that justify or explain~~ proposed by Aurizon Network for the Expansion's approach;

**(Pricing Proposal).**

(b) An application by Aurizon Network for the approval of new or varied Reference Tariffs is not required as part of a Pricing Proposal and will be made to the QCA separately at a later date.

(c) Aurizon Network must provide to the QCA:

(i) sufficient supporting arguments or information for the QCA's consideration that justify or explain Aurizon Network's approach; and

~~(f)~~(ii) such further information as is requested by the QCA to enable the QCA to consider the Pricing Proposal.

~~(e)~~(d) The QCA must:

- (i) publish the Pricing Proposal;
- (ii) invite persons (including ~~the all~~ Expansion ~~Stakeholders~~ ~~Seeker~~) to make submissions on the Pricing Proposal within a reasonable time period specified by the QCA; and
- (iii) provide Aurizon Network and ~~the~~ Expansion ~~Stakeholders~~ ~~Seeker~~ with a draft decision and a reasonable opportunity to respond to that draft decision.

~~(e)~~ Subject to clause 6.4.3(h) or 6.4.3(i), if a Pricing Proposal is referred to the QCA ~~pursuant to~~ under this Undertaking or otherwise, Division 7A of Part 5 of the Act ~~shall apply~~ applies. The parties agree that any Pricing Proposal that is submitted to the QCA ~~pursuant to~~ under this Undertaking will be made in the form of an application for a ruling under section 150F of the Act, unless the QCA requests otherwise.

~~(d)~~(f) The QCA may:

- (i) ~~accept~~ approve the Pricing Proposal; or
- (ii) refuse to accept the Pricing Proposal, with reasons provided to Aurizon Network.

~~(g)~~ If the QCA ~~accepts~~ approves the Pricing Proposal, the QCA may state in its ruling that it will no longer apply if there is a material change in circumstances. In such circumstances, the QCA may invite Aurizon Network to submit an updated Pricing Proposal (and application under section 150F, if applicable).

~~(e)~~(h) If the QCA refuses to ~~accept~~ approve a Pricing Proposal or invites Aurizon Network to submit an updated Pricing Proposal, Aurizon Network will, if applicable, promptly submit a replacement Pricing Proposal to the QCA (and application under section 150F, if applicable).

~~(f)~~(i) Aurizon Network must notify the QCA in writing immediately upon becoming aware that a change in circumstances has arisen in relation to the Pricing Proposal, including any calculations or information used in the course of preparing the Pricing Proposal.

#### 6.4.4 ~~Endorsed~~ *General principles for Expansions*

~~(g)~~(a) This clause 6.4.4 only applies if an Expansion is an Endorsed Expansion. Where an Expansion is an Endorsed Expansion, an Expansion Tariff will apply that is calculated in accordance with this clause 6.4.4.

~~(h)(b)~~ The concept of 'Socialisation' of an Endorsed Expansion ~~refers to~~ involves the aggregation of the Expansion Costs of a new Expansion (**New Expansion**) with the costs associated with one or more existing Expansion Tariffs for the same Coal System in order to determine common Expansion Tariffs. ~~For an Endorsed Expansion, Socialisation is assessed for tariffs AT<sub>1</sub> to AT<sub>4</sub> (collectively) independently from Socialisation for tariff AT<sub>5</sub>. The iterative methodology set out in the remainder of this clause 6.4.4 must be applied to both sets of tariffs independently.~~

~~(i)~~ Every Expansion Tariff must have a separate:

~~(i) relevant Allowable Revenue (adjusted to recognise all revenue that Aurizon Network receives from all sources that enables it recover the costs of the Expansion); and~~

~~(ii) GtK Forecast based on 100% contracted volumes;~~

~~(iii) that can be used to calculate that Expansion Tariff pursuant to **Schedule F**. To avoid doubt, an Expansion Tariff will be calculated based on contracted volumes and, when a Take or Pay applies to the Expansion, it will be calculated in accordance with **clause 3.3(n) of Schedule F**.~~

~~(j)(c)~~ If a Coal System has no existing Expansion Tariff, ~~the an~~ Expansion Tariff for the **New** Expansion, applicable to the Expanding User, Expansion Seeker, will be calculated in accordance with **clause 6.4.6(b) 6.4.3(b)**, subject to adjustment under **clause 6.4.4(e) 6.4.3(f)**.

~~(k)(d)~~ If a Coal System has one or more existing Expansion Tariffs, ~~an the~~ Expansion Tariff for the **New** Expansion will be calculated in accordance with the iterative methodology for socialising Expansions set out in **clauses 6.4.2(e) 6.4.4(e)**. Aurizon Network must apply this methodology and include its associated calculations in the Pricing Proposal under **clause 6.4.3(a)** based on:

(i) the Expansion Costs after adjustment in accordance with the proposed cost allocation principles;

(ii) forecast volumes arising as a result of the Expansion as set out in the Feasibility Study;

(iii) the analysis being undertaken on a forward-looking basis, looking at the effect:

(A) at the end of each Quarter after the earliest contracted commencement of Access by Access Holders whose Access Agreements were conditional on the relevant Expansion (**Initial Access Holders**); until and including

(B) the peak point for contracted Access by the Initial Access Holders.

~~(e)~~ Iterative methodology for socialising Expansions:

- (i) **Step One:** Aurizon Network must calculate:
  - (A) which of the existing Expansion Tariffs applicable to the relevant Coal System is the highest on a \$/NT Basis after being adjusted in a manner consistent with the proposed cost allocation principles based on the Expansion's Projected Cost (**Highest Expansion Tariff**); and
  - (B) whether the Highest Expansion Tariff would, on a \$/NT Basis, decrease if the Highest Expansion Tariff and the Expansion Costs of the New Expansion were socialised (**Tariff Decrease**);
- (ii) **Step Two:** If under Step One, a Tariff Decrease would not occur, then the Highest Expansion Tariff will not be socialised with the Expansion Costs of the New Expansion. A new Expansion Tariff, applicable to the New Expansion, will be established in accordance with **clause 6.4.6(b)**~~6.4.3(b)~~. (Note: Aurizon Network and/or ~~Expansion Seekers~~ Expanding Users may still make submissions to the QCA to exercise its discretion under **clause 6.4.6(c)** to socialise the Highest Expansion Tariff with the Expansion Costs of the New Expansion, but will have the onus of establishing why socialisation should occur with regard to the factors set out in section 138(2) of the Act.);
- (iii) **Step Three:** If under Step One, a Tariff Decrease would occur, then the Highest Expansion Tariff will be socialised with the Expansion Costs of the New Expansion to determine a common Expansion Tariff (**Socialised Tariff**).
- (iv) **Step Four:** Aurizon Network must calculate whether the remaining next Highest Expansion Tariff for the relevant Coal System on a \$/NT basis would decrease if that next Highest Expansion Tariff and the Socialised Tariff as referred to in Step Three were socialised (**Tariff Decrease**).
- (v) **Step Five:** Aurizon Network will repeat Steps Three to Five until either there is no further Tariff Decrease or all Expansion Tariffs have been socialised. Where socialisation occurs in a previous iteration of Steps Three to Five, references to Expansion Costs of the New Expansion in Step Three will be taken to be references to the costs associated with the Socialised Tariff from the last iteration.
- (vi) **Step Six:** Once the iteration in Steps Three to Five has been completed, the common Expansion Tariff for the new Expansion and the other socialised Expansions will be the

Socialised Tariff from the last iteration, subject to adjustment under **clause 6.4.4(f)**.

- (f) If, following the application of **clauses 6.4.4(c) or 6.4.4(e)**, the new or varied Expansion Tariff is lower than the System Reference Tariff for the Coal System on a \$/NT Basis, Aurizon Network must include a positive ~~common cost~~ contribution ~~component to its Common Costs~~ in the Expansion Tariff that has the effect of increasing the Expansion Tariff and reducing the System Reference Tariff so that these Reference Tariffs are equivalent on a \$/NT Basis. The contribution to Aurizon Network's Common Costs will be calculated based on contracted volumes. The contribution to Aurizon Network's Common Cost will be assessed for Tariffs AT<sub>1</sub> to AT<sub>4</sub> (collectively) independently from Tariff AT<sub>5</sub>.

#### **6.4.5 Customised Expansions**

- (a) Where an Expansion is a Customised Expansion, the Expanding Users will submit a proposed Reference Tariff to Aurizon Network (copying the QCA) that gives effect to the Expansion Pricing Principles, taking into account the extent of any agreement between Expansion Stakeholders.
- (b) The QCA will determine the Reference Tariffs for the Customised Expansion in its consideration of the Pricing Proposal.

#### **6.4.6 Reference Tariffs**

- (a) Any applicable Reference Tariff determined under this **clause 6.4** will apply instead of the System Reference Tariff for that Coal System.
- (b) Every Expansion Tariff must have a separate:
- (i) relevant Allowable Revenue (adjusted to recognise all revenue that Aurizon Network receives from all sources that enables it recover the costs of the Expansion); and
  - (ii) Gtk Forecast based on 100% contracted volumes,
- that can be used to calculate that Expansion Tariff under **Schedule F**. For clarity, an Expansion Tariff will be calculated based on contracted volumes and, when a Take or Pay applies to the Expansion, it will be calculated in accordance with **clause 3.3(n) of Schedule F**.
- ~~(m)~~(c) Notwithstanding any provision of this **clause 6.4.36.4**, the QCA may determine (in its sole discretion) the level of any Expansion Tariff, including and the extent to which ~~any~~ Socialisation of any Expansions should occur. Any such determination must have regard to the requirements of section 138(2) of the Act and will be final and binding on Aurizon Network.
- ~~(n)~~(d) At a later date, Aurizon Network must prepare and submit to the QCA a draft amending access undertaking for the applicable Expansion Reference Tariff. The draft amending access undertaking must ~~use a Gtk Forecast based on 100% contracted volumes, but will otherwise~~



have an applicable Expansion Reference Tariff determined in accordance with this **clause 6.4.6.4.4** and approved by the QCA **under clause 6.4.2(e)**.

- ~~(e)~~(e) If two (2) or more Expansion Tariffs continue to exist for any Coal System, Aurizon Network must undertake a review in consultation with the QCA at least once every twelve (12) Months, whether Socialisation of any of those Expansion Tariffs should occur.

#### **6.4.36.4.7 Allocation of Asset Replacement and Renewal Expenditure**

- (a) Subject to **clause 6.4.4(b)6.4.6(b)**, all Asset Replacement and Renewal Expenditure in respect of capital expenditure projects relating to a Coal System must only be included in the capital costs relevant to the calculation of the System Reference Tariff.
- (b) To the extent that Asset Replacement and Renewal Expenditure is necessary for an Expansion to which an Expansion Tariff applies or will apply, then that Asset Replacement and Renewal Expenditure will be treated as part of the cost of that Expansion for the purposes of calculating the Expansion Tariff to be approved by the QCA.

#### **6.4.46.4.8 Indicative Access Charge**

- (a) Where **clause 6.4** applies in respect of an Expansion and the applicable Reference Tariff has not yet been determined, this does not affect Aurizon Network's obligations to negotiate Access and enter into an Access Agreement provided that Aurizon Network may enter into an Access Agreement with the relevant Access Seeker on the basis of an indicative Access Charge (taking into account any applicable Pricing Proposal accepted by the QCA under **clause 6.4.3**) subject to the Access Agreement including provisions which provide that after the applicable Reference Tariff is determined:
- (i) the Access Agreement will be amended to include an Access Charge based on that Reference Tariff; and
- (ii) the Access Seeker and Aurizon Network will account to each other for any under or over recovery of Access Charges during the period when the indicative Access Charge was applied.

#### **6.4.9 Interaction with Access Charges for new or additional coal carrying Train Services that involve the use of Private Infrastructure**

- ~~(ii)~~(a) Where a new or additional coal carrying Train Service involves the use of Private Infrastructure, clause 6.4 and clause 6.3.1(c) must be applied concurrently for the purposes of setting an Access Charge.

### **6.5 Process for acceptance of new Reference Tariff**

#### **6.5.1 Process**

- (a) Where Aurizon Network is negotiating Access Charges for Access Rights and a new Reference Tariff is to be applied under **clause 6.4**

in respect of those Access Charges, Aurizon Network will submit a proposed new Reference Tariff to the QCA. The QCA will:

- (i) publish the proposed Reference Tariff;
  - (ii) invite persons to make submissions on the proposed Reference Tariff to the QCA within a reasonable period of time specified by the QCA; and
  - (iii) consider any submission it receives within that period of time.
- (b) The QCA may approve a proposed Reference Tariff for a new Reference Train Service only if the QCA:
- (i) is satisfied that the proposed Reference Tariff is consistent with this Undertaking;
  - (ii) considers it appropriate to do so having regard to the factors listed in section 138(2) of the Act; and
  - (iii) for a resubmitted proposed Reference Tariff, is satisfied that Aurizon Network has in all material respects addressed the matters referred to in the relevant notice by the QCA under **clause 6.5.1(f)**.
- (c) If the QCA approves the proposed Reference Tariff:
- (i) it will apply from the earlier of:
    - (A) the date of the QCA's decision; and
    - (B) if Aurizon Network and the Access Seeker have entered into an Access Agreement under **clause 6.4.8**, the date of that Access Agreement, except where the QCA specifies a later date in its decision, in which case the proposed Reference Tariff will apply from that date;
  - (ii) the QCA will give Aurizon Network a notice in writing stating the reasons for its decision at the time of publishing its decision; and
  - (iii) Aurizon Network must:
    - (A) publish a new version of **Schedule F** which includes the new Reference Tariff; and
    - (B) advise Access Holders and Access Seekers, in respect of the Train Services to which the new Reference Tariff applies, that the new Reference Tariff has been approved.
- (d) If the QCA is considering refusing to approve the proposed Reference Tariff:

- (i) it must give Aurizon Network a draft of its decision (including a statement of reasons including the way it considers the Reference Tariff should be adjusted);
  - (ii) Aurizon Network may, within twenty (20) Business Days after being given that draft decision (or such longer period as agreed by the QCA), revise the proposed Reference Tariff and/or provide additional information supporting its view that the proposed Reference Tariff should be approved; and
  - (iii) the QCA must consider that revision and/or additional information when deciding whether to approve or refuse to approve the proposed Reference Tariff.
- (e) If the QCA refuses to approve the proposed Reference Tariff, the QCA must give Aurizon Network a notice of the QCA's decision (including a statement of both its reasons and the way in which it considers the proposed Reference Tariff should be amended).
- (f) If the QCA refuses to approve the proposed Reference Tariff, Aurizon Network may resubmit the proposed Reference Tariff with amendments and **clauses 6.5.1(a)** ~~6.5(a) to (e)~~ apply to that resubmitted Reference Tariff.
- (g) For the purposes of this **clause 6.5.1**:
- (i) a proposed Reference Tariff submitted by Aurizon Network must include a new or reviewed Allowable Revenue and GtK Forecast to the extent applicable to that proposed Reference Tariff; and
  - (ii) the QCA in approving a proposed Reference Tariff must also approve the new or reviewed Allowable Revenue and GtK Forecast.

### **6.5.2 Access Charge review provisions**

Without limitation to **clause 6.4.8**, Aurizon Network or an Access Seeker may seek to agree review provisions in an Access Agreement that is being negotiated to enable the Access Charge to be adjusted from time to time in order for those Access Charges to be consistent with changes in:

- (a) (if a Reference Tariff applies to the Train Service) the applicable Reference Tariff (including any matters under **Schedule F**); and
- (b) (if no Reference Tariff applies to the Train Service) the Access Charges agreed with other Access Seekers in respect of Train Services transporting the same commodity within the same geographical area as that Access Seeker's proposed Train Service.

A Standard Access Agreement must contain review provisions in compliance with this **clause 6.5.2**.

## 6.6 Pricing limits

### 6.6.1 *Application of pricing limits*

- (a) Aurizon Network will, in setting the Access Charges for an Access Seeker's proposed Train Services, establish and observe upper and lower limits for the Access Charge(s):
  - (i) for individual Train Services; and
  - (ii) for combinations of Train Services comprised of the proposed Train Services and other Train Services to the extent that they use the same Rail Infrastructure as that which would be used by the proposed Train Services,  
at levels:
    - (iii) which ensure there is no Cross Subsidy between individual Train Services or combinations of Train Services (as applicable); and
    - (iv) determined in accordance with **clause 6.6.2**.
- (b) Subject to the approval of the QCA, Aurizon Network may:
  - (i) establish a new Reference Tariff; or
  - (ii) vary an existing Reference Tariff in a way,  
that is inconsistent with **clause 6.6.2(a)(ii)**~~6.6.2(a)(iii)~~, for the primary purpose of promoting efficient investment by either Aurizon Network or another person in the relevant transport supply chain.

### 6.6.2 *Setting price limits*

- (a) In setting the Access Charges for an Access Seeker's proposed Train Services, Aurizon Network will do so such that, over the Evaluation Period, the Expected Access Revenue for any one of those Train Services and any combination of Train Services comprised of the proposed Train Services and other Train Services to the extent that they use the same Rail Infrastructure as that which would be used by the proposed Train Services is:
  - (i) no less than the level that will recover the expected Incremental Cost of providing Access for that Train Service or that combination of Train Services (as applicable); and
  - (ii) no more than the level that will recover the expected Stand Alone Cost of providing Access for that Train Service or that combination of Train Services (as applicable).

### 6.6.3 *Application of Maximum Allowable Revenue*

- (a) Without limitation to **clause 6.6.2(a)**, where it is necessary to calculate the price limit referred to in **clause 6.6.2(a)(ii)** for the purposes of setting or reviewing a Reference Tariff, the Stand Alone

Cost for the Evaluation Period for the Train Services to which the Reference Tariff relates will be the Maximum Allowable Revenue.

- (b) The Maximum Allowable Revenue means the aggregate of the maximum amount of Expected Access Revenue attributable to a section of Rail Infrastructure for the relevant Train Services using that section of Rail Infrastructure over the Evaluation Period.
- (c) The Maximum Allowable Revenue will be measured such that the net present value of the cashflows associated with providing Access for the relevant Train Services over the Evaluation Period is zero. This measurement can be expressed as:

$$0 = -AV_0 + \sum_{t=1}^n \frac{(MAR_t - C_t - M_t - T_t)}{(1 + ROA)^t} + \frac{AV_n}{(1 + ROA)^n}$$

where:

$AV_0$  is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Services, assessed in accordance with **clause 6.6.3(e)**, at the commencement of the Evaluation Period;

$n$  is the number of years in the Evaluation Period;

$t$  is each year within the Evaluation Period from 1 to  $n$ ;

$MAR_t$  is the Maximum Allowable Revenue for the Train Services expressed as revenue that may be earned in each year of the Evaluation Period;

$C_t$  is the capital expenditure for assets reasonably expected to be required for the Stand Alone provision of Access for the Train Services in each year of the Evaluation Period;

$M_t$  is the Efficient Cost, including operating and maintenance costs, business and corporate overheads and QCA Levy, reasonably expected to be incurred for the Stand Alone provision of Access for the Train Services in each year of the Evaluation Period;

$ROA$  is the relevant rate of return commensurate with the commercial and regulatory risks involved in nominal post tax terms (with the cost of debt expressed on a before tax basis), as agreed by Aurizon Network and the QCA or, failing such agreement, as determined by the QCA;

$T$  is the tax expense assessed through the application of the statutory tax rate for corporations to the taxable income reasonably expected to be earned through the Stand Alone provision of Access for the Train Services in each year of the Evaluation Period, where such tax expense is reduced in each year by the application of the gamma factor, reflecting the market value of dividend imputation, as agreed by

Aurizon Network and the QCA or, failing such agreement, as determined by the QCA; and

$AV_n$  is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Services, assessed in accordance with **clause 6.6.3(e)**, at the end of the Evaluation Period.

- (d) For the purpose of determining the variables under **clause 6.6.3(c)**, the assumed traffic task resulting from the Train Services over the Evaluation Period is the forecast, as reasonably determined by Aurizon Network, for the traffic task resulting from the Train Services over the Evaluation Period (including making allowance for any changes in traffic task that are expected to result from the commencement of projects that impact significantly on the traffic task).
- (e) The value of assets used in **clause 6.6.3(c)** will be determined by reference to:
  - (i) the Regulatory Asset Base, as maintained in accordance with **Schedule E**; or
  - (ii) if a value cannot be determined ~~pursuant to (i)~~ under clause 6.6.3(e)(i), the Depreciated Optimised Replacement Cost methodology.

## 6.7 Pricing objectives

### 6.7.1 *Rail Infrastructure utilisation*

- (a) Aurizon Network may establish different Access Charges for non-coal carrying Train Services serving different markets or commodities to maximise the commercially viable use of Capacity while meeting, in aggregate, the Common Costs.
- (b) Subject to **clause 6.7.1(c)**, if Aurizon Network can evidence to the QCA that:
  - (i) the Available Capacity is insufficient to satisfy the requests for Access Rights of all current and likely Access Seekers; and
  - (ii) an Expansion to provide additional ~~capacity~~ Capacity is not commercially feasible in the circumstances,then:
  - (iii) Aurizon Network may determine the highest Access Charge for a Train Service that it is likely to achieve from the current or likely Access Seekers based on the characteristics of the relevant Reference Train Service for the applicable Coal System (including the terms of the relevant Standard Access Agreement) (**Maximum Access Charge**);

- (iv) the Maximum Access Charge may be quoted to all Access Seekers in respect of the Available Capacity irrespective of:
  - (A) any Access Seeker's ability to contribute to the Common Costs; or
  - (B) the Access Charges payable in existing Access Agreements for similar Train Services; and
- (v) if Aurizon Network:
  - (A) has received Mutually Exclusive Access Applications;
  - (B) chooses to allocate Available Capacity to one of those Access Seekers for an Access Charge less than the Maximum Access Charge; and
  - (C) another of those Access Seekers is willing to pay an Access Charge equal to the Maximum Access Charge,

then, when determining the Maximum Allowable Revenue in accordance with **clause 6.6.3** for Train Services using that constrained section of Rail Infrastructure, the Access Charge for the Access Seeker will be assumed to be the Maximum Access Charge. For the purpose of **clause 6.7.1(b)(iv)(B)**, Aurizon Network does not make a choice to allocate Available Capacity in a particular way where Aurizon Network's allocation is necessary for compliance with any Law (including any Passenger Priority Obligation or Preserved Train Path Obligation).

- (c) **Clause 6.7.1(b)** does not apply in respect of setting Access Charges in relation to Train Services for which a Reference Tariff applies. For clarity, as Reference Tariffs are intended to apply to all coal carrying Train Services, **clause 6.7.1(b)** will not apply in respect of coal carrying Train Services.

## 6.8 Revenue adequacy

Aurizon Network is entitled to earn revenue from the provision of Access that is at least enough to:

- (a) meet the Efficient Costs of providing Access; and
- (b) provide a rate of return on the value of assets commensurate with the regulatory and commercial risks involved.

## 6.9 Reference Tariffs

### 6.9.1 *Application of Reference Tariffs*

- (a) A Reference Tariff is one means by which Aurizon Network provides Access Seekers with information about the matters listed in sections

101(2)(a) to (c) of the Act, but is not intended to fully discharge Aurizon Network's obligations under those sections.

- (b) Unless otherwise approved or required by the QCA, Aurizon Network must calculate the Access Charges for all coal carrying Train Services to which a Reference Tariff applies on a basis that comprises all of the following elements:
- (i) an incremental maintenance component that is levied on a gtk basis – referred to as AT<sub>1</sub>;
  - (ii) an incremental capacity component that is levied on a Train Path basis – referred to as AT<sub>2</sub>;
  - (iii) a component that is levied on a ntk basis – referred to as AT<sub>3</sub>;
  - (iv) a component that is levied on a nt basis – referred to as AT<sub>4</sub>;
  - (v) an electric access tariff that is levied on an egtk basis (if appropriate) – referred to as AT<sub>5</sub>;
  - (vi) an electric energy charge that is levied on an egtk basis (if appropriate) – referred to as EC; and
  - (vii) the QCA Levy levied on a nt basis,
- and including any other amount that may be included in an Access Charge in accordance with this Undertaking.

### **6.9.2** *Review of Reference Tariffs*

**Schedule F** will specify the period for which a Reference Tariff is effective and how the Reference Tariff may be reviewed during that period.

### **6.9.3** *Publishing updated Schedule F*

Where any matters in **clauses 7 to 12** of **Schedule F** are amended or varied from time to time, including where the QCA approves any revisions or other adjustments to Allowable Revenues, Gtk Forecasts or Reference Tariffs in accordance with this Undertaking, Aurizon Network must publish a new version of those **clauses 7 to 12** of **Schedule F** which includes that amendment, variation, revision or adjustment.

### **6.10** **Structure of non-Reference Tariff Access Charges**

Where there is no Reference Tariff applicable for a Train Service (for example, a passenger or non-coal freight Train Service), the structure of Access Charges for that Train Service will be negotiated with the relevant Access Seeker depending on their particular requirements and, without limiting Aurizon Network's and the relevant Access Seeker's discretion to agree a structure, may include any one or more of the following:

- (a) an initial upfront component as a condition to being granted Access Rights;



- (b) an ongoing periodic fixed component independent of the level of usage of the Rail Infrastructure; and
- (c) one or more ongoing variable components based on usage of the Rail Infrastructure.

## 6.11 QCA Levy

Access Charges for any Train Service may include a QCA Levy component to be collected for the QCA by Aurizon Network. This component of Access Charges will, where applicable, be determined from year to year based on the QCA Levy levied by the QCA to Aurizon Network and allocated amongst Train Services in a manner approved by the QCA.

## 6.12 Regulatory Asset Base

Aurizon Network will maintain the Regulatory Asset Base in accordance with **Schedule E**.

## 6.13 Access Conditions

### 6.13.1 *Use of Access Conditions*

- (a) Aurizon Network and an Access Seeker, each acting reasonably, may agree to Access Conditions before the Access Seeker is granted Access Rights, to the extent that this is reasonably required in order to mitigate Aurizon Network's or the Access Seeker's exposure to any additional costs or risks associated with providing Access for the Access Seeker's proposed Train Service and which are not, or would not, be included in the calculation of the Reference Tariff based on the Approved WACC.

### 6.13.2 *Approval of Access Conditions*

- (a) If Aurizon Network intends to commence negotiating Access Conditions (or continue doing so where negotiations for the provision of Access were already underway at the Approval Date) it must issue to all relevant Access Seekers, Customers and the QCA a report which details:
  - (i) the Access Conditions that Aurizon Network is seeking from any Access Seeker;
  - (ii) quantification of the additional costs or risks Aurizon Network is exposed to (the **Additional Risks**), which it is seeking to mitigate through the Access Conditions;
  - (iii) why Aurizon Network's exposure to the Additional Risks would not be:
    - (A) reasonably mitigated by an Access Agreement which permits Aurizon Network to charge Access Charge(s) calculated in accordance with a Reference Tariff based on the Approved WACC and 100% take or pay commitments; or

- (B) more efficiently mitigated through insurance or other financial instruments;
  - (iv) to the extent that the Access Conditions being sought indicate Access Charges being calculated based on:
    - (A) adjustments to cash flows, evidence that there are risks not mitigated by the other Access Conditions being sought, and the adjustments are reflective of the possible outcomes and probabilities of the outcomes as a consequence of such risks; and/or
    - (B) a Varied WACC, evidence that there is either a materially different risk-free rate or debt margin, or that, as a result of the Aurizon Network funding a capital expenditure project, Aurizon Network would have a materially different gearing ratio or credit rating, from that which was assessed at the time the Approved WACC was determined by the QCA;
  - (v) confirmation that Aurizon Network considers the proposed Access Conditions would not contravene a provision of ~~the~~ [this](#) Undertaking or the Act.
- (b) If the QCA has reason to believe that Aurizon Network has commenced negotiating Access Conditions in respect of the provision of Access prior to providing a report as required by **clause 6.13.2(a)**, it may require Aurizon Network to:
- (i) produce a report in accordance with **clause 6.13.2(a)** within [ten \(10\)](#) Business Days; and
  - (ii) cease negotiating Access Conditions until such a report has been provided.
- (c) Aurizon Network and the Access Seekers may, after Aurizon Network has provided the report required by **clause 6.13.2(a)**, negotiate for [sixty \(60\)](#) days on the terms of those Access Conditions, provided that:
- (i) either Aurizon Network or any Access Seeker may apply to the QCA for an extension to the negotiation period (subject to the period not being extended to more than [one hundred and twenty \(120\)](#) days unless a majority of Access Seekers request such an extension); and
  - (ii) an Access Seeker may refer the proposed Access Conditions to the QCA for a determination at any time during the negotiation period (although the QCA may decline to make a determination until the negotiation period has expired where it considers a prior referral is vexatious or the referring party has not engaged in the negotiation of Access Conditions in good faith);<sup>5</sup>

- (d) Following receipt of the report required by **clause 6.13.2(a)**, the QCA will invite and consider comments from relevant stakeholders regarding the proposed Access Conditions.
- (e) To the extent that all Access Seekers agree to the Access Conditions sought by Aurizon Network during the period in **clause 6.13.2(c)**, the QCA will approve the proposed Access Conditions, unless the QCA is satisfied:
  - (i) it would be contrary to the public interest, including the public interest in having competition in markets;
  - (ii) it is reasonably expected to disadvantage Access Seekers, Access Holders, or other stakeholders which will not be parties to the Access Agreements containing the Access Conditions;
  - (iii) Aurizon Network has failed to provide Access Seekers with the report required by **clause 6.13.2(a)**; or
  - (iv) it would contravene a provision of ~~the~~this Undertaking or the Act.
- (f) To the extent that only some or none of the Access Seekers agree to the Access Conditions sought by Aurizon Network during the period in **clause 6.13.2(c)**, the QCA may approve the proposed Access Conditions if it is satisfied that:
  - (i) the Access Conditions are reasonably required in order to mitigate Aurizon Network's exposure to the Additional Risks associated with providing Access;
  - (ii) Aurizon Network's exposure to the Additional Risks would not be:
    - (A) reasonably mitigated by an Access Agreement which permits Aurizon Network to charge Access Charge calculated in accordance with a Reference Tariff based on the Approved WACC and 100% take or pay commitment; or
    - (B) more efficiently mitigated through insurance or other financial instruments;
  - (iii) to the extent a proposed Access Condition includes Access Charges being based on adjustments to cash flows, there are risks not mitigated by other Access Conditions being sought, and that the adjustments are reflective of the possible outcomes and probabilities of the outcomes as a consequence of such risks;
  - (iv) the proposed Access Conditions would not be contrary to the public interest, including the public interest in having competition in markets;

- (v) the proposed Access Conditions would not be reasonably expected to disadvantage Access Seekers, Access Holders, or other stakeholders which will not be parties to the Access Agreements containing the Access Conditions;
  - (vi) Aurizon Network has provided Access Seekers with the report required by **clause 6.13.2(a)**; and
  - (vii) the proposed Access Conditions would not contravene a provision of ~~the~~ this Undertaking or the Act;
- (g) To the extent that the QCA refuses to approve some or all of the Access Conditions sought by Aurizon Network:
- (i) the QCA must publish its decision regarding the Access Conditions it approves (which may include Access Conditions not initially sought by Aurizon Network); and
  - (ii) Aurizon Network must, within 30 days of the QCA's decision, elect to either:
    - (A) proceed to negotiate Access with Access Seekers on the basis of the Access Conditions which have been approved by the QCA; or
    - (B) enter into negotiations for a separate arrangement with Access Seekers that will be regarded as entirely outside the scope of (and not covered in any way by) this Undertaking and hence subject, in their entirety, to the application of Division 5 of Part 5 of the Act **(Non-Undertaking Route)**.
  - ~~(iii) In circumstances where Aurizon Network elects for the Non-Undertaking Route, Aurizon Network agrees that this access undertaking authorises the QCA to make an access determination of a nature contemplated by section 119(4)(a) of the Act, if the QCA wishes to do so.~~

### 6.13.3 *Prohibited Access Conditions*

Aurizon Network must not seek to impose, and the QCA will not approve ~~pursuant to~~ under **clause 6.13.2**, any Access Condition that:

- (a) restricts Access Seekers from raising disputes with the QCA or disclosing proposed Access Conditions or other contract terms to the QCA; or
- (b) requires Access Seekers or, Access Holders, to disclose information that is confidential to one or more of them, to any other Access Holder or Access Seeker, in circumstances other than those permitted by this Undertaking; or
- (c) results in Aurizon Network earning an Access Charge based on a Varied WACC or otherwise earning above the return provided by

Reference Tariffs based on the Approved WACC, other than as approved by the QCA ~~pursuant to~~under **clause 6.13.2**.

## Part 7: Available Capacity allocation and management

### 7.1 Application

- (a) This **Part 7** addresses the allocation and management of Capacity, including in circumstances where there is insufficient Available Capacity to satisfy all of the Access Applications submitted to Aurizon Network. In particular,   under its provisions:
- (i) Aurizon Network may refuse to grant Access Rights if the relevant Access Seeker has not demonstrated to Aurizon Network's satisfaction (acting reasonably and in good faith) that it can utilise those Access Rights: ~~(**Clause 7.2.17.2**)~~
  - (ii) Aurizon Network must maintain a Capacity Notification Register and a Committed Capacity Register: ~~(**Clause 7.2.2** and **Clause 7.2.3**)~~
  - (iii) Aurizon Network will be obliged to give priority to the granting of Access Rights to a Renewing Access Seeker in respect of a Renewal in certain circumstances: ~~(**Clause 7.3**)~~
  - (iv) Standard Access Agreements permit an Access Holder to Transfer Access Rights in accordance with this Undertaking. Aurizon Network has obligations in relation to the allocation of Capacity to facilitate a Transfer: ~~(**Clause 7.4.2**)~~
  - (v) Standard Access Agreements permit an Access Holder to relinquish Access Rights in accordance with this Undertaking. Aurizon Network has obligations in relation to the management of that relinquishment: ~~(**Clause 7.4.3**)~~
  - (vi) Aurizon Network will notify Access Seekers if their Access Applications are Mutually Exclusive Access Applications and assist them to modify their Access Applications to seek to avoid them being Mutually Exclusive Access Applications: ~~(**Clause 7.5.1**)~~
  - (vii) Where Aurizon Network has received Mutually Exclusive Access Applications, Aurizon Network will form a queue to determine which Access Seeker will be allocated those Access Rights: ~~(**Clause 7.5.2**)~~
- However, these provisions for Mutually Exclusive Access Applications do not apply where the allocation occurs under **Part 8**: ~~(**Clause 7.5.2(a)**)~~
- (b) A diagrammatic representation of the ~~capacity~~ Capacity allocation process for Mutually Exclusive Access Applications is set out in **Schedule H**.

- (c) For the purposes of the Act, the treatment of Access Seekers differently as a result of, or in accordance with, **clause 7.3, 7.4.2 or 7.5.2** is permitted and to that extent does not offend the Act.
- (d) Except where otherwise expressly provided in this **Part 7** and without limitation to **clause 7.1(c)**, in the performance of its obligations, and the exercise of its rights, under this **Part 7**, Aurizon Network must not unfairly differentiate between Access Seekers (or, as applicable, Customers) on the basis of the identity of a funder of a ~~Pre-~~Feasibility Study, a Feasibility Study or an Expansion. For example, Aurizon Network will not provide an Access Seeker (or, as applicable, a Customer) with priority in the allocation of Capacity in respect of an Expansion on the basis that Aurizon Network is providing funding for the Expansion, over another Access Seeker (or, as applicable, a Customer) with a different source of funding.
- (e) Nothing in **clauses 7.3, 7.4.2 or 7.5.2** obliges Aurizon Network to grant Access Rights if there is insufficient Available Capacity to provide those Access Rights.
- ~~(e)~~(f) Nothing in **clauses 7.4.2 (Transfers), 7.4.3 (Relinquishments), 7.6 (Capacity resumption) and 7.7 (Force majeure)** affects the terms of an Access Agreement or Train Operations Deed executed before the Approval Date, unless the parties to the relevant document expressly agree to vary that document and adopt clauses 7.4.2, 7.4.3, 7.6 or 7.7.

## 7.2 Capacity allocation and registers

### 7.2.1 *General requirement for allocation*

Despite any other provision in this Undertaking, Aurizon Network may refuse to allocate Available Capacity in respect of an Access Application if the Access Seeker has not demonstrated to Aurizon Network's satisfaction (acting reasonably and in good faith) that the Access Seeker has a reasonable likelihood of being able to utilise the Access Rights requested from the time when the Access Rights are proposed by the Access Seeker to commence, based on the following factors:

- (a) whether the Access Seeker:
  - (i) (or its Customer) has secured, or is reasonably likely to secure, Supply Chain Rights;
  - (ii) ~~except where the Access Seeker is if not~~ a Railway Operator, has secured, or is reasonably ~~e~~ likely to secure, a rail haulage agreement for the operation of the Train Services the subject of the Access Application; ~~and~~
  - ~~(ii)~~(iii) if a Railway Operator, has entered into, or is reasonably likely to enter into, a rail haulage agreement with a Customer to enable it to run Train Services to utilise the Access Rights sought;

(iv) (or ~~its Train-Railway~~ Operator) is reasonably likely to have access to facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Services to utilise the Access Rights sought;

~~(iii)~~(v) (or its Customer) is reasonably likely to have sufficient product (whether through the anticipated output of a mine or otherwise) to utilise the Access Rights sought (taking into account any other Access Rights held by the Access Seeker or its Customer in respect of product from the same origin); and

(b) where the only party that has applied for Access is a ~~Train-Railway~~ Operator, whether the ~~Train-Railway~~ Operator no longer meets the criteria outlined in **clause 4.8(a)(ii)(A) and (B)**.

### **7.2.2 Capacity Notification Register**

(a) Aurizon Network must maintain a Capacity Notification Register which contains an Access Seeker's (and, if applicable, its Customer's) details if:

- (i) Aurizon Network has ceased negotiations with an Access Seeker in accordance with **clause 4.4(d)** (in respect of all or part of the Access Rights sought by the Access Seeker);
- (ii) the Access Seeker (and, if applicable, its Customer) requests Aurizon Network to include it in the Capacity Notification Register; and
- (iii) Aurizon Network, acting reasonably, is satisfied the Access Seeker (or its Customer) has, or is in a queue to obtain, Supply Chain Rights in respect of an unloading facility.

(b) The Capacity Notification Register must contain:

- (i) the identity of each Access Seeker (or its Customer) which has requested it be included;
- (ii) the nature of the Access Seeker's interest;
- (iii) the date on which the applicable Access Application ~~(in respect of which negotiations ceased in accordance with clause 4.4(d))~~ was received, or was deemed to have been received, by Aurizon Network ~~for queuing purposes~~.

(c) Every six (6) Months after forming the Capacity Notification Register, Aurizon Network must confirm with each Access Seeker (or Customer) on the register that:

- (i) it wishes to remain on the Capacity Notification Register; and
- (ii) it has, or is in a queue to obtain, Supply Chain Rights in respect of an unloading facility.



- (d) If there is Available Capacity or a proposed Expansion which, if constructed, would create Available Capacity, then Aurizon Network must notify each person in the Capacity Notification Register who could utilise that existing or potential Available Capacity (as applicable); of the nature and extent of that existing or potential Available Capacity.
- (e) If a person notified under **clause 7.2.2(d)** submits an Access Application within one (1) Month after being given that notice, then that Access Application is deemed, for the purposes of the Queue and in respect of the Access Rights the Access Seeker nominated for inclusion in the Capacity Notification Register, to have been received by Aurizon Network on the date Aurizon Network is deemed to have received the Access Seeker's notice under **clause 7.2.2(a)(iii)7.2.2(b)(iii)**.
- (f) A person will remain on the Capacity Notification Register until:
  - (i) that person fails to comply with **clause 7.2.2(c)**; or
  - (ii) Aurizon Network notifies that person in accordance with **clause 7.2.2(d)**.

### **7.2.3 Committed Capacity Register**

- (a) Aurizon Network must maintain a Committed Capacity Register that identifies:
  - (i) each Access Holder with Access Rights under an Access Agreement;
  - (ii) DTMR in respect of its Committed Capacity; ~~and~~
  - (iii) any other party that has an interest in existing Access Rights and wishes to be included in the Committed Capacity Register and has notified Aurizon Network of that interest, in which case, the register must include:
    - (A) the Committed Capacity or Access Rights in which they have an interest; and
    - (B) the nature of that interest.
- (b) Where an Access Seeker requests Access which will:
  - (i) commence within two (2) ~~Y~~years after the expiration of an existing Access Right (other than an Access Right in respect of coal carrying Train Services); and
  - (ii) utilise Capacity that will only become available following the expiration of that Access Right,

Aurizon Network will, prior to providing an Indicative Access Proposal, use reasonable endeavours to notify the parties who are identified in the Committed Capacity Register as having an interest in the existing Access Rights of the existence of the Access Application. Failure to

give such notification is not a default under this Undertaking and does not invalidate or prejudice any Access Agreement that may have been entered into by Aurizon Network provided that Aurizon Network has acted reasonably and in good faith.

### 7.3 Renewals

- (a) This **clause 7.3** sets out provisions that apply where all or any part of an Access Holder's existing Access Rights will expire and:
- (i) that Access Holder (where the Access Holder has no Customer); or
  - (ii) the person nominated by the Access Holder's Customer in writing to Aurizon Network (and, for clarity, that Customer may nominate itself),
- (**Renewing Access Seeker**) wishes to hold or to continue to hold (as applicable) equivalent Access Rights (based on the Access Holder's Access Rights immediately prior to that expiry), subject to **clause 7.3(b)**, for a further term commencing immediately after those existing Access Rights will expire (that is, a **Renewal**).
- (b) For the purpose of **clause 7.3(a)**, Aurizon Network will disregard any change to the origin or destination of the relevant Train Services in considering whether the relevant Access Rights are equivalent Access Rights so long as the Train Services for the Renewal:
- (i) continue to have substantially the same Train Paths as the existing Train Services. For clarity, the Train Services for the Renewal may include a longer haul than the existing Train Services;
  - (ii) do not adversely affect the ability of existing Access Holders to use their Access Rights;
  - (iii) ~~the have an~~ origin ~~of the Train Services for the Renewal~~ and which is located in the same Track Segment as the origin of the Train Services under the existing Access Rights ~~relating to the Renewal are located in the same Track Segment;~~ and
  - (iv) are not in excess of those existing Access Rights under the relevant Access Holder's existing Access Agreement. For clarity, the Train Services for the Renewal may include a longer haul than the existing Train Services and will not be considered to be in excess of the existing Access Rights if paragraphs (i), (ii) and (iii) above are satisfied.
- (c) For clarity:
- (i) a Renewing Access Seeker may elect to renew only part of its existing Access Rights;

- (ii) that part of the Renewing Access Seeker's existing Access Rights not Renewed will become Available Capacity on the expiry of those existing Access Rights;
  - (iii) an Access Holder does not have Access Rights beyond the term of its Access Agreement; and
  - (iv) a Renewal includes Access Rights that were granted to the ~~relevant Renewing Access Seeker Holder under its existing Access Agreement~~ as a Transferee if the Renewing Access Seeker's existing Access Agreement includes those transferred Access Rights at the date of expiry of that Access Agreement.
- (d) Despite any provision in **Part 4**, Aurizon Network must not:
- (i) negotiate the provision of Access that will use Capacity that will become Available Capacity on the expiry of an existing Access Right; and
  - (ii) enter into an Access Agreement in relation to such Capacity, with a person other than the relevant Renewing Access Seeker unless and until:
  - (iii) the relevant Access Holder, where the Access Holder has no Customer, or otherwise the relevant Access Holder's Customer, has notified Aurizon Network that the Access Holder does not intend to seek a Renewal; or
  - (iv) the Renewing Access Seeker has not (other than because of a delay by or breach of this Undertaking by Aurizon Network) executed an Access Agreement for that Capacity with Aurizon Network under this **clause 7.3** at least twelve (12) Months prior to the expiry of the Access Rights (or such later date as agreed between Aurizon Network and the Renewing Access Seeker).
- (e) Aurizon Network may refuse to negotiate, or to enter into, an Access Agreement with a Renewing Access Seeker for a Renewal more than five (5) years prior to the expiry of the Access Rights. For clarity, a refusal by Aurizon Network to negotiate an Access Agreement as a result of the operation of this **clause 7.3(e)** does not affect the Renewing Access Seeker's right to seek a Renewal under this **clause 7.3** within the period that is five (5) years prior to the expiry of the Access Rights.
- (f) If a Renewing Access Seeker is seeking a Renewal at least twelve (12) Months (or such other later date as agreed between Aurizon Network and the Renewing Access Seeker) but no more than sixty (60) Months (or such earlier date as agreed between Aurizon Network and the Renewing Access Seeker) prior to the expiry of the relevant Access Rights, then:

- (i) the term of an Access Agreement relating to the Renewal must be:
  - (A) for coal carrying Train Services, the lesser of [ten \(10\)](#) years and the remaining life of the relevant mine (as evidenced to Aurizon Network's satisfaction (acting reasonably) by the Renewing Access Seeker); or
  - (B) for other Train Services, the lesser of [ten \(10\)](#) years and the same length of time as the term of the relevant current Access Agreement; and
- (ii) if:
  - (A) the Renewing Access Seeker's Access Application is not seeking a Renewal for; or
  - (B) the Renewing Access Seeker does not agree to an Access Agreement for,
 

a term referred in **clause 7.3(f)(i)**, then the Renewing Access Seeker's Access Application will not be treated as an Access Application for a Renewal under this **clause 7.3**.
- (g) While this **clause 7.3** sets out how Aurizon Network will differentiate in the treatment of a Renewing Access Seeker as compared to other Access Seekers, this **clause 7.3** does not affect the rights and obligations of the Renewing Access Seeker or Aurizon Network under **Part 4** or **Part 5** or the remaining provisions of this **Part 7** except as set out in this **clause 7.3**.
- (h) Aurizon Network must enter into an Access Agreement for a Renewal on the same terms as the relevant Access Holder's Access Agreement for the existing Access Rights, except to the extent that the Renewing Access Seeker agrees with Aurizon Network to:
  - (i) vary the terms of the relevant Access Holder's Access Agreement for the existing Access Rights in accordance with its terms; or
  - (ii) enter into an Access Agreement in accordance with **clause 5.1(e)** [Part 5 based on the Standard Access Agreement and including any amendments negotiated under clause 5.1\(d\)](#).
- (i) For clarity:
  - (i) a Renewing Access Seeker must complete and submit an Access Application for Access Rights it is seeking to renew; and
  - (ii) subject to this **Part 7**, the negotiations for those Access Rights will be conducted in accordance with **Part 4** and **Part 5**, including:

- (A) the Negotiation Cessation Notice provisions under **clause 4.12**;
  - (B) the Renewing Access Seeker and Aurizon Network beginning negotiations as soon as reasonably possible once the relevant Negotiation Period has commenced under **clause 4.10.1(a)**; and
  - (C) both the Renewing Access Seeker and Aurizon Network negotiating the terms of the relevant Access Agreement for the Renewal acting reasonably and in good faith ~~under clause 5.1(e)~~; and
- (iii) despite the provisions of this **clause 7.3**:
- (A) the Access Rights the subject of the Renewal are not included in the Queue; and
  - (B) the Renewing Access Seeker is deemed to have first right to the Access Rights as regards other Access Seekers in the Queue in respect of those Access Rights.
- (j) Aurizon Network acknowledges that any provision under **Part 4** which permits Aurizon Network:
- (i) to treat an Access Application as being withdrawn (except where the Access Seeker expressly withdraws the Access Application); or
  - (ii) to cease negotiation under clause 4.10.1(c)(v) or otherwise issue a Negotiation Cessation Notice because there is insufficient Available Capacity,
- does not apply in respect of a Renewal.

## **7.4 Dealing with Access Rights**

### **7.4.1 Assignments**

An Access Holder may only assign, novate or otherwise transfer the Access Holder's interest in an Access Agreement to a third party in accordance with the terms of that Access Agreement.

### **7.4.2 Transfers**

- (a) If an Access Holder intends to undertake a Transfer of all or part of the Access Rights to itself or a third party (each a **Transferee**), the Access Holder must give Aurizon Network reasonable notice of its intention to do so (**Notice of Intention to Transfer**).

- (b) A Notice of Intention to Transfer must:
- (i) specify full details of the proposed Transfer including:
- (A) the Access Rights which the Access Holder proposes to Transfer (**Nominated Access Rights**) by describing:
    - (1) the number and type of Train Services to be transferred; and
    - ~~(1)~~(2) the existing origin and destination of the Nominated Access Rights;
  - (B) the details of any changes to any nominations of a Train Operator previously given to take into account the proposed Transfer of the Nominated Access Rights;
  - (C) the date (~~Transfer Date~~) (which is at least two (2) Business Days after the date Aurizon Network receives the Notice of Intention to Transfer) on which the transfer of the Nominated Access Rights is to take effect (**Transfer Date**); ~~and the period for which (**Transfer Period**), the Nominated Access Rights are proposed to be Transferred (provided that the Transfer Date must not be less than three (3) Months, and more than two years, after the date on which the Access Holder gives the Notice of Intention to Transfer to Aurizon Network);~~
  - (D) the date on which the transfer of the Nominated Access Rights is to terminate (if any); and
  - ~~(C)~~(E) all Access Agreements the Access Holder (or its Customer or Train Operator, as applicable) may have relating to the origin and destination of the Nominated Access Rights; and
  - ~~(D)~~ the identity of the Transferee; and
  - ~~(E)~~ the Access Rights proposed to be granted to the Transferee as part of the proposed Transfer (provided that the Access Rights must not use more than the Available Capacity that will be created by the relinquishment of the Nominated Access Rights as part of the proposed Transfer) (**Transferred Access Rights**); and
- (ii) if the Transferee is not the Access Holder, be accompanied by an Access Application completed by the Transferee which must, as a minimum, contain: evidence that the Transferee consents to the Transfer of the Transferred Access Rights proposed to be granted to the Transferee.

- (A) the Access Rights the Transferee proposes to acquire from the Access Holder (**Transferred Access Rights**) by describing:

    - (1) the number and type of Train Services the Transferee proposes to acquire;
    - (2) the origin and destination for the Transferred Access Rights;
    - (3) if the Transferred Access Rights require Capacity in addition to the Available Capacity that will be created by the relinquishment of the Nominated Access Rights as part of the proposed Transfer;
  - (B) evidence that the Transferee (or its Customer, if any) has secured, or is reasonably likely to secure, Supply Chain Rights for the Transferred Access Rights from the Transfer Date;
  - (C) either:

    - (1) evidence that the Transferee has secured or is reasonably likely to secure a rail haulage agreement for the Transferred Access Rights from the Transfer Date; or
    - (2) the details of any changes to any nominations of a Train Operator previously given to take into account the proposed Transfer of the Transferred Access Rights; and
  - (D) all Access Agreements the Transferee (or its Customer or Train Operator, as applicable) may have to which the Transferred Access Rights could be added (if any).
- (c) The Access Application to be completed and submitted by the Transferee under **clause 7.4.2(b)(ii)**:
- (i) must be an Access Application in the form required to satisfy **Part 4** for the Transferred Access Rights if the Transferee (or its Customer or Train Operator) does not have an existing Access Agreement to which the Transferred Access Rights could be added; or
  - (ii) may be a short form Access Application that provides the information required in **clause 7.4.2(b)(ii)** if the Transferee (or its Customer or Train Operator) does have an existing Access Agreement to which the Transferred Access Rights could be added.

- (d) If either:
- (i) the Transferee does not have an existing Access Agreement to which the Transferred Access Rights could be added; or
  - (ii) clause 7.4.2(e) or clause 7.4.2(f) does not apply;
- ~~then, A Transferee must complete and submit an Access Application for the Transferred Access Rights and~~ subject to this **Part 7** (which ~~shall~~ prevails to the extent of any inconsistency), the negotiation process for those Transferred Access Rights will be conducted in accordance with **Part 4**. For clarity and without limiting the provisions of **Part 4** that apply to the Access Application, nothing in this **clause 7.4.2** affects the application of **clauses 4.3(f)** and **4.12(a)(ii)** to the Access Application.
- (e) Aurizon Network must, within two (2) Business Days after receipt of the Notice of Intention to Transfer, effect the transfer of the Nominated Access Rights to the Transferee in accordance with clause 7.4.2(h) if:
- (i) the Transferee (or its Customer or Train Operator) has an existing Access Agreement in respect of the nominated origin and destination for the Transferred Access Rights;
  - (ii) the Transferee has provided evidence reasonably establishing it (or its Customer) will have Supply Chain Rights;
  - (iii) the Transferee has provided the details of any changes to any nominations of a Train Operator previously given to take into account the Transferred Access Rights on and from the Transfer Date;
  - (iv) the origin for the Transferred Access Rights is on the same Mainline Path as the Nominated Access Rights and is either the same origin as the Nominated Access Rights or closer to the destination for the Nominated Access Rights;
  - (v) the destination for the Transferred Access Rights is the same as the destination for the Nominated Access Rights;  
and
  - (vi) the Train Services for the Transferred Access Rights is the same as the nature or type of Train Services for the Nominated Access Rights.
- (f) Aurizon Network must, within two (2) Business Days after receipt of the Notice of Intention to Transfer, notify the Access Holder and the Transferee that a Rapid Capacity Assessment is required and commence that Rapid Capacity Assessment if:
- (i) the Transferee (or its Customer or Train Operator) has an existing Access Agreement in respect of the nominated origin and destination for the Transferred Access Rights;



- (ii) the Transferee has provided evidence reasonably establishing it (or its Customer) will have Supply Chain Rights;
- (iii) the Transferee has provided the details of any changes to any nominations of a Train Operator previously given to take into account the Transferred Access Rights on and from the Transfer Date;
- (iv) the Transferred Access Rights use the same Mainline Path as the Nominated Access Rights;
- (v) the origin for the Transferred Access Rights requires Access Rights in addition to the Nominated Access Rights;
- (vi) the destination for the Transferred Access Rights is in the same port precinct as the destination for the Nominated Access Rights; and
- (vii) the Train Services for the Transferred Access Rights is the same as the nature or type of Train Services for the Nominated Access Rights.

and on completion of the Rapid Capacity Assessment (which must be completed within two (2) Business Days from the commencement of the Rapid Capacity Assessment):

- (viii) Aurizon Network must promptly notify the Access Holder and the Transferee of the result of the Rapid Capacity Assessment;
- (ix) if the Rapid Capacity Assessment indicates there is sufficient Available Capacity (if the Nominated Access Rights is deemed to be Available Capacity for the purposes of the Rapid Capacity Assessment) for the Transferred Access Rights, Aurizon Network must effect the transfer of the Nominated Access Rights to the Transferee in accordance with **clause 7.4.2(e)**; and
- (x) if the Rapid Capacity Assessment indicates there is insufficient Available Capacity (if the Nominated Access Rights is deemed to be Available Capacity for the purposes of the Rapid Capacity Assessment) for the Transferred Access Rights, the Access Holder may request Aurizon Network to conduct a detailed assessment of the Notice of Intention to Transfer, in which case, **clause 7.4.2(h)** (excluding **clause 7.4.2(h)(iv)**) will apply.

(g) If **clauses 7.4.2(e)** or **7.4.2(f)** do not apply, Aurizon Network must:

- (i) within two (2) Business Days after receipt of the Notice of Intention to Transfer, notify the Access Holder and the Transferee that a detailed assessment of the Notice of

- Intention to Transfer must be undertaken and the date it anticipates that assessment will be completed;
- (ii) provide its final review and either consent to or not consent to the proposed Transfer within three (3) Months after receipt of the Notice of Intention to Transfer; and
- (iii) effect the Transfer of the Nominated Access Rights to the Transferee in accordance with **clause 7.4.2(e)** if:
- (A) the Transferred Access Rights are granted under a new or varied Access Agreement between Aurizon Network and the Transferee that:
- (1) has been negotiated and agreed in accordance with the requirements of this Undertaking; and
- (2) (except for a condition in relation to the grant of the Transferred Access Rights taking effect under this **clause 7.4.2**) is unconditional and binding upon the Transferee;
- (B) the Transferee has demonstrated to the reasonable satisfaction of Aurizon Network that the Transferee:
- (1) will hold, or will have the benefit of, Supply Chain Rights from the Transfer Date utilising the Transferred Access Rights; and
- (2) is reasonably likely to continue to hold, or have the benefit of, those Supply Chain Rights for the whole of the Transfer Period (including as a result of a right to renew or extend the Supply Chain Rights); and
- (C) the Rail Infrastructure has sufficient Available Capacity (if the Nominated Access Rights is deemed to be Available Capacity) for the Transferred Access Rights without another Access Holder being adversely affected.
- (h) If Aurizon Network effects the Transfer of the Nominated Access Rights to the Transferee under any of **clauses 7.4.2(e), (f) or (g)**, then on and from the later of:
- (i) the Transfer Date;
- (ii) if **clause 7.4.2(f)** applies, two (2) Business Days after completion of the Rapid Capacity Assessment; and
- (iii) the date the last of the conditions set out in **clause 7.4.2(i)** is satisfied.

(or such later date agreed by the Access Holder, the Transferee and Aurizon Network):

~~(iii) If the Access Holder gives a Notice of Intention to Transfer, then:~~

~~(iv) the Access Holder will be taken to have relinquished the Nominated Access Rights are removed from the Access Holder's (or its Customer's or Train Operator's, as applicable) under its Access Agreement which; and:~~

~~(A) relates to Train Services in respect of the origin and destination of the Nominated Access Rights; and~~

~~(B) was entered into first in time as determined on the following basis:~~

~~(1) a Pre-30 June 2006 Coal Access Agreement is deemed to have been entered into prior to any other Access Agreement;~~

~~(2) a Pre-1 October 2010 Coal Access Agreement is deemed to have been entered into prior to any other Access Agreement excluding a Pre-30 June 2006 Coal Access Agreement; and~~

~~(1)(3) a Pre-Approval Date Coal Access Agreement is deemed to have been entered into prior to any other Access Agreement excluding a Pre-30 June 2006 Coal Access Agreement or a Pre-1 October 2010 Coal Access Agreement; and~~

~~(v) the Transferred Access Rights ~~will be~~ are granted to the Transferee for the Transfer Period under the ~~Transferee~~ Access Agreement nominated by or entered into by the Transferee except if the Transferee has more than one existing Access Agreement to which the Transferred Access Rights could be added, the Transferred Access Rights must be added to the Access Agreement that was entered into last in time as determined on the following basis;~~

~~(A) a Pre-30 June 2006 Coal Access Agreement is deemed to have been entered into prior to any other Access Agreement;~~

~~(B) a Pre-1 October 2010 Coal Access Agreement is deemed to have been entered into prior to any other Access Agreement excluding a Pre-30 June 2006 Coal Access Agreement;~~

~~(B)~~(C) a Pre-Approval Date Coal Access Agreement is deemed to have been entered into prior to any other Access Agreement excluding a Pre-30 June 2006 Coal Access Agreement or a Pre-1 October 2010 Coal Access Agreement.

if:

(i) Transfer of the Nominated Access Rights under any of clauses 7.4.2(e), (f) or (g), is conditional on the following being satisfied:

~~(c)~~ the Transferred Access Rights are for Cyclic Traffic;

(i) Aurizon Network and the Access Holder ~~have entered~~ entering into an agreement, in a form reasonably acceptable to the Access Holder and Aurizon Network, to vary the terms of the Access Holder's Access Agreement to address the relinquishment of the Nominated Access Rights (including any variations to the Access Charge Rates);

(ii) if the Transferred Access Rights are being granted under an existing Access Agreement between Aurizon Network and the Transferee, Aurizon Network and the Transferee entering into an agreement, in a form reasonably acceptable to the Transferee and Aurizon Network, to vary the terms of that Access Agreement to accommodate the Transferred Access Rights including:

(A) any variations to the Access Charge Rates; and

~~(A)~~(B) the provision of security or additional security in respect of the Transferred Access Rights as a result of the transfer of the Transferred Access Rights, to the extent that Aurizon Network, acting reasonably, requires that security or additional security;

~~(ii)~~(iii) if the Transferred Access Rights are being granted under a new ~~or varied~~ Access Agreement between Aurizon Network and the Transferee, ~~(Transferee Access Agreement)~~ that Access Agreement:

(A) has been negotiated and agreed in accordance with the requirements of this Undertaking; and

(B) (except for a condition in relation to the grant of the Transferred Access Rights taking effect under this clause 7.4.2) is unconditional and binding upon the Transferee; and

(iv) the Transferee providing Aurizon Network with security in respect of the Transferred Access Rights to the extent that Aurizon Network, acting reasonably, requires that security or additional security.

- (j) If Aurizon Network determines it cannot effect the proposed Transfer under any of **clauses 7.4.2(e), (f) or (g)**, it must provide reasons with its notice to the Access Holder and the Transferee to explain its decision.
- (k) If an Access Holder requests Aurizon Network to amend an Access Agreement to permit the Transfer of its Access Rights in accordance with this **clause 7.4.2** and Aurizon Network agrees, within three (3) Months of that request, Aurizon Network and the Access Holder must enter into an agreement, in a form reasonably acceptable to Aurizon Network and the Access Holder, to vary the terms of the Access Agreement to incorporate the terms of this **clause 7.4.2** (including a right to require security or additional security in respect of Transferred Access Rights if the Access Holder's Access Rights are increased as a result of a transfer of Access Rights).
- (l) Within three (3) Months of the anniversary of the Commencing Date, Aurizon Network must:
  - (i) undertake a review of the operation of this **clause 7.4.2**;
  - (ii) consult with Access Holders and Train Operators about the workability of this **clause 7.4.2**; and
  - (iii) submit to the QCA either:
    - (A) proposed amendments to this **clause 7.4.2** that Aurizon Network (acting reasonably) considers necessary to improve the workability of the transfer of Access Rights; or
    - (B) detailed written reasons for not making amendments to this **clause 7.4.2**,

in which event:

  - (iv) the QCA must assess Aurizon Network's submission and, if deemed appropriate, seek submissions from stakeholders in respect of Aurizon Network's submission;
  - (v) if the QCA approves the amendments proposed by Aurizon Network, it must give notice to Aurizon Network of its approval, specifying a date upon which the proposed amendments will take effect; and
  - (vi) if either:
    - (A) the QCA does not approve the amendments proposed by Aurizon Network;
    - (B) Aurizon Network does not make any submission under **clause 7.4.2(l)(iii)** within the applicable timeframe; or
    - (C) the QCA disagrees with Aurizon Network's reasons provided under **7.4.2(l)(iii)(B)**,

then the QCA may develop amendments to this clause 7.4.2 to improve the workability of the transfer of Access Rights.

(m) Nothing in clause 7.4.2(l) prevents Aurizon Network from seeking amendments to this clause 7.4.2 to improve its workability, even if the QCA has previously refused to approve proposed amendments to this clause.

~~(iii) \_\_\_\_\_,~~

~~(iv) the Transferee has demonstrated to the reasonable satisfaction of Aurizon Network that the Transferee:~~

~~(A) will hold, or will have the benefit of, Supply Chain Rights from the Transfer Date utilising the Transferred Access Rights; and~~

~~(B) is reasonably likely to continue to hold, or have the benefit of, those Supply Chain Rights for the whole of the Transfer Period (including as a result of a right to renew or extend the Supply Chain Rights); and~~

~~(v) the Rail Infrastructure has sufficient Capacity to support the grant of the Transferred Access Rights to the Transferee without another Access Holder being adversely affected.~~

~~(d) The Transfer of the Transferred Access Rights commences on the later of:~~

~~(i) the date upon which the Access Holder pays the Transfer Fee to Aurizon Network; and~~

~~(ii) the Transfer Date.~~

(n) Subject to clause 7.4.2(q), an Access Holder must pay a Transfer Fee to Aurizon Network if:

(i) a Transfer is for a period of more than three (3) Months in length;

(ii) both the Nominated Access Rights and the Transferred Access Rights are not for coal carrying services; or

(iii) the Reference Tariff used to calculate the Access Charge for the Nominated Access Rights is not the same as that used to calculate the Access Charge for the Transferred Access Rights.

~~(e)~~(o) Aurizon Network must:

(i) calculate the Transfer Fee; and

(ii) notify the Access Holder of the amount of the Transfer Fee and how the Transfer Fee was calculated, including details of any assumptions made when calculating the Transfer Fee and reasons for those assumptions,

at the following times:

- (iii) if the Access Holder is considering Transferring some or all of the Access Rights but has not given Aurizon Network a Notice of Intention to Transfer in respect of those Access Rights, promptly following a request by the Access Holder; and
- (iv) if the Access Holder has given Aurizon Network a Notice of Intention to Transfer, not less than five (5) Business Days before the Transfer Date.

~~(f)~~(p) The Transfer Fee is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the aggregate TOP Charges ~~(ATPY)~~ for the relevant Train Service Types that would have been payable for the remainder of the term of the relevant Access Agreement assuming:

- (i) the Nominated Access Rights were not transferred; and
- (ii) the Train Services were not operated for the Access Holder for a reason other than Aurizon Network Cause,

(PV Amount) less the amount which is the product of the PV Amount and the Reduction Factor.

~~(g)~~(q) Despite any other provision in this **clause 7.4.2**, if the Transfer Fee is calculated to be an amount that is less than zero, then the Transfer Fee will be zero.:

- ~~(i) the Transfer Fee is calculated to be an amount that is less than zero; or~~
- ~~(ii) the Nominated Access Rights to be Transferred are to be Transferred for a period which, when aggregated with the sum of the periods of all previous Transfers of Access Rights for Train Services for Train Service Types with the same origin and destination and with a Transfer Period (for each such Transfer) within the three year period ending on the last day of the Transfer Period, is less than two years,~~

~~then the Transfer Fee will be zero.~~

~~(h)~~(r) If the Access Holder has not paid (or commenced a dispute in respect of the calculation of) the Transfer Fee within twenty (20) Business Days after the latest of:

- (i) the Transfer Date;
- (ii) the date Aurizon Network gives the Access Holder a notice under **clause 7.4.2(o)(ii)**;
- (iii) the date that Aurizon Network gives the Access Holder a valid tax invoice in respect of the Transfer Fee; and

- (iv) in respect of payment only, the date any dispute regarding the calculation of the Transfer Fee is determined,

then Aurizon Network may give the Access Holder a notice (**Transfer Cancellation Notice**) with respect to Nominated Access Rights specified in the Notice of Intention to Transfer in which case:

- (v) the Notice of Intention to Transfer is deemed to have never been given by the Access Holder; and
- (vi) the Nominated Access Rights that were the subject of the Notice of Intention to Transfer will not be Transferred to the Transferee.

~~(i)~~(s) The giving of a Transfer Cancellation Notice in respect of the Transfer of Nominated Access Rights does not prevent the Access Holder from subsequently giving Aurizon Network a new Notice of Intention to Transfer in respect of the same Nominated Access Rights.

~~(j)~~ ~~Clause 7.3.7 (Customer Initiated Capacity Transfer) of the 2010 Undertaking continues to apply to each Access Agreement entered into, prior to the Approval Date, by Aurizon Network and an Access Holder who has a Customer (Prior Access Agreement), as though:~~

- ~~(i) that clause forms part of this Undertaking but only applies to Prior Access Agreements;~~
- ~~(ii) references in that clause to “Adjustment Charges”, “Dispute”, “Take or Pay” and “Undertaking” have the meanings given to those terms under this Undertaking;~~
- ~~(iii) a reference in that clause to:
  - ~~(A) “QR Network” is a reference to Aurizon Network; and~~
  - ~~(B) “clause 10.1.4” is a reference to clause 11.1.5 (of this Undertaking); and~~~~
- ~~(iv) except as provided under clauses 7.4.2(k)(i) to (iii), that clause otherwise has the same meaning and effect as it had under the 2010 Undertaking.~~

~~(k)~~(t) For clarity, a change in the nomination of a Train Operator by an Access Holder does not constitute a Transfer.

### 7.4.3 *Relinquishments*

- (a) If an Access Holder wishes to relinquish any of its Access Rights it must give Aurizon Network reasonable notice of its intention (**Notice of Intention to Relinquish**).
- (b) A Notice of Intention to Relinquish must specify:
  - (i) the Access Rights, by reference to each Train Service Type, which the Access Holder intends to relinquish (**Nominated Access Rights**); and



- (ii) the date (**Relinquishment Date**) on which the Nominated Access Rights are to be relinquished (provided that such Relinquishment Date must not be more than two (2) years Years after the date on which the Access Holder gives the Notice of Intention to Relinquish to Aurizon Network).
- (c) Nominated Access Rights the subject of a Notice of Intention to Relinquish will not be relinquished until the later of:
  - (i) the date upon which the Access Holder pays the Relinquishment Fee to Aurizon Network; and
  - (ii) the Relinquishment Date.
- (d) Aurizon Network must:
  - (i) calculate the Relinquishment Fee; and
  - (ii) notify the Access Holder of the amount of the Relinquishment Fee and how the Relinquishment Fee was calculated, including details of any assumptions made when calculating the Relinquishment Fee and reasons for those assumptions.

at the following times:

  - (iii) if the Access Holder is considering relinquishing some or all of the Access Rights but has not given Aurizon Network a Notice of Intention to Relinquish in respect of those Access Rights, promptly following a request by the Access Holder; and
  - (iv) if the Access Holder has given Aurizon Network a Notice of Intention to Relinquish, not less than five (5) Business Days before the Relinquishment Date.
- (e) The Relinquishment Fee is the amount calculated as follows:
  - (i) for coal carrying Train Services included in Pre-30 June 2006 Coal Access Agreements 40%<sub>2</sub> of the Access Charges that would be payable if the Access Holder operated the Train Services permitted by the Nominated Access Rights over the following two (2) year period less the product of that amount and the Reduction Factor; or
  - (ii) in all other cases, the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the aggregate TOP Charges ~~(ATPY)~~ for the relevant Train Service Types that would have been payable for the remainder of the term of the relevant Access Agreement assuming:
    - (A) the Nominated Access Rights were not relinquished; and

- (B) the relevant Train Services were not operated for the Access Holder for a reason other than Aurizon Network Cause,
- (PV Amount) less the amount which is the product of the PV Amount and the greater of:
- (C) 0.5; and
  - (D) the Reduction Factor.
- (f) Despite any other provision in this **clause 7.4.3**, if the Relinquishment Fee is calculated to be an amount that is less than zero, then the Relinquishment Fee will be zero.

#### 7.4.4 *General provisions*

- (a) Aurizon Network must act in a diligent and timely manner in dealing with a proposed Transfer or ~~Relinquishment~~relinquishment.
- (b) If the calculation of the Transfer Fee or Relinquishment Fee changes after the date of the notice under **clause 7.4.2(o)(ii)** or **7.4.3(d)(ii)**, but before the Access Holder has paid the amount in the notice, then:
  - (i) Aurizon Network must advise the Access Holder of the revised amount and full reasons for the change in the calculation; and
  - (ii) the Access Holder must pay the revised amount, (unless:
    - (A) it has already paid the amount in the notice); or
    - (A)(B) the amount paid by the Access Holder is in excess of the revised amount, in which case Aurizon Network must refund the excess amount to the Access Holder.
- (c) In calculating the Transfer Fee or Relinquishment Fee, Aurizon Network may assume that each of the Access Charge Rates (as at the Transfer Date or Relinquishment Date, as applicable) will escalate, on each 1 July, at the rate of 2.5% per annum for the remainder of the term of the relevant Access Agreement.
- (d) The Reduction Factor is the amount calculated as follows:
  - (i) if:
    - (A) a new Access Holder or a Transferee has executed an Access Agreement (or a variation to an existing Access Agreement) in respect of Access Rights that Aurizon Network could not have provided without using the whole or part of the Nominated Access Rights; and
    - (B) ~~QR~~Aurizon Network's provision of the Access Rights under that Access Agreement commenced, for a new Access Holder:

- (1) who is not a Transferee, after ~~QR~~ Aurizon Network was given the Notice of Intention to Relinquish, but prior to the payment to it of the Relinquishment Fee; or
- (2) who is a Transferee, on and from the Transfer Date,

then:

- (C) for the purposes of **clauses 7.4.2(p)** and **7.4.3(e)(ii)**, if:
  - (1) the relevant Train Services of the existing Access Holder and of the new Access Holder or Transferee are coal carrying Train Services; and
  - (2) the Transferee's or new Access Holder's Train Services that will use the Nominated Access Rights will operate predominantly in and have a Nominated Unloading Facility in the same Coal System as the Train Services of the existing Access Holder that used those Nominated Access Rights,

an amount calculated as follows:

TOPB / TOPA

where:

**TOPA** is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the take or pay amount that would have been payable for the remainder of the term of the Access Agreement (Remainder of the Original Term) if the Nominated Access Rights were not relinquished but the existing Access Holder did not operate the relevant Train Services; and

**TOPB** is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the take or pay amount that would be payable in accordance with the new Access Holder's or Transferee's Access Agreement (in relation to the whole or part of the Nominated Access Rights) if the new Access Holder's or Transferee's Train Services using the Nominated Access Rights were not operated by or for the new Access Holder or Transferee during the same period as the Remainder of the Original Term; or

(D) if **clause 7.4.4(d)(i)(C)** does not apply, an amount calculated as follows:

A / B

where:

**A** is the annual train kilometres over the Common Corridor attributable to the new Access Holder's or Transferee's Train Services in respect of which Access Rights could not have been provided without using the whole or part of the Nominated Access Rights; and

**B** is the annual train kilometres over the Rail Infrastructure attributable to the Train Services operated under the Nominated Access Rights,

provided that to the extent that the new Access Holder's average contribution to Common Costs per train kilometre for its relevant Train Service is less than the existing Access Holder's average contribution to Common Costs per train kilometre for its relevant Train Service, the Reduction Factor will be decreased in proportion to that relative contribution; and

(ii) if **clause 7.4.4(d)(i)** does not apply, zero (0).

- (e) If the Reduction Factor is calculated in accordance with this Undertaking and the Reference Tariff in relation to the Nominated Access Rights includes a System Discount or System Premium, then the Transfer Fee or Relinquishment Fee, as applicable, must be further adjusted by Aurizon Network to account for any consequential decrease or increase (as applicable) in the System Discount or System Premium (as applicable) that would otherwise result in Aurizon Network under-recovering or over-recovering (as applicable) amounts from the Access Holder due to the application of the System Discount or System Premium (as applicable).
- (f) Aurizon Network must maintain, on its Website, worked examples of the calculation of a Relinquishment Fee.
- (g) The Access Holder may dispute the calculation of the Transfer Fee or Relinquishment Fee notified by Aurizon Network to the Access Holder under **clause 7.4.2(o)(ii)** or **7.4.3(d)(ii)** (including any assumptions made by Aurizon Network) ~~in accordance with clause 11.1.~~

## 7.5 Mutually Exclusive Access Applications

### 7.5.1 *Notification and assistance*

- (a) Aurizon Network will identify Access Applications that are or have become Mutually Exclusive Access Applications and will notify an Access Seeker as soon as practicable after Aurizon Network identifies that the Access Seeker's Access Application is or has become a Mutually Exclusive Access Application.
- (b) Aurizon Network will, if requested, provide reasonable assistance to an Access Seeker to identify whether its Access Application can be modified so that it is not a Mutually Exclusive Access Application.

### 7.5.2 *Queuing mechanism*~~*Capacity allocation for Mutually Exclusive Access Applications*~~

(a) \_\_\_\_\_ This **clause 7.5.2**:

~~(a)(i)~~ (i) applies in respect of Mutually Exclusive Access Applications or ~~whether~~ where this Undertaking otherwise specifies that an Access Seeker has joined the Queue; ~~and~~:

~~(b)~~ \_\_\_\_\_ ~~Aurizon Network will form a queue to determine which Access Seeker will be allocated Access Rights in priority of other Access Seeker(s) (Queue). The order of that queue will initially be determined based upon the time when Aurizon Network received each Access Application (that is, the Access Application received by Aurizon Network first in time is first in the Queue and the Access Application received next in time by Aurizon Network is second in the Queue, and so on).~~

~~(c)~~ \_\_\_\_\_ ~~Once formed, Aurizon Network must not change the order of the Queue unless:~~

~~(i)~~ \_\_\_\_\_ ~~subject to **clause 4.10.1(d)**, the Negotiation Period for an Access Seeker has ceased in accordance with **clause 4.10.1(c)**;~~

~~(ii)~~ \_\_\_\_\_ ~~Aurizon Network determines to not allocate Available Capacity in respect of an Access Application as a result of the operation of **clause 7.2**; or~~

(ii) \_\_\_\_\_ ~~Aurizon Network receives a notification of intent from an Access Seeker under **clause 4.7** in relation to a further Access Application by that Access Seeker which is added to the Queue; or~~ does not apply to:

(A) \_\_\_\_\_ an Access Application for Access Rights that can only be granted subject to an Expansion creating additional Available Capacity; or

(B) \_\_\_\_\_ in relation to the allocation of Available Capacity that:

- (1) is subject to a Provisional Capacity Allocation under **Part 8** (including a Provisional Capacity Allocation arising from a reallocation under **Part 8**, for example under **clause 8.2.3(b)**);
  - (2) is or was subject to a Provisional Capacity Allocation that Aurizon Network, in accordance with **Part 8**, is seeking to reallocate following a withdrawal of that Provisional Capacity Allocation; or
  - (3) is or was subject to a Provisional Capacity Allocation in respect of which the relevant Access Seeker has entered into an Access Agreement, Access Conditions or User Funding Agreement relating to the corresponding Access Rights; or
- (C) an Access Application for Access Rights which are sought according to a Transfer under **clause 7.4.2** or in accordance with the terms of an Access Agreement.
- (b) In allocating Access Rights, Aurizon Network will prioritise Access Seekers in a chronological queue based on the date when Aurizon Network is deemed to have received each Access Seeker's Access Application as outlined in **clause 4.4(b) (Queue)**, except that:
- (i) a Renewing Access Seeker will be placed ahead of all other Access Seekers in the Queue in respect of the Access Rights the subject of the Renewal;
  - ~~(iii)~~(ii) in respect of Conditional Access Rights where:
    - ~~(iv)~~(A) Aurizon Network has notified relevant Access Holders in accordance with **clause 8.9.28.9.5** of its Reduced Conditional Access Rights; and
    - (B) ~~Without limiting **clause 7.5.2(c)(i)**, if the further an Access Application is deemed to have been lodged in respect of the reduction as a Renewal, then result of the Conditional Access Holder providing notice to Aurizon Network will initially place that Renewal ahead of all other Access Applications in the Queue that are not Renewals under **clause 8.9.3(a)(ii)**; and~~
    - (C) either:
      - (1) there is Available Capacity which is capable of satisfying that Access Application in respect of the reduction; or

(2) an Affected Access Holder elects to seek to fund an Expansion in accordance with clause 8.9.3(e).

then:

(D) the Conditional Access Holder and Affected Access Holder (as applicable) will be given priority in the Queue behind any Renewals in respect of the Access Application for that reduction; and

~~(d)~~ If clause 7.5.2(c)(iv) applies, Aurizon Network must:

~~(i)(E)~~ ~~change the order of the Queue only to give the~~ where there are two (2) or more Conditional Access Holders ~~the highest position in the Queue after any Renewals; and~~ treat or Affected Access Holders (as applicable) affected, each Conditional Access Holders ~~s~~ and Affected Access Holder (as applicable) will be treated as having the same position in the Queue for the purposes of negotiating and allocating the Available Capacity.

(c) An Access Seeker will be removed from the Queue if:

(i) the Access Seeker's Access Application has been withdrawn or the Negotiation Period for an Access Seeker has ceased in accordance with **Part 4**;

(ii) Aurizon Network has determined not to allocate Available Capacity to an Access Seeker as a result of the operation of clause 7.2.1;

(iii) the Access Seeker is a Conditional Access Holder and it has not provided notice to Aurizon Network under clause 8.9.3(a)(ii); or

~~(iii)(iv)~~ (iv) the Access Seeker is an Affected Access Holder and it has made an election under clause 8.9.3(e)(i).

~~(e)(d)~~ Aurizon Network will notify each Access Seeker who has an Access Application in ~~the~~ a Queue of the initial position of their Access Application in the Queue and thereafter of any change to that position in the Queue and the reason(s) for that change.

~~(f)(e)~~ (e) An Access Seeker may assign its position in ~~the~~ a Queue to another party ~~where~~ who:

(i) ~~that party~~ is a Railway Operator and the Access Seeker has entered into an agreement with that Railway Operator to provide the Train Services and requires that Railway Operator to hold the Access Rights;

(ii) is a ~~related body corporate~~ Related Party of the Access Seeker and the assignment is not a Material Variation; or

(iii) ~~that party~~ has acquired the whole or a substantial part of the assets of the Access Seeker.

~~(g)(f)~~ If a dispute concerning positions in ~~a the~~ Queue or any other aspect of Aurizon Network's management of ~~a the~~ Queue is referred for resolution under **Part 11 clause 11.1**, Aurizon Network must not change an Access Seeker's position in that Queue unless and until that ~~dispute~~ Dispute is resolved in favour of such a change in position.

~~(h)~~ ~~This clause does not apply:~~

~~(i)~~ ~~as between two or more Access Seekers with Access Applications that can only be granted Access Rights subject to an Expansion creating additional Available Capacity – the process in Part 8 will apply instead; or~~

~~(ii)~~ ~~in relation to the allocation of Available Capacity that:~~

~~(A)~~ ~~is subject to a Provisional Capacity Allocation under Part 8 (including a Provisional Capacity Allocation arising from a reallocation under Part 8 – for example, under clause 8.2.3(b));~~

~~(B)~~ ~~is or was subject to Provisional Capacity Allocation that Aurizon Network, in accordance with Part 8, is seeking to reallocate following a withdrawal of that Provisional Capacity Allocation; or~~

~~(C)~~ ~~is or was subject to a Provisional Capacity Allocation in respect of which the relevant Access Seeker has signed an Access Agreement, Access Conditions or User Funding Agreement relating to corresponding Access Rights; or~~

~~(iii)~~ ~~an Access Application submitted by a Transferee in respect of Transferred Access Rights.~~

### 7.5.3 Mutually Exclusive Access Application

~~(i)(a)~~ If Aurizon Network has received Mutually Exclusive Access Applications for Available Capacity, then Aurizon Network will enter into negotiations for Access Agreements (including any agreements to allow Access Rights to be exercised or created – for example, a Rail Connection Agreement) for the Available Capacity for those Access Applications that meet the requirements of **Part 4**, but may not enter into an Access Agreement with an Access Seeker lower in the Queue in priority to an Access Seeker higher in the Queue, without the written consent of that Access Seeker which is higher in the Queue.

~~(i)(b)~~ Where Aurizon Network has allocated Available Capacity under this **clause 7.5.2** and none of the remaining Access Seekers can be granted the Access Rights sought as there is insufficient Available Capacity to do so, then negotiations with those remaining Access Seekers are suspended and **clause 4.4(c)** will apply.



## 7.6 Capacity resumption

- (a) If an Access Holder for any reason other than the occurrence of a Force Majeure Event or an Aurizon Network Cause does not:
- (i) for Cyclic Traffic, ~~operate, over any four (4) consecutive Quarters, cause the operation of~~ at least eighty five percent (85%) of the Train Services allowed under the Access Holder's Train Service Entitlement during each Quarter, for four (4) consecutive Quarters; for that period; or
  - (ii) for Timetabled Traffic, ~~operate cause the operation of~~ a Train Service on a Scheduled Train Path seven (7) or more (not necessarily consecutive) times out of any twelve (12) consecutive occasions on which that particular Scheduled Train Path exists,

**(Resumption Trigger Event)** Aurizon Network may, within forty (40) Business Days after the Resumption Trigger Event, give that Access Holder notice (**Information Request Notice**) of:

- (iii) reasonable details of the Resumption Trigger Event;
- (iv) the Access Rights for the Train Service Type which Aurizon Network considers to be underutilised Access Rights for the Train Service Type in respect of the Resumption Trigger Event;
- (v) that Aurizon Network is considering resuming the whole or part of the underutilised Access Rights for the Train Service Type to the extent of that underutilisation; ~~and~~
- (vi) requesting the Access Holder to demonstrate a sustained requirement for the underutilised Access Rights; and
- (vii) reasonable details of Aurizon Network's reasonable expectation of a sustained alternative demand for the Capacity used by the Access Rights in question.

For clarity:

(viii) nothing in this clause 7.6(a) requires Aurizon Network to disclose any information that is not relevant to the Information Request Notice in respect of the Resumption Trigger Event or information that is commercially sensitive to the Aurizon Group; and

~~(vi)~~(ix) Aurizon Network will not be in breach of its obligations under Part 3 when making a disclosure under this clause 7.6(a) provided that the information disclosed is relevant to the resumption in question.

- (b) Aurizon Network must not give an Information Request Notice in respect of a Resumption Trigger Event for a Train Service Type specified in ~~paragraph (a) clause 7.6(a) of the definition of~~

~~Resumption Trigger Event~~ more than forty (40) Business Days after the end of the applicable four (4) consecutive Quarters referred to in clause 7.6(a)~~paragraph (a) of that definition~~.

- (c) If Aurizon Network gives an Access Holder an Information Request Notice within the timeframe set out in clause 7.6(a), the Access Holder must:
- (i) within fifteen (15) Business Days after Aurizon Network gives the Information Request Notice to the Access Holder, provide to Aurizon Network the information requested in the Information Request Notice; and
  - (ii) if required by Aurizon Network, meet with Aurizon Network to discuss the suspected Resumption Trigger Event for the applicable Train Service Type.
- (d) If an Information Request Notice is given to an Access Holder and:
- (i) the Access Holder has not demonstrated, to Aurizon Network's reasonable satisfaction, a sustained requirement for the Access Rights that were not utilised; and
  - (ii) Aurizon Network has~~can~~demonstrated that it has a reasonable expectation of a sustained alternative demand for the Capacity used by the Access Rights in question,

then Aurizon Network may give a further notice (**Resumption Notice**) confirming the Resumption Date and that it will reduce that Access Holder's Access Rights from the Resumption Date by:

    - (iii) for Cyclic Traffic, reducing the Access Holder's Access Rights to the extent that the Access Holder's Train Service Entitlement was underutilised; or
    - (iv) for Timetabled Traffic, deleting the Scheduled Train Path referred to in clause 7.6(a)(ii) from the Access Holder's Train Service Entitlement.

(e) A Resumption Notice must:

    - (i) not be given before the end and not more than twenty (20) Business Days after the end of the fifteen (15) Business Day period in clause 7.6(c)(i)~~7.7(e)(i)~~; and
    - (ii) specify:
      - (A) full details of the Access Rights for the Train Service Type to be resumed (Resumed Access Rights); and
      - (B) the date on which the resumption will take effect (which must be at least ten (10) Business Days after the Resumption Notice is given to the Access Holder) (**Resumption Date**).

- (f) If a valid Resumption Notice is given under this **clause 7.67.7**, the underutilised Access Rights for the Train Service Type will cease to form part of the Access Rights for the Train Service Type on and from the Resumption Date (other than for the purpose of calculating any TOP Charges that are payable as a result of the non-utilisation of any of the Resumed Access Rights prior to the Resumption Date).
- (g) Aurizon Network may withdraw a Resumption Notice prior to the later of the Resumption Date and fourteen (14) days after the determination of any dispute in relation to the Resumption Notice ~~in accordance with clause 11.1~~.
- (h) If Aurizon Network resumes an Access Holder's Access Rights in accordance with this **clause 7.67.7**, then the Access Charge payable by the Access Holder will be varied in accordance with the terms of the relevant Access Agreement and the Access Agreement will be varied accordingly.
- (i) If there is a dispute in connection with a decision by Aurizon Network to:
- (i) issue an Information Request Notice and the Access Holder considers that Aurizon Network had insufficient grounds to do so under clause 7.6(a); and
- (ii) resume an Access Holder's Access Rights in accordance with this clause 7.6;
- then Aurizon Network must not implement the resumption until the dispute resolution process has been concluded, and then only to the extent that such resumption is consistent with the outcomes of the dispute resolution process.
- ~~(i) that Dispute may only be referred to the dispute resolution process in clause 11.1 by that Access Holder if it does so within twenty-eight (28) days after receiving the relevant Resumption Notice; and~~
- ~~(ii) Aurizon Network must not implement the resumption until the dispute resolution process has been concluded, and then only to the extent that such resumption is consistent with the outcomes of the dispute resolution process.~~

## 7.7 Force ~~Majeure~~majeure

### 7.7.1 *Suspension of obligations*

- (a) If, by reason of a Force Majeure Event, Aurizon Network is prevented or hindered from providing, whether wholly or in part, Access Rights under an Access Agreement, then for the purposes of that Access Agreement, the obligations of Aurizon Network to provide Access Rights will be suspended during that time to the extent that the performance of such obligations is prevented or hindered by the Force Majeure Event ~~if~~ if Aurizon Network notifies (by electronic

means or in accordance with **clause 12.3** the Access Holder as soon as reasonably practicable after Aurizon Network becomes aware of the Force Majeure Event (and, in any event, within forty eight (48) hours after the event or circumstance causing the Force Majeure Event) of the Force Majeure Event including:

(i) details of the Force Majeure Event and (if applicable) that part of the Nominated Network affected or likely to be affected; and

(ii) the details of the obligations affected or likely to be affected.

(b) If the notice provided in **clause 7.7.1(a)** is either in electronic form or does not include the following information, Aurizon Network must provide the Access Holder with a further notice which contains full particulars of all relevant matters including (in addition to the information in **clause 7.7.1(a)**):

(i) details of the action Aurizon Network has taken to remedy the situation and details of the action that Aurizon Network proposes to take to remedy the situation (to the extent that they are known); and

(ii) a reasonable estimate of the time during which Aurizon Network will be (or is likely to be) prevented or hindered from carrying out, whether wholly or in part, its obligations under the Access Agreement due to the Force Majeure Event,

within two (2) Business Days of the notice provided under **clause 7.7.1(a)**.

~~(i) Aurizon Network provides the Access Holder with a notice setting out:~~

~~(A) details of the Force Majeure Event and (if applicable) that part of the Rail Infrastructure affected;~~

~~(B) details of the Access Rights affected;~~

~~(C) details of the action Aurizon Network has taken and is proposing to take to remedy the situation; and~~

~~(D) an estimate of the time during which Aurizon Network will be prevented or hindered in providing Access Rights under the Access Agreement due to the Force Majeure Event; and~~

~~(b)(c) if the notice is not provided in accordance with **clause 7.7.1(a)** or **7.7.1(b)**, within forty eight (48) hours after the event or circumstance causing the Force Majeure Event, then for the purposes of the relevant Access Agreement, the obligations of Aurizon Network to provide Access Rights under the Access Agreement will be suspended failing which the suspension will take effect~~ on and from

the later of the time the notice requirements of ~~is provided~~ clause 7.7.1(a) and 7.7.1(b) are satisfied.

~~(e)~~ (d) Aurizon Network must:

- (i) include the affected Access Holder (and its Customer, if any) and its Train Operator, if any, in any meeting which Aurizon Network may have in respect of the Force Majeure Event; and
- (ii) provide a copy of any notice given to the Access Holder ~~under this clause 7.6~~ to that Access Holder's Customer, if any, ~~or~~ and Train Operator, if any.

~~(d) — If more than one Access Holder is affected by the Force Majeure Event, the obligation to provide Access Rights must be suspended proportionally between each affected Access Holder based on the Committed Capacity and the change in Existing Capacity for the relevant segment of the Network arising as a result of the Force Majeure Event.~~

#### 7.7.2 *Duty to mitigate*

(a) Subject to clause 7.7.2(b), Aurizon Network must use all reasonable endeavours to remedy or overcome the effect of the Force Majeure Event affecting its obligations to provide Access Rights under an Access Agreement as soon as possible and must attempt to:

- (i) mitigate the effect of the Force Majeure Event; and
- (ii) identify alternative viable means of providing the Access Rights affected (if applicable).

(b) Aurizon Network is not obliged to settle any strike, lockout or other labour dispute other than on terms acceptable to it.

#### ~~7.7.2~~ 7.7.3 *End of period of Force Majeure Event*

The suspension of the obligations of Aurizon Network due to a Force Majeure Event ends when, but only to the extent that, Aurizon Network is no longer prevented or hindered from providing, whether wholly or in part, Access Rights under an Access Agreement by reason of the relevant Force Majeure Event ~~able to resume provision of Access Rights~~, at which time ~~it~~ Aurizon Network must as soon as reasonably practicable:

- (a) issue a notice to each affected Access Holder advising the extent to which ~~that~~ it is recommencing the performance of its obligations; and
- (b) recommence the performance of its obligations to the extent outlined in such notice.

**7.7.37.7.4 Reduction of Access Rights due to loss or damage to Nominated Network**

- (a) If:
- (i) any part of the Nominated Network is damaged or destroyed by a Force Majeure Event; and
  - (ii) in Aurizon Network's reasonable opinion the cost of repairing such damage or destruction or replacing that part of the Nominated Network is not economic on the basis of the then and committed future utilisation of that part of the Nominated Network,

then Aurizon Network may, by notice, advise each affected Access Holder (and its Customer, if applicable), each affected Train Operator and the QCA of:

- (iii) the estimated cost of effecting the necessary repairs or replacement;
- (iv) the level of insurance available to effect the necessary repairs and replacement;
- (v) a detailed explanation as to why the cost of repairing or replacing is not economic; and
- (vi) Aurizon Network's intention to not repair or replace the relevant part of the Nominated Network unless the Access Holders (or their Customers) or Train Operators, as applicable using that part of the Nominated Network pay ~~the amounts specified by Aurizon Network~~ the difference between the amount of insurance available to effect the necessary repairs or replacement and the actual anticipated cost to effect those repairs or replacements.

- (b) If the Access Holder (or its Customer or Train Operator, as applicable) notifies Aurizon Network that:

- (i) it agrees to bear the whole incremental cost of necessary repairs or replacement (after the amount of insurance available has been applied); or
- (ii) it agrees to bear that part requested by Aurizon Network of the incremental cost of necessary repairs or replacement (and subject to Aurizon Network being satisfied that all other relevant ~~Access Holders Railway Operators~~ (or their Customers or Train Operators, as applicable) have also agreed to bear their respective part of such costs) (after the amount of insurance available has been applied),

then Aurizon Network will proceed with the repairs or replacement within a reasonable time after:

- (iii) if **clause 7.7.4(b)(i)** applies, receipt by Aurizon Network from the Access Holder (or its Customer) of payment of the relevant amount; and
  - (iv) if **clause 7.7.4(b)(ii)** applies, receipt by Aurizon Network from the Access Holder (or its Customer) of the last payment of the relevant amount.
- (c) If an Access Holder (or its Customer or Train Operator, as applicable) pays to Aurizon Network any of the costs under **clause 7.7.4(b)**, on completion of the necessary repairs or replacement:
- (i) Aurizon Network must, within a reasonable time, refund to the party who made such payment ~~Access Holder~~ any amount by which the amount paid that party by the Access Holder (or its Customer) exceeds the actual cost; or
  - (ii) the Access Holder (or its Customer or Train Operator, if applicable) must, within a reasonable time, pay to Aurizon Network the amount by which the actual cost exceeds proportionately the amount agreed to be paid by that party ~~the Access Holder (or its Customer)~~,
- (as applicable).
- (d) If, within forty (40) Business Days after receipt of a notice from Aurizon Network under **clause 7.7.4(a)**, the Access Holder (or its Customer or Train Operator, as applicable) has not given notice to Aurizon Network under **clause 7.7.4(b)**, then Aurizon Network may, by giving not less than twenty (20) Business Days' notice to the Access Holder (**Nominated Network FM Reduction Notice**), reduce the Access Rights by the Access Rights affected by the Force Majeure Event, in which case, those Access Rights will cease to form part of the Access Rights of the Access Holder on and from the date specified in the notice (which must be at least twenty (20) Business Days from the date of the notice).
- ~~(e) If more than one Access Holder is affected by the reduction in Access Rights as a result of the Force Majeure Event, the Access Rights must be suspended proportionally between each affected Access Holder based on the Committed Capacity and the change in Existing Capacity for the relevant segment of the Network arising as a result of the Force Majeure Event.~~

## Part 7A: Baseline Capacity

### 7A.1 Intent

This **Part 7A** sets out various provisions relating to the provision of Existing Capacity, Committed Capacity and Available Capacity in the Rail Infrastructure – in particular:

- (a) **clause 7A.2** describes Aurizon Network's obligations in relation to Network Management Principles and System Rules;
- (b) **clause 7A.3** provides that Aurizon Network will participate in Supply Chain coordination including processes in relation [to the review of System Operating Parameters](#);
- (c) **clauses 7A.4** and **7A.5** confirm ~~s~~ that Aurizon Network will:
  - (i) undertake a Baseline Capacity Assessment ~~within six (6) Months of the Approval Date~~;
  - (ii) conduct annual reviews of System Operating Parameters and Capacity; and
- (d) **clause 7A.6** describes Aurizon Network's obligations in relation to its proposed Network Development Plan.

### 7A.2 Network Management Principles ~~[Drafting Note: Previously 7.6.]~~

#### 7A.2.1 *Compliance with Network Management Principles*

- (a) Aurizon Network must:
  - (i) perform scheduling, Network Control and associated services; and
  - (ii) provide [C](#)apacity related information to Access Holders and Train Operators (in respect of the Access Rights to which its Train Operations Deed relates),  
  
in accordance with the Network Management Principles.
- (b) Any dispute in relation to compliance with the Network Management Principles will be dealt with in accordance with **Part 11**, except to the extent the dispute arises in respect of rights under an Access Agreement or Train Operations Deed in which case the dispute will be dealt with in accordance with the dispute resolution process set out in the relevant agreement.

#### 7A.2.2 *Nature of the System Rules*

- (a) The System Rules specify in greater detail the way in which Aurizon Network must plan, schedule and control the operation of Train Services on a single or combination of Coal Systems in accordance with the Network Management Principles.
- (b) The System Rules must be published on the Website.



### **7A.2.3 *Making the initial System Rules for a Coal System***

- (a) Where System Rules do not already exist for a Coal System (whether individually or together with other Coal Systems), then within two (2) Months of the Approval Date or the approval of a new Coal System under this Undertaking, Aurizon Network must:
  - (i) develop the initial System Rules for that Coal System including, where Aurizon Network elects to do so:
    - (A) together with one (1) or more other Coal Systems; or
    - (B) by way of amending existing System Rules to apply in relation to that Coal System; and
  - (ii) for a period of no longer than three (3) Months, consult with Access Holders, Railway Operators and Access Seekers whose Train Services will be affected by the System Rules or amended System Rules, as applicable, and any affected Infrastructure Service Providers, in relation to the introduction of the System Rules or amended System Rules, as applicable.
- (b) Within one (1) Month after the completion of the consultation process under **clause 7A.2.3(a)**, Aurizon Network must:
  - (i) prepare the proposed System Rules or amended System Rules, as applicable, (**Draft System Rules**) having regard to the equitable operation of the Draft System Rules across Access Holders and Access Seekers (should they become Access Holders) and their Customers and the terms of Access Agreements;
  - (ii) in preparing the Draft System Rules, seek to ensure that they do not conflict with the Network Management Principles or any provision of this Undertaking; and
  - (iii) submit the Draft System Rules to the QCA for approval.

### **7A.2.4 *Reviewing and amending the System Rules***

- (a)        This **clause 7A.2.4**:
  - (i)        does not apply to an amendment of System Rules referred to under **clause 7A.2.3**; but
  - ~~(i)~~ (ii)        does apply to a review of System Rules referred to under clause 7A.2.3.
- (b) Without limiting Aurizon Network's right to review any System Rules from time to time, Aurizon Network must review the System Rules immediately upon Aurizon Network becoming aware of the occurrence of any of the following events:

- (i) Capacity in the relevant Coal System (or, if more than one (1), Coal Systems in aggregate) to which the relevant System Rules apply changes by greater than 10% of the existing total number of relevant Train Paths on a Monthly basis; ~~or~~
- (ii) Yearly Cyclic Traffic or Timetabled Traffic (as applicable) increases by greater than 10% of the previous Year's number of relevant Train Paths; ~~or~~
- (iii) a new loading facility, port terminal or unloading facility becomes (or is reasonably likely to become) connected to a relevant Coal System; or
- (iv) a material change to the System Operating Parameters or the Network Management Principles which subsequently affects the operations of the System Rules,

and despite whether or not any of the events outlined in **clause 7A.2.4(b)** have occurred, at least once per Year.

- (c) If Aurizon Network has reviewed the System Rules, then Aurizon Network must:
  - (i) notify the QCA (who may, if it determines necessary, publish the information provided on the QCA's Website) and each of the following:
    - (A) Access Holders and Access Seekers and their Customers (but only to the extent that the Access Holder or Access Seeker has given Aurizon Network those Customer contact details) whose Train Services will be affected by any amendments necessary as a result of such review;
    - (B) affected infrastructure providers for infrastructure forming part of the relevant Supply Chain (including, for example, the unloading facility operator that is the destination of Train Services operating in the relevant Coal System);
    - (C) affected Infrastructure Service Providers;
    - (D) affected Railway Operators,

(collectively, the **Affected Persons**) of the following matters:

    - (E) the outcome of the review and the necessity (or otherwise) to amend the System Rules;
    - (F) if the System Rules are to be amended, the proposed amendments (**Proposed Amendments**);
    - (G) reasons for the Proposed Amendments or the decision to not amend the relevant System Rules; and

- (H) details of the impact the Proposed Amendments will or may have on the delivery of each Affected Person's Train Service Entitlements;
  - (ii) consult with the Affected Persons;
  - (iii) have regard to the equitable operation of the System Rules across Access Holders and Access Seekers (should they become Access Holders) and the Customers of the Access Holders and Access Seekers (should they become Access Holders) and the terms of Access Agreements;
  - (iv) ensure that the amendments do not conflict with the Network Management Principles or any provision of this Undertaking; and
  - (v) ensure that the amendments are appropriate having regard to the matters listed in section 138(2) of the Act.
- (d) If a person (acting reasonably and in good faith):
- (i) disagrees with the outcome of Aurizon Network's review of the System Rules notified under **clause 7A.2.4(c)(i)**; or
  - (ii) considers that the Proposed Amendments:
    - (A) would not, as a whole, operate equitably amongst Access Holders and Access Seekers (should they become Access Holders) and the Customers of the Access Holders and Access Seekers (should they become Access Holders); or
    - (B) are inconsistent with this Undertaking (including the Network Management Principles); or
    - (C) are inappropriate having regard to the matters listed in section 138(2) of the Act,

then that person may, within twenty (20) Business Days after being given a notice under **clause 7A.2.4(c)(i)** or the publication on the QCA website, provide a written submission to Aurizon Network identifying its view with respect to **paragraphs (A) to (C)**.
- (e) Immediately following the expiration of the time period under **clause 7A.2.4(d)**, Aurizon Network must:
- (i) notify the Affected Persons and any person who provides Aurizon Network with a written submission under **clause 7A.2.4(d)** that the Proposed Amendments are being referred to the QCA for approval;
  - (ii) submit the Proposed Amendments to the QCA for approval; and

- (iii) provide the QCA:
  - (A) all submissions provided to Aurizon Network within the time period under **clause 7A.2.4(d)**;
  - (B) an assessment of those submissions by Aurizon Network;
  - (C) any variations to the Proposed Amendments that Aurizon Network proposes to make after taking into account the submissions (**Variations**); and
  - (D) details of the impact the Proposed Amendments and Variations will or may have on the delivery of each Affected Person's Train Service Entitlements.<sup>57</sup>

#### **7A.2.5 Approval of System Rules**

- (a) If Aurizon Network has submitted:
  - (i) Draft System Rules to the QCA under **clause 7A.2.3(b)(iii)**; and
  - (ii) Proposed Amendments (or Variations, if any) to the QCA under **clause 7A.2.4(e)(ii)**,

**(Proposed System Rules**, for the purpose of this **clause 7A.2.5**) the QCA must:

  - (iii) publish the Proposed System Rules on its website; or
  - (iv) assess the Proposed System Rules (together with any submissions provided to Aurizon Network under **clause 7A.2.4(d)**); and
  - (v) if deemed appropriate by the QCA, seek submissions in respect of the Proposed System Rules.
- (b) The QCA may approve the Proposed System Rules only if the QCA:
  - (i) is satisfied they are consistent with this Undertaking (including the Network Management Principles);
  - (ii) is satisfied that they are in accordance with the notice given under **clause 7A.2.5**, if any; and
  - (iii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act.<sup>57</sup>
- (c) If the QCA approves the Proposed System Rules, it must give notice to Aurizon Network of its approval, specifying the date on which the proposed amendments will take effect.
- (d) If the QCA refuses to approve the Proposed System Rules, then the QCA will give Aurizon Network a notice:
  - (i) stating the reasons for its refusal; and

- (ii) requiring Aurizon Network to amend the Proposed System Rules to address the matters in [the](#) QCA's reasons or submit additional information, to address the matters in [the](#) QCA's reasons within twenty (20) Business Days after the giving of that notice (or such other period as the QCA may in its absolute discretion determine).
- (e) The QCA may develop System Rules consistent with ~~the~~[this](#) Undertaking if:
  - (i) Aurizon Network does not submit Draft System Rules in accordance with **clause 7A.2.3(b)(iii)**;
  - (ii) Aurizon Network does not resubmit the Proposed System Rules in accordance with **clause 7A.2.5(d)(ii)**; or
  - (iii) the QCA refuses to approve the Proposed System Rules that were resubmitted in accordance with **clause 7A.2.5(d)(ii)**.
- (f) If the QCA develops Draft System Rules under **clause 7A.2.5(d)** despite **clause 7A.2.5(a)**, the QCA must:
  - (i) publish the Draft System Rules on its website;
  - (ii) invite persons to make submissions on the Draft System Rules to the QCA within a reasonable time specified by the QCA; and
  - (iii) consider any submissions it receives within the time specified.
- (g) **Clauses 7A.2.5(a) to 7A.2.5(d)** will:
  - (i) apply to any Proposed System Rules resubmitted to the QCA under **clause 7A.2.5(d)(ii)**;
  - (ii) apply to any additional information submitted to the QCA under **clause 7A.2.5(d)(ii)** (including where the Proposed System Rules are not amended) as though Aurizon Network were resubmitting the same Proposed System Rules but with the additional information; and
  - (iii) continue to apply until the QCA approves the Proposed System Rules for the relevant Coal System.
- (h) If the QCA approves the Proposed System Rules, then:
  - (i) the relevant System Rules take effect on the date of the approval or such later date as specified in the System Rules or the approval;
  - (ii) in the case of Proposed Amendments and Variations, the relevant System Rules are taken to have been amended in accordance with the Proposed Amendments and Variations;

- (iii) the QCA must give Aurizon Network a notice providing the reasons for its decision; and
- (iv) Aurizon Network must publish the amended System Rules on its Website.
- (i) Nothing in **clause 7A.2.5** prevents Aurizon Network from seeking subsequent amendments to any System Rules even if the QCA has previously refused to approve Proposed Amendments in relation to those System Rules.

#### **7A.2.6** *General provisions*

- (a) For the purposes of this **clause 7A.2**:
  - (i) the amending of the System Rules includes replacing or removing the System Rules; and
  - (ii) Proposed Amendments includes a proposed replacement of System Rules or a proposal to remove the System Rules.}]
- (b) The System Rules may be withdrawn by Aurizon Network only with the approval of the QCA.
- (c) If the QCA considers that the System Rules require amendment, the QCA may require Aurizon Network to submit replacement System Rules within a reasonable period advised by the QCA, in which case **clause 7A.2.5** applies.

#### **7A.3** **Supply Chain coordination** [Drafting note: Previously 8]

- (a) Aurizon Network must participate:
  - (i) in each Supply Chain Group in relation to:
    - (A) the coordination and effective performance of a relevant 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 Supply Chain, on request, with a view to the coordination of maintenance activities in the relevant Supply Chain.
- (b) Without limiting the nature of Aurizon Network's participation, if requested by a Supply Chain Group, Aurizon Network must:
  - (i) participate in the development of and undertake regular reviews of that Supply Chain Group's master plan;
  - (ii) review options for the development of Capacity being investigated by the Supply Chain Group and advise if and how any option is likely to impact on the Network Management Principles, System Operating Parameters or System Rules for the relevant Coal System; and

- (iii) if requested by the Supply Chain Group, investigate operational changes that could increase Capacity in the relevant Coal System, including by conducting a review of the relevant System Operating Parameters under **clause 7A.5**.
- (c) Subject to the terms of this Undertaking, Aurizon Network must act in a way that:
  - (i) facilitates an appropriate balance between cooperation between all elements of 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 2.21.1.1(a) of this Undertaking**;
  - (ii) ensures each Supply Chain is provided with a consistent level of service; and
  - (iii) all decisions made under this Undertaking are made in a manner that is consistent and does not unfairly differentiate ~~between each~~ in a material way between each Supply Chain or between Access Seekers, Access Holders or Customers within a Supply Chain.
- (d) Aurizon Network must adopt any operational changes identified in ~~the Coal~~ each Supply Chain that could increase Capacity in the relevant Coal System, but only to the extent that the operational change does not adversely affect any existing Network Management Principles, System Rules or System Operating Parameters. For clarity, any dispute in relation to Aurizon Network's action (or decision) to not adopt operational changes under this clause 7A.3(d) will be dealt with in accordance with Part 11.
- (e) Aurizon Network will not be obliged to:
  - (i) undertake any activity referred to in **clause 7A.3(a)** or **clause 7A.3(b)** if the reasonable cost of undertaking that activity is in excess of the amount that Aurizon Network is able to recover on the terms of this Undertaking; and
  - (ii) make any binding commitment or to take any action as a result of its participation and discussions referred to in **clause 7A.3(a)**, except to the extent required in **clause 7A.3(d)**.

#### **7A.4 Capacity assessments [~~Drafting Note: Previously 8.11.3~~]**

##### **7A.4.1 ~~Baseline Capacity review~~ Assessment**

- (a) Aurizon Network must:
  - (i) undertake a ~~Baseline~~ Capacity Assessment ~~Analysis~~ and determine the Baseline Capacity for each Coal System; and

(ii) make the outcomes of the Baseline Capacity Assessment conducted in accordance with clause 7A.4.1(b)(iv), including Aurizon Network's assumptions affecting Capacity and relied upon for the Baseline Capacity Assessment, (**Baseline Capacity Assessment Report**) available to the QCA,

~~(i)~~ within six (6) Months (or such other period agreed during the consultation in clauses 7A.4.1(b)(i) and (b)(ii)) after the Approval Date.

(b) The Baseline Capacity Assessment must include:

(i) consultation by Aurizon Network with Access Holders (and its Customer and Train Operator, as applicable) for Train Services operating in each Coal System in relation to each Coal System;

(ii) consultation with each Supply Chain Group for each Coal System;

(iii) consideration of the following factors:

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

(B) the interfaces between the Rail Infrastructure and other facilities forming part of, or affecting, the relevant Supply Chain; and

(iv) subject to the outcome of the consultation in clauses 7A.4.1(b)(i) and (ii) and any alternative matters agreed during that process as being matters to be addressed by the report, a ~~report~~ Baseline Capacity Assessment Report that:

~~(iv)(A)~~ -sets out Aurizon Network's assumptions affecting Capacity and relied upon for the Baseline Capacity Assessment, including:

~~(A)(1)~~ operational, maintenance, construction and planning assumptions in each Coal System;

~~(B)(2)~~ Possession Protocols;

~~(C)(3)~~ Aurizon Network's methodology for calculating Train Service Entitlements in each Coal System;

(4) Network Management Principles, System Operating Parameters and System Rules, if applicable, for each Coal System; and

(5) all capacity, operational and planning definitions relied on for the development of the Baseline Capacity Assessment; and



~~(D)~~

(B) provides the following:

~~(E)~~(1) a waterfall analysis of Capacity, analysing the Absolute Capacity, Existing Capacity, Committed Capacity and Available Capacity in each Coal System;

(2) the information provided under paragraph (1) converted (where possible) to monthly and annual:

- number of Train Paths on each Coal System's branch lines and mainlines; and
- tonnages on each Coal System's branch lines and mainlines; and

(3) specified confidence intervals for the estimates provided in paragraph (2), reflecting the degree of reliability Aurizon Network ascribes to its capacity modelling outputs.

For clarity, Aurizon Network may agree during the consultation in clauses 7A.4.1(b)(i) and (ii) that the Baseline Capacity Assessment Report will provide different measures of Capacity, Absolute Capacity, Existing Capacity, Committed Capacity and Available Capacity to that set out above.

~~(F)~~ all capacity, operational and planning definitions relied on for the development of the Baseline Capacity Assessment.

- (c) If Aurizon Network has submitted the Baseline Capacity Assessment Report to the QCA, the QCA:
- must publish the Baseline Capacity Assessment Report on its website (except that Aurizon Network may provide the QCA with a non-confidential version for publication that aggregates information regarding individual Access Seekers, Access Holders or Customers, if any, to avoid disclosing information that is sensitive to an Access Seeker, Access Holder or Customer);
  - must assess the outcomes of the Baseline Capacity Assessment, including Aurizon Network's assumptions affecting Capacity and relied upon for the Baseline Capacity Assessment;
  - ~~if deemed appropriate by the QCA, may~~ must (unless the QCA is satisfied the Baseline Capacity Assessment and the

[resulting Baseline Capacity Assessment Report properly reflects a collaborative approach and outcome developed by Aurizon Network with Access Holders \(and their Customers and Train Operators, as applicable\)](#) seek submissions [in respect of the Baseline Capacity Assessment](#); and

- (iv) if deemed appropriate by the QCA, may engage an appropriately qualified and experienced expert to review the Baseline Capacity Assessment, in which case:
  - (A) the expert must act independently; and
  - (B) the expert must give an 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 disclosed or used for another purpose could constitute a breach of Aurizon Network's obligations under **Part 3**.
- (d) The QCA may approve the outcome of the Baseline Capacity Assessment only if the QCA:
  - (i) is satisfied Baseline Capacity Assessment and the resulting Baseline Capacity Assessment Report are consistent with this Undertaking [or properly reflects a collaborative approach and outcome developed by Aurizon Network with Access Holders \(and their Customers and Train Operators, as applicable\)](#); and
  - (ii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act,
    - ~~(iii)~~ and must give notice to Aurizon Network of its approval.
- (e) If the QCA refuses to approve the outcome of the Baseline Capacity Assessment, then the QCA will give Aurizon Network a notice:
  - (i) stating the reasons for its refusal; and
  - (ii) requiring Aurizon Network to:
    - (A) amend:
      - (1) the Baseline Capacity Assessment; and/or
      - (2) any of Aurizon Network's assumptions affecting Capacity and relied upon for the Baseline Capacity Assessment,
        - ~~(A)~~ to address the matters in [the](#) QCA's reasons; or
    - (B) submit additional information to address the matters in [the](#) QCA's reasons,

within thirty (30) days after the giving of that notice (or such other period as the QCA may in its absolute discretion determine).

- (f) The QCA may undertake a Baseline Capacity Assessment and determine the Baseline Capacity consistent with this Undertaking if:
  - (i) Aurizon Network does not submit a Baseline Capacity Assessment Report in accordance with **clause 7A.4.1(a)**;
  - (ii) Aurizon Network does not resubmit the Baseline Capacity Assessment Report and any additional information requested by the QCA in accordance with **clause 7A.4.1(e)(ii)**; or
  - (iii) the QCA refuses to approve the Baseline Capacity Assessment Report that was resubmitted in accordance with **clause 7A.4.1(e)(ii)**.

(g) If the QCA undertakes a Baseline Capacity Assessment under **clause 7A.4.1(f)**, the QCA:

(i) may engage an appropriately qualified and experienced expert to undertake the Baseline Capacity Assessment, in which case **clauses 7A.4.1(c)(iv)(A) and 7A.4.1(c)(iv)(B)** apply; and ~~must~~:

~~(g)~~ (ii) must:

~~(i)~~ (A) publish the resulting Baseline Capacity Assessment Report on its website;

~~(ii)~~ (B) invite persons to make submissions on the Baseline Capacity Assessment Report to the QCA within a reasonable time specified by the QCA; and

~~(iii)~~ (C) consider any submissions it receives within the time specified.

- (h) When the Baseline Capacity Assessment Report has been approved by the QCA under **clause 7A.4.1(d)** or the Baseline Capacity is determined by the QCA under **clause 7A.4.1(f)**, Aurizon Network must publish the Baseline Capacity for each Coal System on the Website.
- (i) Aurizon Network must provide the Baseline Capacity Assessment Report for each Coal System, in accordance with this **clause 7A.4.1**, as a complete and transparent document:
  - (i) to the QCA on an unredacted basis; and
  - (ii) to stakeholders and when published on its Website:
    - (A) to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the Baseline Capacity Assessment

Report (and if those obligations permit disclosure if required by ~~the this~~ Undertaking then ~~for the avoidance of doubt~~ Aurizon Network is required to disclose the information contained in the Baseline Capacity Assessment Report), on an unredacted basis; and

- (B) if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
- (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the Baseline Capacity Assessment Report on an unredacted basis;
  - (2) in respect of the information referred to in **paragraph 2(b)(i)** or for which consent is obtained under **paragraph (ii)2(b)(ii)(A)**, on an unredacted basis; and
  - (3) in respect of the information that does not satisfy **paragraph (i)** or for which consent is not obtained under **paragraph (ii)(A)**:
    - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
    - to the extent not possible, on a redacted basis.
- (j) Aurizon Network must not agree to any confidentiality obligations which prevent the disclosure of the information contained in the Baseline Capacity Assessment Report or that does not permit disclosure of information required by ~~the this~~ Undertaking.

#### **7A.4.2 Capacity Assessment**

- (a) Aurizon Network must undertake a Capacity ~~Assessment~~ Analysis and determine the Capacity:
- (i) for each Coal System on each anniversary of the date the QCA approves the Baseline Capacity Assessment Report under **clause 7A.4.1(d)** or determines the Baseline Capacity under **clause 7A.4.1(f)**; and
  - (ii) for a Coal System if the System Operating Parameters are varied in a way that Aurizon Network, acting reasonably, considers can be expected to materially change the Existing Capacity in that Coal System.

- (b) A Capacity Assessment must include:
- (i) consultation by Aurizon Network with Access Holders for Train Services operating in that Coal System in relation to that assessment;
  - (ii) consultation with any Supply Chain Group for the relevant Coal System;
  - (iii) consideration of the following factors:
    - (A) the terms of Access Agreements relating to Train Services operating in that Coal System; and
    - (B) the interfaces between the Rail Infrastructure and other facilities forming part of, or affecting, the relevant Supply Chain; and
  - (iv) a report that sets out Aurizon Network's assumptions [\(which must include those assumptions set out in the Baseline Capacity Assessment Report\)](#) affecting Capacity and relied upon for the Capacity Assessment.
- (c) Aurizon Network will promptly make the outcomes of a Capacity Assessment, including Aurizon Network's assumptions affecting Capacity and relied upon for the Capacity Assessment, (**Capacity Assessment Report**) available to the QCA, Access Holders, Access Seekers and, if applicable, ~~their~~ Customers.
- (d) If, within thirty (30) Business Days after Aurizon Network makes a Capacity Assessment Report available in accordance with **clause 7A.4.2(c)**, either:
- (i) the QCA; or
  - (ii) the Access Holders (or ~~their~~ Customers):
    - (A) for at least 60% of the Train Paths in relation to a Coal System (as determined in accordance with **clause 7A.4.2(f)**); or
    - (B) representing in number 60% of the Access Holders (or ~~their~~ Customers) with Access to the Coal System (as determined in accordance with **clause 7A.4.2(g)**),
- notify Aurizon Network that they wish to have the Capacity Assessment in relation to that Coal System reviewed by an independent expert, then:
- (iii) [\\_\\_\\_\\_\\_](#) Aurizon Network will (acting reasonably) engage an appropriately qualified and experienced expert acceptable to the QCA or the Access Holders (or ~~their~~ Customers) (if the review is triggered by the Access Holder or ~~their~~ Customers) to review the Capacity Assessment [and any assumptions](#)

including the assumptions listed in **clause 7A.4.1(b)(iv)**, as applicable to the Capacity Assessment;

~~(iii)~~(iv) the expert engaged by Aurizon Network must be approved by the QCA;

~~(iv)~~(v) the expert must act independently;

~~(v)~~(vi) without limitation to **clause 7A.4.2(d)(v)**, the expert must not be an employee of Aurizon Network or a Related Party of Aurizon Network;

~~(vi)~~(vii) the expert must undertake, in writing, 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 disclosed or used for another purpose could constitute a breach of Aurizon Network's obligations under **Part 3**; and

(viii) Aurizon Network will promptly provide the expert's report to the QCA, Access Holders, Access Seekers and, if applicable, ~~their~~ Customers after receiving the expert's report.

(e) An independent expert report undertaken in accordance with **clause 7A.4.2(d)** is binding on Aurizon Network.

(f) For the purpose of **clause 7A.4.2(d)(ii)(A)**, 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;

(ii) the Train Paths must be calculated as at the date on which Aurizon Network receives a notice under **clause 7A.4.2(d)8.11.3(e) (Notice Date)**;

(iii) subject to **clause 7A.4.2(f)(iv)8.11.3(g)(iv)**, 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) where:

(A) the Access Agreement is due to expire less than twelve (12) Months after the Notice Date; and

(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 twelve (12) Month period starting on the Notice Date.

- (g) For the purpose of **clause 7A.4.2(d)(ii)(B)**, the number of Access Holders (or ~~their~~ Customers) with Access Rights in the Coal System must be determined in a manner consistent with the following principles:
- (i) an Access Holder who holds Access to the Coal System on behalf of more than one Customer it will have the number of votes equal to the number of Customers in that Coal System for which it holds the Access Rights under the relevant Access Agreements;
  - (ii) if an Access Holder or Customer is a ~~related body corporate~~ Related Party of another Access Holder or Customer in that Coal System, it will be counted once only;
  - (iii) the number of Access Holders or Customers must be calculated as at the date on which Aurizon Network receives a notice under **clause 7A.4.2(d) (Notice Date)**;
  - (iv) subject to ~~clause 7A.4.2(f)(v)~~ 7A.4.2(g)(v), the number of Access Holders or Customers must be determined for a twelve (12) Month period starting on the Notice Date; and
  - (v) where:
    - (A) the Access Agreement is due to expire less than twelve (12) Months after the Notice Date; and
    - (B) there has been a Renewal in relation to the relevant Access Rights under that Access Agreement,
 the number of Access Holders or Customers must be determined (based on the Access Rights specified in the relevant Access Agreements) for a twelve (12) Month period starting on the Notice Date.
- (h) Aurizon Network must provide, or make available in accordance with this ~~clause 7A.4.3~~ 7A.4.2, the Capacity Assessment Report as a complete and transparent document:
- (i) to the QCA on an unredacted basis; and
  - (ii) to stakeholders and when published on its Website:
    - (A) to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the Capacity Assessment Report (and if those obligations permit disclosure if required by the this Undertaking then ~~for the avoidance of doubt~~ Aurizon Network is required to disclose the information contained in the Capacity Assessment Report), on an unredacted basis; and
    - (B) if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:

- (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the Capacity Assessment Report on an unredacted basis;
  - (2) in respect of the information referred to in **paragraph 2(b)(ii)(A) (i)** or for which consent is obtained under **paragraph (ii)(A) (A) 2(b)(ii)(B)**, on an unredacted basis; and
  - (3) in respect of the information that does not satisfy **paragraph (i)** or for which consent is not obtained under **paragraph (ii)(A)**:
    - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
    - to the extent not possible, on a redacted basis.
- (i) Aurizon Network must not agree to any confidentiality obligations which prevent the disclosure of the information contained in the Capacity Assessment Report or that does not permit disclosure of information required by ~~the~~ this Undertaking.

#### **7A.4.3 Capacity Deficit**

- (a) If the Baseline Capacity Assessment or any Capacity Assessment reveals that there is a deficit in the Capacity for a Coal System ~~at a particular point in time~~ (**Capacity Deficit**), then Aurizon Network must:
- (i) \_\_\_\_\_ have regard to that Capacity Deficit prior to executing an Access Agreement that would increase the size of that Capacity Deficit and prior to constructing any relevant Expansion for that Coal System; ~~and~~
  - (ii) within twenty (20) Business Days after the date:
    - (A) \_\_\_\_\_ the QCA approves the Baseline Capacity Assessment Report under **clause 7A.4.1(d)** or determines the Baseline Capacity under **clause 7A.4.1(f)**; or
    - (B) \_\_\_\_\_ of the Capacity Assessment Report,  
as applicable, submit a report to the QCA setting out:



- (C) the relevant Coal System and, if known, the location in that Coal System where the Capacity Deficit arises;
- (D) the quantum of the Capacity Deficit;
- (E) the Access Holders and, if any, Access Seekers affected by the Capacity Deficit;
- (F) Aurizon Network's consultation plan (which, when followed, must satisfy the requirements of **clause 7A.4.3(b)(ii)** and **7A.4.3(b)(iii)**);
- (+)(G) Aurizon Network's preliminary views on solutions which could most efficiently address the Capacity Deficit; and

(+)(iii) within six (6) Months after the date:

- (A) the QCA approves the Baseline Capacity Assessment Report under **clause 7A.4.1(d)** or determines the Baseline Capacity under **clause 7A.4.1(f)**; or

(B) of the Capacity Assessment Report,  
as applicable, submit a report to the QCA showing the outcome of Aurizon Network's analysis of the Capacity Deficit and solutions which could address the Capacity Deficit and which includes:

- (C) the preferred changes to the operation and management of the Rail Infrastructure that can address the Capacity Deficit (including estimates of costs (if any) to implement those changes);
- (D) if relevant, evidence of Aurizon Network's consultation under **clause 7A.4.3(b)(ii)** that explains why changes to the operation and management of the Rail Infrastructure cannot address the Capacity Deficit;
- (E) a shortlist of Expansions considered by Aurizon Network and through the consultation under **clause 7A.4.3(b)(iii)** (including estimates of costs to undertake each Expansion); and
- (F) any Expansion which Aurizon Network and the affected Access Holders or Access Seekers have agreed will address the Capacity Deficit.

(b) In its analysis of a Capacity Deficit, Aurizon Network must undertake at least the following:

- (i) a review of the assumptions which it utilises in the operation and management of the Rail Infrastructure to identify if

amendments to those assumptions would address the Capacity Deficit;

- (ii) consultation with Access Holders and Customers, if applicable, Train Operators, Supply Chain Groups and terminal operators to identify if there are alternative supply chain capacity options which could address the Capacity Deficit; and
- (iii) consultation with Access Holders and Customers to identify and consider options for Expansions which could address the Capacity Deficit.

~~(c) If an Expansion would address the Capacity Deficit and the Expansion is technically and economically feasible and the QCA approves the Expansion as being prudent and efficient, Aurizon Network must promptly undertake and fund that Expansion to deliver the additional Capacity needed to address the Capacity Deficit.~~

(c) If Aurizon Network, affected Access Holders or affected Access Seekers agree an Expansion will address the Capacity Deficit, then:

(i) Part 8 will apply to that Expansion;

(ii) Aurizon Network must seek to agree with the affected Access Holders and affected Access Seekers, individually and as required, funding for the Expansion (but any Dispute regarding who will fund or the proportion will be determined in accordance with Part 11 only if all parties agree to the Dispute being resolved in accordance with Part 11).

(d) Aurizon Network must provide, or make available in accordance with this **clause 7A.4.3**, any information or report in respect of the Capacity Deficit as a complete and transparent document:

- (i) to the QCA on an unredacted basis; and
- (ii) to stakeholders and when published on its Website:
  - (A) to the extent permitted by any confidentiality obligations it may have in relation to the information in respect of the Capacity Deficit (and if those obligations permit disclosure if required by ~~the this~~ Undertaking then ~~for the avoidance of doubt~~ Aurizon Network is required to disclose the information in respect of the Capacity Deficit), on an unredacted basis; and
  - (B) if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
    - (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the

information in respect of the Capacity Deficit on an unredacted basis;

- (2) in respect of the information referred to in **paragraph (i)** or for which consent is obtained under **paragraph (ii)(A)**, on an unredacted basis; and
- (3) in respect of the information that does not satisfy **paragraph (i)** or for which consent is not obtained under **paragraph (ii)(A)**:
  - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
  - to the extent not possible, on a redacted basis.

(e) Aurizon Network must not agree to any confidentiality obligations which prevent the disclosure of the information in respect of the Capacity Deficit or that does not permit disclosure of information required by ~~the~~ this Undertaking.

~~(e)~~ (f) Nothing in this clause 7A.4.3 affects or limits Aurizon Network's obligations or liabilities in respect of an Access Agreement or any other agreement entered into in accordance with this Undertaking.

## 7A.5 System Operating Parameters [Drafting Note: Previously 8.11.2]

(a) Aurizon Network must ensure that System Operating Parameters are in place for each Coal System at all times.

~~(a)~~ (b) In reviewing the System Operating Parameters for a Coal System, Aurizon Network will:

- (i) notify the QCA (who may, if determined necessary by the QCA, publish the information provided on its website) and each of the following:
  - (A) Access Holders and Access Seekers (and their Customers ~~but~~ only to the extent that the Access Holder or Access Seeker has given Aurizon Network those Customer contact details) whose Train Services will be affected by any amendments necessary as a result of such review;
  - (B) the applicable Supply Chain Group (if any);
  - (C) affected infrastructure providers for infrastructure forming part of the relevant Supply Chain (including, for example, the unloading facility

operator that is the destination of Train Services operating in the relevant Coal System);

(D) affected Infrastructure Service Providers; and

(E) affected Railway Operators,

~~(iii)~~ of the relevant System Operating Parameters and the time in which to make submissions;

(ii) consider any submissions received in respect of the proposed System Operating Parameters or whether any variation of the System Operating Parameters is required (as applicable);

(iii) include and utilise Aurizon Network's assumptions affecting Capacity and relied upon for the most recent Capacity Assessment (or Baseline Capacity Assessment, as applicable);

(iv) ensure that any amendments to the System Operating Parameters:

(A) do not conflict with any provision of this Undertaking; and

(B) are appropriate having regard to the matters listed in section 138(2) of the Act; and

(v) respond (with reasons) to any such submissions ~~as soon as reasonably practicable~~ within fifteen (15) Business Days of receipt of the submission (or such longer period approved by the QCA) including whether and, if so, how Aurizon Network has varied the proposed or existing System Operating Parameters (as applicable) in response to those submissions.

~~(c)~~ (d) Without limitation to **clause 7A.5(b)**~~7-5(a)~~, Aurizon Network will review the System Operating Parameters for a Coal System as soon as practicable after:

~~(i)~~ (i) -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;

~~(ii)~~ (ii) a new coal basin or port terminal is connected to the Rail Infrastructure;

~~(iii)~~ (iii) the completion of a major Expansion; or

~~(b)(iv)~~ (iv) being requested by the QCA or by 60% of Access Holders (or its Customers) on the relevant Coal System.-

~~(e)~~(d) If the QCA undertakes a Baseline Capacity Assessment under **clause 7A.4.1(f)** and determines that the System Operating

Parameters for a Coal System require amendment, the QCA may include the review and amendment of the System Operating Parameters in its Baseline Capacity Assessment.

~~(d)~~(e) Except to the extent required by the QCA as a result of it undertaking a Baseline Capacity Assessment, nothing in this **clause 7A.5** obliges Aurizon Network to vary the System Operating Parameters.

~~(e)~~(f) Aurizon Network must keep its most current System Operating Parameters available on the Website.

~~(f)~~(g) Aurizon Network must provide the current System Operating Parameters as a complete and transparent document:

(i) to the QCA on an unredacted basis; and

(ii) to stakeholders and when published on its Website:

(A) to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the System Operating Parameters (and if those obligations permit disclosure if required by ~~the this~~ Undertaking then ~~for the avoidance of doubt~~ Aurizon Network is required to disclose the information contained in the System Operating Parameters), on an unredacted basis; and

(B) if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:

(1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the System Operating Parameters on an unredacted basis;

(2) in respect of the information referred to in **paragraph (i)** or for which consent is obtained under **paragraph (ii)(A)**, on an unredacted basis; and

(3) in respect of the information that does not satisfy **paragraph (i)** or for which consent is not obtained under **paragraph (ii)(A)**:

- to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
- to the extent not possible, on a redacted basis.

~~(g)~~(h) Aurizon Network must not agree to any confidentiality obligations which prevent the disclosure of the information contained in the System Operating Parameters or that does not permit disclosure of information required by ~~the~~ this Undertaking.

~~(h)~~(i) Aurizon Network will ensure that the System Operating Parameters are consistent with Good Engineering Practices.

~~(i)~~(j) On, or as soon as reasonably practicable after, the Approval Date, Aurizon Network will make available to the QCA and to each Access Holder (and its Customer, if any) and Train Operator the System Operating Parameters (as at the Approval Date) relevant to that Access Holder or Train Operator.

#### 7A.6 Network Development Plan ~~{Drafting Note: Previously 8-11}~~

- (a) Aurizon Network must develop a Network Development Plan and keep its most current Network Development Plan available on the Website.
- (b) The Network Development Plan must contain the following information:
- (i) a detailed assessment of the Capacity (and the constrained Track sections) of each Coal System broken down by Existing Capacity and Committed Capacity (in each case on the assumption of no Operational Constraints), utilising the most recent Capacity Assessment (or Baseline Capacity Assessment, as applicable);
  - (ii) a progressive 5 year plan of Capacity, based on the most recent Capacity Assessment (or Baseline Capacity Assessment, as applicable) and including:
    - (A) each likely and possible (to the extent to which Aurizon Network is made aware) change to the ~~Coal~~ Supply Chain for each Coal System during that period;
    - (B) a minimum of 3 growth scenarios within each Coal System associated with an optimisation project at a terminal in each port precinct connected to the Rail Infrastructure; and
    - (C) assumed Expansions which would be required to support expansions at each port connected to the Rail Infrastructure, on the assumption that each port expansion would be sufficient to support an additional berth at the relevant port;
  - (iii) in respect of each Expansion being studied or investigated by Aurizon Network as a Concept Study, Pre-feasibility Study or Feasibility Study, the proposed scope, standard

- and preliminary determination of the cost of the proposed Expansion;
- (iv) the impact of Operational Constraints on Existing Capacity, Committed Capacity and Available Capacity;
  - (v) an overview of opportunities for increasing Existing Capacity to support expansions in each port precinct connected to the Rail Infrastructure, on the assumption that each port expansion would be sufficient to support an additional shiploading berth;
  - (vi) a comparison of opportunities for increasing Existing Capacity for each Coal System; and
  - (vii) the studies and investigations that Aurizon Network is undertaking or expects to undertake to inform the next review and update of the Network Development Plan.
- (c) Aurizon Network will review and update the Network Development Plan annually or more frequently as it considers necessary, including:
- (i) if circumstances change in a way that Aurizon Network expects will materially ~~adversely~~ affect the Network Development Plan;
  - (ii) if a new coal basin or port terminal is connected to the Rail Infrastructure;
  - (iii) at the completion of a major Expansion; or
  - (iv) where requested by the QCA or by 60% of Access Holders (or ~~their~~ its Customers) on the relevant Coal System.
- (d) In developing or reviewing the Network Development Plan, Aurizon Network:
- (i) must ensure the Network Development Plan has regard to:
    - (A) ~~complies with~~ the Network Management Principles;
    - (B) ~~aligns with~~ any:
      - (1) System Operating Parameters;
      - (2) Supply Chain Master Plan; and
  - (ii) must notify the QCA (who may, if determined necessary by the QCA, publish the information provided on its website) and each of the following:
    - (A) Access Holders and Access Seekers and ~~their~~ its Customers (but only to the extent that the Access Holder or Access Seeker has given Aurizon Network those Customer contact details);
    - (B) affected infrastructure providers for infrastructure forming part of the relevant Supply Chain

(including, for example, the unloading facility operator that is the destination of Train Services operating in the relevant Coal System);

- (C) affected Infrastructure Service Providers;
  - (D) affected Railway Operators; and
  - (E) other interested parties identified by Aurizon Network in relation to the proposed Network Development Plan;
- (iii) must consider submissions received from any interested parties;
- (iv) must have regard to:
- (A) forecast changes in demand for Queensland coal exports;
  - (B) any relevant Access Applications;
  - (C) any relevant port terminal developments or development of other out-loading facilities;
  - (D) any relevant previous or current studies undertaken by Aurizon Network; and
  - (E) other developments or circumstances which in Aurizon Network's opinion are relevant to the Network Development Plan.
- (v) must make a draft Network Development Plan available to the QCA and each person identified in **clause 7A.6(d)(ii)** and provide twenty (20) Business Days for comments or submissions to be made by those persons before finalising the Network Development Plan for publication on the Website.

(e) If Access Holders, Access Seekers or ~~their~~ its Customers (if relevant) notify Aurizon Network that they require a peer review to be conducted of the Network Development Plan, then Aurizon Network must cooperate with a consultant appointed to conduct that peer review by and at the cost of the Access Holders, Access Seekers and its ~~their~~ Customers (if relevant), except that Aurizon Network is not obliged to cooperate with more than one consultant for a review contemplated under this clause.

(f) Any Dispute regarding the contents of the Network Development Plan must be determined in accordance with **Part 11 clause 11.1**.

(g) Neither anything in this **clause 7A.6** ~~7A.5~~ 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.





## Part 8: Network development and Expansions

### 8.1 Overview

This **Part 8** sets out various provisions relating to the creation of new Rail Infrastructure<sub>3</sub>— in particular:

- (a) **clause 8.2** 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, Pre-feasibility Studies and Feasibility Studies;
- (c) **clause 8.4** sets out principles in relation to the way in which Concept Studies, Pre-feasibility Studies and Feasibility Studies are to be funded;
- (d) **clause 8.5** sets out how Capacity is provisionally allocated if a Study Funding Agreement for a Feasibility Study becomes unconditional;
- (e) **clause 8.6** sets out the ability for third parties to step into a **Rail [Concept Study, Pre-feasibility Study or Feasibility Study](#)** in certain circumstances;
- (f) **clause 8.7** sets out general principles in relation to the funding of Expansions;
- (g) **clause 8.8** describes how Users may fund all or part of an Expansion; and
- (h) **clause 8.9** sets out provisions in relation to Capacity Shortfalls and Access Agreements which are conditional on Expansions and Aurizon Network's obligation to deliver a minimum level of Capacity out of an Expansion.

### 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 8.2.1(b), 8.2.1(c), 8.2.1(d)** and **Part 9**, nothing in this Undertaking:
  - (i) obliges Aurizon Network to fund, construct or permit an Expansion, or to agree to do so; or
  - (ii) prevents Aurizon Network from agreeing (in its absolute discretion), or deciding itself, to fund, construct or permit an Expansion, or any part thereof.
- (b) Aurizon Network may, at its discretion, fund all or part of the construction of any Expansion and must provide notice of that decision (including details of the amount of funding) to the parties

requesting the Expansion. The delivery of that notice by Aurizon Network will create a funding obligation on Aurizon Network to provide the relevant funding for the purposes of this Undertaking.

(c) Notwithstanding any other provision of this **Part 8**, Aurizon Network is obliged to construct or permit an Expansion 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.

The proposed Expansion is deemed to be technically and economically feasible and consistent with the safe and reliable operation of the Rail Infrastructure unless:

(A) within ten (10) Business Days after entry into a relevant Study Funding Agreement for a Feasibility Study for that Expansion, Aurizon Network has notified the Access Seekers selected to utilise an Expansion in accordance with this **Part 8** that the Expansion does not satisfy those requirements; or

(B) despite Aurizon Network not having notified the relevant Access Seekers, there has been a mMaterial cChange so that the proposed Expansion no longer satisfies those requirements (in which case Aurizon Network will notify the relevant Access Seekers of the mMaterial cChange and the basis of its decision not to construct or permit the Expansion);

(ii) the Expansion is fully funded through one of the following means:

(A) Aurizon Network is obliged by this Undertaking to fund the Expansion or, where Aurizon Network is not obliged by this Undertaking, it agrees (at its discretion) to fund the Expansion;

(B) Expansion Funders agree to fund the Expansion in accordance with a User Funding Agreement for the Expansion; or

(C) Expansion Funders partially fund~~ing~~ the Expansion under a User Funding Agreement and the remainder of the funding is provided by Aurizon Network;

(iii) Aurizon Network and all other relevant parties have entered into User Funding Agreements, Access Conditions and/or an Access Agreement (as the case may be) and such agreements are u or have become u unconditional in

- accordance with their terms (except for the delivery of the Capacity being generated by the Expansion); and
- (iv) unless otherwise agreed by Aurizon Network, the Expansion (whether or not funded in whole or part by a person other than Aurizon Network) is or will be leased from the State, an Authority or a trustee as contemplated by SUFA or owned, and in either case operated, by Aurizon Network.
- (d) The pricing principles to apply to an Expansion are set out in **Part 6** and nothing in this **Part 8** limits the application of **Part 6**.
  - (e) Notwithstanding any other provision of this **Part 8** ~~and~~, **Part 6**, to the extent that Aurizon Network is obliged to undertake asset replacement works in order to meet its obligations under an Access Agreement or ~~this the~~ Undertaking, Aurizon Network will be responsible for the funding of Asset Replacement and Renewal Expenditure as well as undertaking or procuring the undertaking of the asset replacement covered by that funding. (Aurizon Network's obligations to provide that funding and to undertake or procure the asset replacement will be governed by the terms of the relevant Access Agreement or ~~this the~~ Undertaking, as applicable).
  - (f) 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 and the Customer seeking to construct the Customer Specific Branch Line from agreeing that Aurizon Network may do so.
  - (g) Aurizon Network's obligations in respect of Connecting Infrastructure are set out in **Part 9** and nothing in this **Part 8** limits Aurizon Network's obligations under **Part 9**.
  - (h) Aurizon Network will not unnecessarily or 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 Expansion 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.
  - (i) Aurizon Network must, in accordance with **Part 4**, enter into Access Agreements with relevant Access Seekers for ~~capacity~~ Capacity to be created by an Expansion.
  - (j) It is acknowledged that:
    - (i) Aurizon Network and an Access Seeker (or, as applicable, Customer) may agree (in each party's absolute discretion) to enter 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, as applicable, Customer);

- (ii) Aurizon Network and an Access Seeker (or, as applicable, Customer) may agree that Aurizon Network will fund and construct a Customer Specific Branch Line; and
- (iii) Aurizon Network may elect to otherwise invest in the Rail Infrastructure on its own account,

provided that any such agreement or election must not:

- (iv) in any way unfairly prejudice or unfairly disadvantage another Access Seeker (or, as applicable, Customer) who is seeking Capacity to be created by an Expansion or Customer Specific Branch Line under this **Part 8**; or
  - (v) affect the priority of allocation of ~~capacity~~ Capacity between Access Seekers that would otherwise apply under **Part 7** or **clause 8.5**.
- (k) To the extent that this Undertaking is inconsistent with a User Funding Agreement, ~~Rail Connection Agreement~~ or a Studies Funding Agreement for a Pre-feasibility Study or a Feasibility Study:
- (i) subject to **clause 8.2.1(k)(ii)**, the User Funding Agreement, ~~Rail 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)); and
  - (ii) if the inconsistency relates to the right or ability of a party to make submissions, provide information or refer disputes to the QCA, this Undertaking will prevail.
- (l) Except where set out to the contrary in this **Part 8**, the person responsible for:
- (i) the investigation and design of any Expansion that is necessary in order to provide any Access Rights requested by an Access Seeker:
    - (A) must be Aurizon Network if Aurizon Network agrees to seek reimbursement of only its reasonable direct costs, excluding any and all profit, margin or overhead relating to the investigation and design; or
    - (B) may be any party nominated by an Access Seeker (or its Customer) if:

(1) Aurizon Network does not comply with **clause 8.2.1(I)(i)(A)** and seeks reimbursement of any profit, margin or overhead on the costs of that investigation and design; and

(2) only one party is nominated if there is more than one Access Seeker (or Customer) for a Concept Study, Pre-feasibility Study or Feasibility Study,

in which case:

(3) Aurizon Network must cooperate with the third party and provide all reasonable assistance to that party, including information; and

~~(1)~~(4) that party must give Aurizon Network an undertaking to keep confidential and not use for another purpose all information and other matters coming to their knowledge by reason of their appointment which if disclosed or used for another purpose could constitute a breach of Aurizon Network's obligations under Part 3; and

(ii) construction of any Expansion must be Aurizon Network.

(m) 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 must:

(i) treat each Access Application as a separate Access Application and as if each were lodged by a separate Access Seeker; and

(ii) ensure that the Access Applications do not distort any analysis of capacity requirements for the purposes of any Capacity Analysis, Demand Assessment, Concept Study, Pre-feasibility Study or Feasibility Study as a result of being treated as separate Access Applications.

(n) This **Part 8** applies to Expansions for the purpose of providing additional Access to both coal carrying Train Services and non-coal carrying Train Services.

(o) Except where set out to the contrary in this **Part 8**, Aurizon Network will not discriminate in the performance of its obligations and the exercise of its rights in this **Part 8** as between Access Seekers (or, as applicable, Customers) on the basis of the identity of the funder of a

Pre-~~f~~ Feasibility Study, a Feasibility Study or an Expansion. For example, Aurizon Network will not provide an Access Seeker (or, as applicable, Customer) with priority in the allocation of Capacity in respect of an Expansion on the basis that Aurizon Network is providing funding for the Expansion, over another Access Seeker (or as applicable, Customer) with a different source of funding.

- (p) In this **Part 8**, if the Access Seeker is intending to use Access Rights that may be developed as a result of an Expansion for another person (in that Access Seeker's capacity as a Railway Operator):
- (i) the Access Seeker must be acting on behalf of a Customer or Customers identified to Aurizon Network for all of the Access Rights sought by the Access Seeker and Aurizon Network must make reasonable inquiries as to the identity of the Customer(s) in accordance with the requirements of this **Part 8**;
  - (ii) a reference to the Access Seeker also includes a reference to its Customer; and
  - (iii) Aurizon Network and the Access Seeker must copy the Customer on any correspondence or notices between them.

### 8.2.2 *Disputes under Part 8*

- (a) For ~~the avoidance of doubt~~ clarity, an Access Seeker, proposed Pre-~~f~~ Feasibility Funder, proposed Feasibility Funder or proposed Expansion Funder (as applicable) may dispute any matter that may arise under this **Part 8**, including:
- (i) any decision made by Aurizon Network under Part 8;
  - (ii) the completion of schedules in a Studies Funding Agreement where the relevant Studies Funding Agreement is in the form of the Standard Studies Funding Agreement;
  - (iii) the completion of schedules in a User Funding Agreement, where the relevant User Funding Agreement is in the form of a SUFA;
  - (iv) the adequacy or otherwise of any report prepared by Aurizon Network under Part 8;
  - (v) whether Aurizon Network has acted reasonably or in good faith in applying Part 8; and
  - (vi) whether Aurizon Network has complied with its obligations, ~~(vii)~~ by referring the matter to the QCA.
- (b) Any dispute referred to in **clause 8.2.2(a)** must be referred to the QCA and notified to Aurizon Network:
- (i) within ten (10) Business Days of the notification of any decision by Aurizon Network;

- (ii) within twenty (20) Business Days of the date of receipt of any report from Aurizon Network;
  - (iii) within twenty (20) Business Days of the date of receipt of a Capacity Assessment Notice; or
  - (iv) at any time in respect of completion of schedules in a Studies Funding Agreement or a SUFA.
- (c) A dispute notified under **clause 8.2.2(a)** is a Dispute for the purpose of **clause 11.1**.
- (d) On receipt of a notice under **clause 8.2.2(b)**, Aurizon Network must:
- (i) promptly notify (with an outline of the matters in dispute and the identity of the initial parties to the ~~dispute~~Dispute) each Access Seeker (or where applicable, Customer) that is either affected by the decision made by Aurizon Network or has indicated an interest in the Expansion the subject of the ~~dispute~~Dispute that a ~~dispute~~Dispute has been referred to the QCA; and
  - (ii) use its best endeavours to promptly identify all other parties that should be bound by the outcome of the ~~dispute~~Dispute and provide those parties with notice of the existence of the ~~dispute~~Dispute including an outline of the matters in dispute and the identity of the initial parties to the ~~dispute~~Dispute; and
  - (iii) provide the QCA with a list of the parties to whom notice of the ~~dispute~~Dispute has been given under this **clause 8.2.2(d)**~~8.2.2(d)~~.
- (e) Any party receiving notice of the ~~dispute~~Dispute under **clause 8.2.2(d)**~~8.2.2(d)~~ may contact the QCA to seek to be heard on the ~~dispute~~Dispute.
- (f) Any party that did not receive a notice of the ~~dispute~~Dispute under **clause 8.2.2(d)**~~8.2.2(d)~~ but believes it should have received that notice may also contact the QCA to seek to be heard on the ~~dispute~~Dispute.
- (g) The QCA's determination may include alternative conclusions (where the adequacy of a report is in dispute) and will be binding on all of the Access Seekers the subject of the relevant Demand Assessment, Concept Study, Pre-f-Feasibility Study or Feasibility Study (as applicable) and on Aurizon Network.
- (h) Aurizon Network must not effect any decision made under this Part 8 until:
- (i) the relevant period for disputing that decision has expired and the decision has not been referred to the QCA; or



- (ii) the QCA has determined that Aurizon Network may proceed with the relevant decision.

### 8.2.3 *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 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) subject to **clause 8.2.3(b)**, until:
    - (A) the Access Seekers (or, as applicable, their Customers) for any earlier Expansion in a sequence of Expansions have entered into Access Agreements or User Funding Agreements, as applicable, (**Earlier Expansion Agreements**) in respect of that earlier Expansion; and
    - (B) such agreements are or have become unconditional,  
  
Aurizon Network and Access Seekers (or, as applicable, their Customers) for any later Expansion in a sequence of Expansions must not enter into Access Agreements or User Funding Agreements, as applicable, (**Later Expansion Agreements**) in respect of that later Expansion except where the Later Expansion Agreement is conditional on the requirements in **clauses 8.2.3(a)(v)(A) and 8.2.3(a)(v)(B)** being satisfied for the Later Expansion Agreement to come into full effect.
- (b) Where different Access Seekers have been identified to be provided with Access through sequential proposed Expansions and either:
  - (i) an Access Seeker allocated to a later Expansion in the sequence of Expansions has advised Aurizon Network that it

will have an unconditional Access Agreement or a User Funding Agreement on a date Aurizon Network (acting reasonably) determines is at least six (6) Months earlier than the date on which an Access Seeker allocated to an earlier Expansion in the sequence of Expansions is likely to have an unconditional Access Agreement or User Funding Agreement, as applicable; or

- (ii) there has been a delay of at least six (6) Months in the expected date on which an Access Seeker allocated to an earlier Expansion in the sequence of Expansions can fully utilise the relevant Access Rights under that proposed Expansion (taking into account the matters in **clause 8.4.3(a)(ii)** and ramp up profiles notified by the Access Seeker to Aurizon Network) and another Access Seeker allocated to a later Expansion in the sequence of Expansions is expected to be able to fully utilise the Access Rights created by the earlier Expansion at least ninety (90) days earlier than the delayed Access Seeker,

Aurizon Network may, acting reasonably and in good faith, reallocate Capacity proposed to be created by the sequential Expansions between those Access Seekers but only to the extent that the reallocation does not prevent:

- (iii) the relevant Expansions from achieving the dates for practical completion or dates for commissioning agreed for each Expansion; and
  - (iv) the Access Seeker allocated to the earlier Expansion in the sequence of Expansions obtaining its Access Rights at the time agreed by Aurizon Network and that Access Seeker.
- (c) If Aurizon Network intends to reallocate Capacity to Access Seekers under **clause 8.2.3(b)**, it must give reasonable prior written notice to each Access Seeker affected by the reallocation, including sufficient grounds for the reallocation to permit the Access Seeker to understand Aurizon Network's decision but without disclosing information that is sensitive to the other Access Seekers (or Customer, if any) and all details of the intended reallocation.
  - (d) If the majority of Access Seekers in a later Expansion in a sequence (by reference to the number of Train Paths sought by those Access Seekers), consider that the circumstances described in **clause 8.2.3(b)(i)** or **clause 8.2.3(b)(ii)** exist, those Access Seekers may notify Aurizon Network of that belief and the grounds for that belief. On receipt of a notice under this **clause 8.2.3(d)**, Aurizon Network must reasonably consider whether a reallocation should be made under **clause 8.2.3(b)**.

#### 8.2.4 *Determination of sufficient demand for an Expansion*

- (a) Without limiting Aurizon Network's ability to conduct a Demand Assessment for an Expansion of its own volition, Aurizon Network must:
- (i) promptly (and in any case within ten (10) Business Days of the relevant event referred to below) commence a Demand Assessment for an Expansion where:
    - (A) the operator of an existing or proposed coal terminal formally advises Aurizon Network 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
    - (B) an Access Seeker submits an Access Application for Access that Aurizon Network concludes cannot be satisfied without Aurizon Network undertaking an Expansion and that Access Seeker requests in writing that Aurizon Network carry out a Concept Study for that Expansion; and
  - (ii) provide the QCA, each relevant Access Seeker and, if relevant, the proponent of the coal terminal with a copy of a detailed report of the results of its Demand Assessment within twenty (20) Business Days after the commencement of the study (except where a Dispute arises in respect of the information being sought by Aurizon Network for the purposes of Demand Assessment, in which case the period is extended by the number of Business Days between (and including) the day on which the Dispute is referred to the QCA and the day on which the QCA's determination is published).
- (b) Where Aurizon Network undertakes a Demand Assessment for an Expansion it must do so using the most appropriate means and any information it considers relevant (in each case acting reasonably) in the circumstances including as follows:
- (i) the Access Applications it has received;
  - (ii) liaison and consultation with participants in Supply Chains and Supply Chain Groups relating to each affected Coal System;
  - (iii) analysis or advice on demand or capacity submitted by participants in relevant Supply Chain Groups; and
  - (iv) analysis or advice from relevantly experienced expert advisors, if necessary.

Aurizon Network agrees not to seek information from Access Seekers or ~~potential prospective a~~ Access ~~s~~ Seekers under this **clause 8.2.4(b)**~~8.2.3(b)~~ which is not reasonably required for a prudent and sound Demand Assessment.

- (c) The Demand Assessment report:
- (i) must not exceed the quantum of out-loading capacity being sought at the coal terminal (if the Demand Assessment is triggered by the operator of an existing or proposed coal terminal);
  - (ii) may investigate different capacity permutations in branch lines to reflect anticipated origin points for the port infrastructure (if relevant);
  - (iii) must not identify individual Access Seekers or ~~potential prospective A~~ Access ~~S~~ Seekers by name or, to the extent practicable, precise origins or destinations for trains utilising the potential Expansion; and
  - (iv) must aggregate capacity information so that capacity use or requirements cannot be associated with a particular Access Seeker, ~~potential access seeker~~ prospective Access Seeker or Access Holder.

### **8.2.5** *Participation of Customers*

- (a) If Aurizon Network proposes to conduct a Pre-~~f~~ Feasibility Study, Feasibility Study or Expansion, it must notify any Customer ~~or~~ Access Seeker ~~or potential access seeker~~ who could reasonably be expected to be interested in funding the cost of that Pre-~~f~~ Feasibility Study, Feasibility Study or Expansion and provide a reasonable period of time by when that party may indicate to Aurizon Network its desire to fund the cost of that Pre-~~F~~ feasibility Study, Feasibility Study or Expansion.
- (b) If a Customer, ~~or~~ Access Seeker ~~or potential access seeker~~ wishes to fund the cost of:
- (i) a Pre-feasibility Study, as a Pre-feasibility Funder under **clause 8.48.4.2**;
  - (ii) a Feasibility Study, as a Feasibility Funder under **clause 8.5 8.4.3**; or
  - (iii) an Expansion, as a User under **clause 8.98.8**,

as applicable, then within the time set out in Aurizon Network's notice, it 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. Nothing in this **clause 8.2.5(b)** obliges a Customer to give a funding notice earlier than the time required under the relevant part of this **Part 8**.

- (c) Where Aurizon Network does not receive a notice under **clause 8.2.5(b)** 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; Access Seeker ~~or potential access seeker~~ or to otherwise treat it as a proposed Pre-feasibility Funder or Feasibility Funder.
- (d) Where Aurizon Network considers, acting reasonably, that a Customer or; Access Seeker ~~or potential access seeker~~ 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; Access Seeker ~~or potential access seeker~~ under **clause 4.12(a)**~~4.12~~; and
  - (ii) cease any other relevant negotiations with that Customer or; Access Seeker ~~or potential access seeker~~ in relation to the funding of the cost of the Pre-feasibility Study, Feasibility Study or an Expansion (as applicable) by giving notice to that Customer,

except that if the Negotiation Cessation Notice is disputed by the Customer or; Access Seeker ~~or potential access seeker~~, the notice is not effective, and the parties must continue as if the notice had not been given, until the ~~dispute~~ Dispute is resolved.

## 8.2.6 *Compliance with obligations*

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

## 8.3 **Undertaking Concept Studies, Pre-feasibility Studies and Feasibility Studies**

### 8.3.1 *Concept Studies*

- (a) Aurizon Network must promptly undertake a Concept Study:
  - (i) for capacity that is consistent with the capacity identified in the relevant Demand Assessment report finalised under **clause 8.2.4**; ~~and~~ or
  - (ii) if requested by any person (in which case, Aurizon Network may require that person to fund the Concept Study),

unless a sufficient Concept Study for the relevant Expansion is already underway or completed.

- (b) Any person may request Aurizon Network to undertake a Concept Study on its behalf (except to the extent that **clause 8.3.1(a)** permits Aurizon Network to not undertake that study) in which case:
  - (i) the costs incurred by Aurizon Network in undertaking that study must not be included as part of the Regulatory Asset Base except to the extent that that Expansion is developed and the costs associated with the Expansion is included as part of the Regulatory Asset Base; and
  - (ii) Aurizon Network must cooperate with that person and provide all reasonable assistance to that party.
- (c) Aurizon Network will include in its Network Development Plan general details of:
  - (i) each Concept Study it is undertaking promptly after commencement of work on the Concept Study; and
  - (ii) the project configuration alternatives appropriate for Pre-feasibility Study consideration,
 regardless of whether or not the Concept Study is funded by Aurizon Network or another person.

### 8.3.2 ~~Pre-~~Feasibility Study

Following a Concept Study, Aurizon Network must immediately commence a Pre-feasibility Study for that Expansion, if:

(a) ~~One~~ (1) or more Potential Pre-feasibility Funders give notice to Aurizon Network that they will:

(i) fund the Pre-feasibility Study; and

(ii) enter into a Studies Funding Agreement for the Expansion and for an amount equal to or greater than the estimate of the cost of that Pre-feasibility Study determined in the Concept Study for that Expansion;

and that the conditions precedent set out in the Studies Funding Agreement referred to in **clause 8.3.2(a)(ii)** are satisfied or waived in accordance with the terms of that agreement;

~~(a)~~(b) subject to **clause 8.4.2(a)**, the Potential Pre-feasibility Funders and Aurizon Network agree that Aurizon Network should fund the Pre-feasibility Study; or

~~(b)~~(c) subject to **clause 8.4.2(a)**, Aurizon Network chooses, at its discretion, to fund the Pre-feasibility Study itself in circumstances where no unconditional Studies Funding Agreement comes into effect as contemplated by **clause 8.3.2(a)**:

(i) within forty (40) Business Days after the date of a communication referred to in **clause 8.4.2(d)(ii)**; or

- (ii) within fifteen (15) Business Days after an expert determination of a ~~dispute~~ Dispute in respect of Aurizon Network's decision under **clause 8.4.2(c)**.

### 8.3.3 *Feasibility Studies*

(a) Following a Pre-~~f~~ Feasibility Study, Aurizon Network must immediately commence a Feasibility Study for that Expansion; if one or more of the Potential Feasibility Funders give notice to Aurizon Network that they will:

- (i) fund the Feasibility Study; and
- (ii) enter into a Studies Funding Agreement for that Expansion, and all of the conditions precedent set out in the Studies Funding Agreement referred to in **clause 8.3.3(a)(ii)** are satisfied or waived in accordance with the terms of that agreement.

~~(a)~~ (b) Aurizon Network must (acting reasonably and in good faith) determine the target amount of Capacity for the potential Expansion to be investigated in the proposed Feasibility Study (**Target Capacity**) having regard to:

- (i) the outcomes of the Pre-feasibility Study, including the scope determined for the Feasibility Study;
- (ii) the total indicative demand for Capacity from all the relevant Access Seekers that satisfy the requirements under **clause 8.4.3(a)(ii)**;
- (iii) the potential scope of the proposed Expansion;
- (iv) the capacity of the port or other unloading facility relevant to the use of the proposed Expansion; and
- (v) any potential staging of Expansions.

~~(b)~~ (c) Aurizon Network will notify all the relevant Access Seekers of:

- (i) the Target Capacity for the potential Expansion to be investigated in the Feasibility Study, as determined under **clause 8.3.3(b)**;
- (ii) the total indicative demand for Capacity from all the relevant Access Seekers that satisfy the requirements under **clause 8.4.3(a)(ii)**; and
- (iii) if the total demand under **clause 8.3.3(c)(ii)** is more than the Target Capacity under **clause 8.3.3(c)(i)**, the reasons why a higher Target Capacity has not been proposed.

### 8.3.4 *General provisions*

- (a) Aurizon Network must not make any amendments to the scope (as the scope is defined in the relevant definition in **Part 12**) of:
  - (i) the Concept Study;

- (ii) the Pre-feasibility Study; or
  - (iii) the Feasibility Study,
  - ~~(iv)~~ that are not agreed by all funders of the Concept Study, Pre-feasibility Funders or Feasibility Funders, as applicable.
- (b) Unless otherwise agreed by Aurizon Network and a proposed Pre-feasibility Funder or Feasibility Funder, a Studies Funding Agreement for a Pre-feasibility Study or Feasibility Study (as applicable) must be in the form of the Standard Studies Funding Agreement.
- (c) Aurizon Network and the proposed Pre-feasibility Funders or Feasibility Funders, as applicable, must agree on the completion of schedules in a Studies Funding Agreement in the form of the Standard Studies Funding Agreement within:
- (i) twenty (20) Business Days of a communication referred to in **clause 8.4.2(d)(ii)** or **8.4.3(e)(ii)**, as applicable; or
  - (ii) if a decision communicated in accordance with **clause 8.4.2(d)** or **8.4.3(e)**, as applicable, is referred for dispute resolution, within five (5) Business Days following the QCA's decision.
- (d) The capital expenditure for an Expansion includes the cost of a Pre-feasibility Study or Feasibility Study relating to that Expansion except that any amounts that are not repaid or reimbursed (as applicable):
- (i) for a Pre-feasibility Study, under **clause 8.4.4(a)(iii)(A)**; and
  - (ii) for a Feasibility Study, under **clause 8.4.4(a)(iii)(B)**,
- ~~(iii)~~ will not be treated as capital expenditure and will not be included in the Regulatory Asset Base.
- (e) 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 or Feasibility Study relating to that Expansion.
- (f) Aurizon Network must publish to relevant Access Seekers (and, where applicable, their Customers) general details of each multi-user Pre-feasibility Study and Feasibility Study it is undertaking promptly after commencement of work on the Pre-feasibility Study or Feasibility Study. The publication must not identify individual Access Seekers by name, precise details of origins and destinations (to the extent possible) or any other confidential information.
- (g) The Concept Study, Pre-feasibility Study or Feasibility Study must be provided as a complete and transparent document:
- (i) to the QCA on an unredacted basis; and



(ii) to a party other than the QCA or relevant Access Seeker (or, where applicable its Customer) or in the Network Development Plan (if a Concept Study):

(A) to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the Concept Study, Pre-feasibility Study or Feasibility Study (and if those obligations permit disclosure if required by ~~this the~~ Undertaking, then ~~for the avoidance of doubt~~ Aurizon Network is required to disclose the information contained in the Concept Study, Pre-feasibility Study or Feasibility Study), on an unredacted basis; and

(B) if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:

(1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the Concept Study, Pre-feasibility Study or Feasibility Study on an unredacted basis;

(2) in respect of the information referred to in **paragraph (i)** or for which consent is obtained under **paragraph (ii)(A)**, on an unredacted basis; and

(3) in respect of the information that does not satisfy **paragraph (i)** or for which consent is not obtained under **paragraph (ii)(A)**:

- to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
- to the extent not possible, on a redacted basis.

(h) Aurizon Network must not agree to any confidentiality obligations which prevent the disclosure of the information contained in a Concept Study, Pre-feasibility Study or Feasibility Study or that does not permit disclosure of information required by ~~this the~~ Undertaking.

## 8.4 Funding Concept Studies, Pre-feasibility Studies and Feasibility Studies

### 8.4.1 *Concept Studies*

- (a) Aurizon Network must fund all Concept Studies except:
  - (i) if an Access Seeker (or, as applicable, Customer) at its absolute discretion, agrees to fund the Concept Study; or
  - (ii) **clause 8.3.1(a)(ii)** applies.
- (b) If Aurizon Network does not fund a Concept Study, the funding party must not be provided with any rights that person would not otherwise be entitled to had they not funded the Concept Study. For ~~the avoidance of doubt~~ clarity, this includes providing the funding Access Seeker (or, as applicable, Customer) with priority for the Expansion relevant to that Access Seeker (or, as applicable, Customer).

### 8.4.2 *Pre-Feasibility Studies*

- (a) Subject to **clause 8.4.2(b)**, if all of the relevant Studies Funding Agreements for a Pre-feasibility Study terminate prior to completion of a Pre-feasibility Study, then Aurizon Network may (in its discretion) elect to continue to undertake and complete the Pre-feasibility Study at its own cost (in which case Aurizon Network releases the relevant Pre-feasibility Funders from any further liability with respect to that Pre-feasibility Study).
- (b) If Aurizon Network funds the Pre-feasibility Study in accordance with **clause 8.3.2(a)** or **8.3.2(b)**, or elects to continue to undertake and complete a Pre-feasibility Study under **clause 8.4.2(a)**:
  - (i) Aurizon Network must not afford an Access Seeker (or, as applicable, Customer) any rights that Access Seeker (or, as applicable, Customer) would not otherwise be entitled had Aurizon Network not funded the Pre-feasibility Study; and
  - (ii) the costs incurred by Aurizon Network must not be included as part of the Regulatory Asset Base except to the extent that that Expansion is developed and the costs associated with the Expansion is included as part of the Regulatory Asset Base.
- (c) The Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Pre-feasibility Study under **clause 8.3.2(a)** ~~0~~ 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) each of the Access Seekers (or, as applicable, their Customers) who Aurizon Network considers, acting reasonably, satisfy the following requirements:
- (A) is participating in a process for the acquisition or development 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 consistent with the Access Seeker's Access Application;
  - (B) where the relevant Access Seeker (or, as applicable, their Customer) is a producer of coal:
    - (1) has at least an Exploration Permit for Coal under the *Mineral Resources Act 1989* (Qld);
    - (2) has a credible program for the development of its mine or mine expansion on a basis that is consistent with its Access Application; [and](#)
    - (3) is diligently developing its mine or mine expansion in accordance with the development program referred to in **paragraph 8.4.2(c)(ii)(B)(2)**;
  - (C) where the relevant Access Seeker (or, as applicable, their Customer) is a consumer of coal:
    - (1) has or is reasonably likely to obtain the licences, approvals, consents, permits and other permissions (if any) necessary to evaluate the feasibility of the business or activity for which Access Rights are required;
    - (2) has a credible program for the development of any infrastructure or other facilities and has or is likely to secure coal necessary for that business or activity; and
    - (3) is diligently developing any infrastructure or other facilities in accordance with the development program referred to in **[paragraph clause 8.4.2\(c\)\(ii\)\(C\)\(2\)](#)**; and

- (D) where applicable, has either provided a bank guarantee in accordance with the relevant Study Funding Agreement or otherwise has the ability to meet the funding obligation under the terms of the relevant Studies Funding Agreement.
- (d) Following a decision under **clause 8.4.2(c)**, Aurizon Network will advise each Access Seeker (or, as applicable, Customer) who was:
  - (i) ~~each Access Seeker (or, as applicable, Customer) who was~~ not selected to fund the Pre-feasibility Study<sub>3</sub> of that fact; and
  - (ii) ~~each Access Seeker (or, as applicable, Customer) who was~~ selected to fund the Pre-feasibility Study<sub>3</sub> of that fact and of the Access Rights for which it has been selected to participate in the funding of the Pre-feasibility Study.

### 8.4.3 *Feasibility Studies*

- (a) Subject to **clauses 8.4.3(b)** and **8.4.3(d)**, the Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Feasibility Study under **clause 8.3.3(a)** for an Expansion, as proposed Feasibility Funders, will be:
  - (i) firstly, Access Seekers that satisfy the requirements of **clause 8.4.2(c)(i)** 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 8.3.3(b)**, those Access Seekers (or, as applicable, their Customers) whom Aurizon Network decides (acting reasonably) satisfy all of the requirements of **clause 8.4.2(c)(ii)** and, in addition, either:
    - (A) where the relevant Access Seeker (or, as applicable, their Customer) is a producer of coal:
      - (1) has at least a Mineral Development Licence under the *Mineral Resources Act 1989* (Qld); and
      - (2) has Marketable Coal Reserves (as defined by the JORC Code) equal to at least ten (10) times the annual capacity for which Access is required (as determined by reference to the Access Seeker's Access Application), following ramp up; or
    - (B) where the relevant Access Seeker (or, as applicable, their Customer) is a consumer of coal:
      - (1) has or will obtain all licences, approvals, consents, permits and other permissions

necessary for the business or activity for which Access Rights are required; and

- (2) has or is reasonably likely to obtain a supplier or suppliers of coal in connection with the business or activity for amounts of coal consistent with the Access Rights requested.

(b) For the purposes of **clause 8.4.3(a)**:

(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 ten (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

(2) that the Access Seeker (and, where there are two (2) 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 8.4.3(b)(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

(B) an Access Seeker Nomination under **clause 8.4.3(b)(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

(iii) where the Customer does not give Aurizon Network a Customer Nomination or an Access Seeker Nomination under **clause 8.4.3(b)(i)(B)**, neither that Customer nor that

Customer's Access Seeker(s) can be eligible for an opportunity to fund the relevant Feasibility Study.

- (c) Aurizon Network must not make a decision under **clause 8.4.3(d)** until:
- (i) if Aurizon Network's decision has not been referred to the QCA for resolution as a ~~dispute~~Dispute, twenty (20) Business Days after receipt by the Access Seekers of the notice under **clause 8.3.3(c)**; or
  - (ii) if Aurizon Network's decision has been referred to the QCA for resolution of a ~~dispute~~Dispute, the QCA has made its determination.
- (d) Subject to **clause 8.4.3(c)**, if the Target Capacity to be created by the proposed Expansion as determined under **clause 8.3.3(b)** by Aurizon Network, or (if applicable) as determined by the QCA, is expected to be insufficient Capacity for all the relevant Access Seekers that satisfy the requirements under **clause 8.4.3(a)(ii)**, then priority will be given to Access Seekers or Customers having regard to the following criteria (in order of priority):
- (i) those Access Seekers who meet the requirements set out in **clause 8.4.3(a)(ii)** to a greater extent than other Access Seekers; and
  - (ii) the Access Seekers who funded the Pre-feasibility Study.

For clarity, the assessment under this **clause 8.4.3(d)** 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 Target Capacity for which the Feasibility Study is being conducted.

- (e) Following a decision under **clause 8.4.3(a)**, 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 of:
    - (A) that fact;
    - (B) 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 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) Aurizon Network will provide details to each relevant Access Seeker (or, as applicable, Customer) of Aurizon Network's assessment of that Access Seeker's case against the requirements and criteria in **clause 8.4.3(a)(ii)**.
- (g) Feasibility Studies must be funded by Access Seekers and/or, as applicable, Customers and must not be funded by:
  - (i) Aurizon Network, except where **clause 8.4.4(a)(i)** applies; or
  - (ii) a Railway Operator acting as an Access Seeker, other than where a specifically identified Customer has made an Access Seeker Nomination under **clause 8.4.3(b)(i)(B)(2)** in favour of that Railway Operator.
- (h) Where this **Part 8** provides that a Railway Operator (acting as an Access Seeker) cannot act other than on behalf of an identified Customer:
  - (i) that Railway Operator must notify Aurizon Network of the identity and details of the Customer on whose behalf it is purporting to act; and
  - (ii) Aurizon Network must make reasonable inquiries to verify the identity of that Customer and confirm that the Customer agrees to the Railway Operator acting on its behalf.

#### **8.4.4** *General provisions*

- (a) If a Pre-feasibility Study or Feasibility Study for an Expansion is funded under one or more Studies Funding Agreements, then:
    - (i) Aurizon Network must fund any shortfall in the Pre-feasibility Study or Feasibility Study arising as a result of the default of a Pre-feasibility Funder or Feasibility Funder under its Study Funding Agreement if there is more than one Study Funding Agreement for the Pre-feasibility Study or Feasibility Study;
    - (ii) the relevant Feasibility Funders and Expansion Funders (if any) must include in the funding amounts under their Study Funding Agreement or User Funding Agreement, as applicable, amounts that in aggregate equal the amount to be repaid or reimbursed by Aurizon Network:
      - (A) \_\_\_\_\_ under a Study Funding Agreement for a Feasibility Study, the funding provided by:
        - (1) Aurizon Network in accordance with clause 8.4.4(a)(i); and
        - (2) \_\_\_\_\_ the Pre-feasibility Funder under each Study Funding Agreement,
- for the relevant Pre-feasibility Study; and

(B) under an ~~Expansion~~ User Funding Agreement or Access Conditions, the funding provided by:

(1) Aurizon Network in accordance with clause 8.4.4(a)(i); and

(2) the Feasibility Funder under each Study Funding Agreement,

for the relevant Feasibility Study; and

(iii) Aurizon Network must repay or reimburse itself the funding it provided under clause 8.4.4(a)(i) or the Pre-feasibility Funder or Feasibility Funder, as applicable, the funding provided under its Study Funding Agreement when:

(A) in respect of funding for a Pre-feasibility Study, ~~Funder~~, the Study Funding Agreement for the Feasibility Study become unconditional; and

(B) in respect of funding for a Feasibility Study ~~Funder~~:

(1) 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 (save for any condition regarding construction of the Expansion); and

(2) 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 must, 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.~~

(b) If a Pre-feasibility Study or Feasibility Study for an Expansion is funded by more than one Pre-feasibility Funder or Feasibility Funder under Studies Funding Agreements, then Aurizon Network must ensure that each Pre-feasibility Funder and Feasibility Funder either:

(i) provides a bank guarantee for the amount required in the relevant Study Funding Agreement as a condition precedent to that relevant Study Funding Agreement becoming unconditional; or

(ii) has the ability to meet its financial obligations under the relevant Study Funding Agreement. For clarity, Aurizon Network may require a bank guarantee for the amount



required in the relevant Study Funding Agreement as a condition precedent to that relevant Study Funding Agreement becoming unconditional, despite the Pre-feasibility Funder or Feasibility Funder having the ability to meet its financial obligations under the relevant Study Funding Agreement.

- (c) If a Pre-feasibility Study or Feasibility Study is funded under one or more Studies Funding Agreements, then Aurizon Network must perform a reconciliation of funding amounts against amounts that Aurizon Network has incurred in performing the Pre-feasibility Study or Feasibility Study, when:
- (i) a Study Funding Agreement for a Pre-feasibility Study or Feasibility Study is terminated; or
  - (ii) when the report in respect of the Pre-feasibility study or Feasibility Study is completed.
- (d) If the reconciliation under **clause 8.4.4(c)**:
- (i) shows Aurizon Network has incurred amounts greater than amounts funded, then Aurizon Network must be reimbursed by the Pre-feasibility Funders or Feasibility Funders, as applicable, for that amount; or
  - (ii) shows the Pre-feasibility Funders or Feasibility Funders, as applicable, have funded amounts greater than Aurizon Network has incurred, then Aurizon Network must be reimbursed that amount by the Pre-feasibility Funders or Feasibility Funders, as applicable.

## **8.5 Provisional Capacity Allocation**

- (a) Where the scope of a Feasibility Study and the ~~Schedules~~ schedules of the Studies Funding Agreement for that ~~Study~~ study have been:
- (i) agreed by Aurizon Network with all of the proposed Feasibility Funders of the ~~Study~~ study; or
  - (ii) the subject of a QCA determination,
- Aurizon Network will, within five (5) Business Days of that agreement being reached or publication to Aurizon Network of the determination, as applicable, send to each of the Feasibility Funders an executable copy of the Studies Funding Agreement with completed Schedules reflecting the agreement reached or the QCA's determination, as applicable.
- (b) Within twenty (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(c)** and **8.5(d)**, grant that Access Seeker a provisional allocation of the capacity detailed in the Train Service ~~Description~~ description included in the Studies Funding Agreement (**Provisional Capacity Allocation**).
- (c) 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(b)(i)**, that Access Seeker must notify Aurizon Network of that intention in writing within twenty (20) Business Days after Aurizon Network gives a relevant notice under ~~clause~~ **clause 8.7.1(c)(ii)** ~~8.8(c)~~.
- (d) Subject to **clause 8.5(e)**, all or part of a Provisional Capacity Allocation may be withdrawn by Aurizon Network acting reasonably and in good faith, 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 8.4.3(a)(ii)**;
  - (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 twelve (12) Months or more as compared to the timeframe that was proposed when Aurizon Network made the original assessment;
  - (iii) Aurizon Network exercises a right to lawfully terminate the Feasibility Funder's Studies Funding Agreement; 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 one hundred and twenty (120) Business Days (or such longer period as agreed by Aurizon Network acting reasonably and in good faith) after the Feasibility Study is completed (provided that to the extent that the Access Seeker, or its Customer, is a party to a dispute concerning the negotiation of an Access Agreement or User Funding Agreement, then the time from when that dispute is notified, to the determination of that dispute, is excluded from that period).

For clarity, where a Provisional Capacity Allocation is withdrawn under this **clause 8.5(d)**, Aurizon Network must seek to reallocate that Provisional Capacity Allocation in accordance with ~~clause 8.5(f)~~ **8.5(g)**.

- (e) If Aurizon Network intends exercising its rights under **clause 8.5(d)** to withdraw all or a part of a Provisional Capacity Allocation, it must:

- (i) give the relevant Feasibility Funder notice and a reasonable opportunity (for a period of at least twenty (20) Business Days) to explain why Aurizon Network should not exercise its rights in the way proposed; and
  - (ii) permit the Feasibility Funder to assign its Study Funding Agreement to a replacement Access Seeker in accordance with the terms of the Study Funding Agreement.
- (f) 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 notice, including reasons for its decision. That decision takes effect on the later of:
  - (i) ten (10) Business Days after the date the Access Seeker receives that notice; and
  - (ii) the date of determination of a dispute if the Access Seeker disputes Aurizon Network's decision.
- (g) Subject to the terms of the relevant Studies Funding Agreements, where a Provisional Capacity Allocation is withdrawn under **clause 8.5(d)**, Aurizon Network must to the extent feasible (and provided that other Access Seekers will not be materially delayed) 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 8.4.3(a)** and subject to **clause 8.8.3(b)**; and
  - (ii) is willing to enter into a Studies Funding Agreement as a Feasibility Funder for the relevant Feasibility Study [on the same terms and conditions as the Studies Funding Agreement between Aurizon Network and the Feasibility Funder being replaced](#),

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.
- (h) For ~~the avoidance of doubt~~ [clarity](#), if a proposed replacement Feasibility Funder enters into a Studies Funding Agreement in respect of the relevant Feasibility Study, then **clauses 8.5(b) to 8.5(d)** apply to that replacement Feasibility Funder.
  - (i) It will be a term of the Studies Funding Agreement entered into by a replacement Feasibility Funder that it must pay all costs incurred by the exiting Access Seeker to the date of the withdrawal of the Provisional Capacity Allocation under **clause 8.5(d)** to Aurizon Network who must refund those costs to the exiting Access Seeker.

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

## 8.6 Step-in where Aurizon Network fails to enter into Studies Funding Agreement or delay doing so

- (a) If:
  - (i) either:
    - (A) Aurizon Network fails to enter into a Studies Funding Agreement in accordance with this Undertaking or unreasonably delays doing so;
    - (B) Aurizon Network fails to commence a Concept Study, Pre-feasibility Study or Feasibility Study within twenty (20) Business Days after entering into a Studies Funding Agreement in accordance with this Undertaking; or
    - (C) there is a reasonable expectation that the relevant Pre-feasibility Study or Feasibility Study (as applicable) cannot be completed by Aurizon Network prior to the date (**Completion Date**) that is sixty (60) Business Days after the target date specified (including as amended, extended or otherwise varied from time to time) in accordance with the Studies Funding Agreement (**Performance Delay**);
  - (ii) a relevant affected Access Seeker (or, as applicable, Customer) who is a proposed party or party to the relevant Studies Funding Agreement has given notice to Aurizon Network's Executive Officer:
    - (A) identifying the alleged failure, unreasonable delay or Performance Delay; and
    - (B) in the case of the circumstance referred to in **clause 8.6(a)(i)(A)**, (under the hand of a person with authority to bind the Access Seeker and who warrants that he or she has that authority when giving the notice), confirming that the Access Seeker is ready, willing and able to execute a Studies Funding Agreement as previously agreed or as determined by a final, binding determination in accordance with the provisions of this Undertaking;
  - (iii) where the failure or unreasonable delay is that referred to in **clause 8.6(a)(i)(A)**, Aurizon Network fails to enter into the

Studies Funding Agreement within ten (10) Business Days after receiving the relevant notice under **clause 8.6(a)(ii)**; and

- (iv) where there is a failure referred to in **clause 8.6(a)(i)(B)** or an alleged Performance Delay referred to in **clause 8.6(a)(i)(C)**, Aurizon Network:
  - (A) fails to prepare and provide to the relevant affected Access Seeker (or, as applicable, Customer), within ten (10) Business Days after receiving the relevant notice under **clause 8.6(a)(ii)**, a response confirming that Aurizon Network will commence the study or complete the study by the Completion Date (and supported by reasonable particulars demonstrating how completion will be achieved); or
  - (B) after preparing and providing such a response to the relevant affected Access Seeker (or, as applicable, Customer), materially fails, due to its own acts or omissions, to comply with any aspect of that response,

then a relevant affected Access Seeker (or, as applicable, Customer) may refer the matter to the QCA for resolution as a Dispute under **Part 11**.

- (b) If the QCA determines that Aurizon Network:
  - (i) is obliged to enter into a Studies Funding Agreement and, subject to **clause 8.6(a)(iii)**, has failed unreasonably to do so or unreasonably delayed doing so; or
  - (ii) has failed to commence a study under **clause 8.6(a)(i)(B)** and either:
    - (A) failed to provide a response within the time specified in **clause 8.6(a)(iv)(A)**; or
    - (B) has failed to comply with the steps detailed in the response provided under **clause 8.6(a)(iv)(A)**; or
  - (iii) has been the cause of a Performance Delay (as described in **clause 8.6(a)(i)(C)**) and either:
    - (A) failed to provide a response within the time specified in **clause 8.6(a)(iv)(A)**; or
    - (B) has failed to comply with the steps detailed in the response provided under **clause 8.6(a)(iv)(A)**,

the QCA may (with the approval of all relevant Access Seekers and Customers) determine that the relevant study be undertaken by an appropriately qualified and experienced nominee of all relevant Customers.

- (c) If the QCA 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) the nominee must:
    - (A) comply with all confidentiality obligations that Aurizon Network is required to comply with in respect of the information coming to their knowledge by reason of their appointment and performance of the study; and
    - ~~(A)~~(B) give Aurizon Network an 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 the study which if disclosed or used for another purpose could constitute a breach of Aurizon Network's obligations under **Part 3**;
    - ~~(ii)~~(iii) if the nominee provides Aurizon Network the undertaking referred to in **clause 8.6(c)(ii)**, then despite Aurizon Network's obligations under **Part 3** Aurizon Network must provide the nominee with all reasonable assistance, including information, which is reasonably required by the nominee to undertake the applicable study; and
    - ~~(iii)~~(iv) Aurizon Network must use the relevant study output for the purposes for which it was provided.
- (d) If a study is undertaken by a nominee of all relevant Customers as contemplated by **clause 8.6(c)** Aurizon Network must implement the output of the study for completion of the applicable Feasibility Study, User Funding Agreement or Access Agreement, except to the extent that Aurizon Network successfully seeks a review of the scope (which may include the standard of work) of the Expansion referred to in the study by means of a QCA determination.
- (e) Aurizon Network:
- (i) may refer the matter to the QCA under **Part 11** within twenty (20) Business Days following publication to Aurizon Network of the study by the nominee;
  - (ii) must provide notice of its dispute to the relevant Access Seekers, each of whom ~~shall have a right to~~ may make submissions to the QCA in respect of the dispute; and
  - (iii) must provide written submissions to the QCA, with copies to each of the relevant Access Seekers, detailing why, in Aurizon Network's view, the scope (which may include the standard of work) decided by the nominee is not appropriate and how it should be amended.

## 8.7 Funding an Expansion

### 8.7.1 *General*

- (a) Subject to this **clause 8.7** and **clause 8.8**, 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 and Aurizon Network must agree to the Access Seeker funding its portion of the cost even if Aurizon Network is willing to fund the Expansion, with or without Access Conditions.
- ~~(i) is obliged under this Undertaking to fund the Expansion itself; or~~
- ~~(ii) is not obliged to fund the Expansion but is willing to fund the Expansion, with or without Access Conditions.~~
- (b) For ~~the avoidance of doubt~~ clarity, any obligation on Aurizon Network to construct or permit an Expansion is subject to **clause 8.2.1(c)**.
- (c) Aurizon Network will:
- (i) provide an indication by notice to ~~notify~~ the Pre-feasibility Funders within ten (10) Business Days after the relevant Studies Funding Agreements become unconditional of whether:
- (A) Aurizon Network is likely to be willing to fund the Expansion without Access Conditions;
- (B) Aurizon Network is likely to not be willing to fund the Expansion; or
- (C) the Access Conditions (if any) on which Aurizon Network is likely to be willing to fund the Expansion; and
- (ii) confirm by notice to the Feasibility Funders within twenty (20) Business Days after the relevant Studies Funding Agreements become unconditional whether:
- (A) Aurizon Network has changed its position as set out in its notice under **clause 8.7.1(c)(i)**; and
- (B) if Aurizon Network is willing to fund the Expansion, the Access Conditions (if any) on which Aurizon Network is willing to fund the Expansion.
- (d) If Aurizon Network has not given a notice under **clause 8.7.1(c)** or **clause 8.2.1(b)**, then (for the purpose of Access Seekers commencing the processes under **clause 8.8.1(a)**) Aurizon Network is deemed not to be willing to fund the Expansion.
- (e) If Aurizon Network has given a notice under either **clause 8.7.1(c)(i)(C)** or **8.7.1(c)(ii)(B)** and the relevant Access

Seeker is willing to negotiate, then **clause 6.13** will apply to the terms on which Aurizon Network will fund the Expansion.

- (f) Where Aurizon Network has given a notice under **clause 8.7.1(c)(ii)(B)**, an Access Seeker may require Aurizon Network to negotiate a User Funding Agreement for ~~all or part of an~~ the Expansion in parallel to any other negotiations.
- (g) **Clause 8.7.1(c)** does not prevent Aurizon Network from subsequently notifying relevant parties of whether Aurizon Network is willing to fund the Expansion. Any notice under this **clause 8.7.1(g)** does not prevent Access Seekers from pursuing User Funding in preference to the proposal from Aurizon Network for it to fund the Expansion.
- (h) 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.
- (i) It is acknowledged that if an Expansion ~~is may be~~ funded partly by Expansion Funders and partly by Aurizon Network, the terms of the SUFA to be entered into by the Expansion Funders may require amendment to ensure Aurizon Network is in no worse taxation or accounting position than if the Expansion Funders funded the entire Expansion.
- (j) Where Aurizon Network is:
  - (i) granting a Provisional Capacity Allocation under **clause 8.5(b)**; or
  - (ii) negotiating or entering into an Access Agreement,Aurizon Network ~~will~~ must 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.

#### **8.7.2** *Inclusion of Expansion cost in ~~Regulated~~ Regulatory Asset Base*

- (a) The ~~Regulated~~ Regulatory Asset Base may include User Funded Expansions (subject to the QCA's approval), notwithstanding that the cost of such Expansions are not paid for by Aurizon Network.

- (b) If the scope of works (including the standard of work) and an estimated cost of an Expansion is: ~~either~~
  - (i) agreed through a Feasibility Study; ~~or~~
  - (ii) determined by the QCA as contemplated by this **Part 8**; or
  - (iii) determined by a nominee under **clause 8.6**,

Aurizon Network must promptly apply to the QCA following agreement or determination of scope for pre-approval in accordance with the process in clause 2 of Schedule E.



~~(b)~~(c) For clarity and in addition to **clause 8.7.2(b)**, promptly after a written request from an Expansion Funder, Aurizon Network must either seek:

- (i) a vote by Interested Participants in accordance with **clause 4 of Schedule E** to accept; or
- (ii) approval from the QCA for, the prudence and efficiency of the proposed scope, cost and standard of work for the relevant Expansion.

~~(e)~~(d) If the capital expenditure for the Expansion is approved for inclusion into the ~~Regulated~~ Regulatory Asset Base by the QCA:

- (i) the actual cost of the Expansion up to the total of the pre-approved proposed cost under **Schedule E** will be automatically included into the Regulatory Asset Base in accordance with the process in **Schedule E**; and
- (ii) the amount of any actual cost above the pre-approved proposed cost must be approved by the QCA for it to be included into the Regulatory Asset Base.

~~(e)~~(e) If the capital expenditure for the Expansion is not approved for inclusion into the ~~Regulated~~ Regulatory Asset Base by the QCA, as contemplated by **clause 8.7.2(d)**, Aurizon Network is not obliged to:

- (i) fund the cost of that Expansion; nor
- (ii) construct that Expansion without User Funding.

~~(e)~~(f) If the Expansion is a User Funded Expansion:

- (i) as soon as is reasonably practicable on completion of the Expansion, Aurizon Network must apply to the QCA to have all of the costs of a User Funded Expansion included in the Regulatory Asset Base. The application must identify that it is made at the request of the Expansion; and
- (ii) the Expansion Funders may each choose to make their own independent submissions to the QCA in relation to any application made under **clause 8.7.2(c)(ii)** or **8.7.2(f)(i)**.

## 8.8 User Funded Expansions

### 8.8.1 *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 8.7.1:
  - (i) each proposed Expansion Funder must give 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 notice, Aurizon Network and the proposed Expansion Funders will negotiate in good faith a User Funding Agreement;
- (iii) if required by the proposed Expansion Funder, an entity other than an Access Seeker or Access Holder (or its Customer) may be the Preference Unit Holder under the User Funding Agreement in respect of that Access Seeker or Access Holder's portion of the cost of the Expansion;
- (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 Expansion Funders (in which case, any amendments proposed to those terms must be negotiated by both Aurizon Network and the Expansion Funder acting reasonably and in good faith);
- ~~(iv)~~(v) Aurizon Network must provide the proposed Expansion Funders with relevant scope and cost information (clarity, nothing in this clause 8.8.1(a)(v) requires Aurizon Network to disclose any information that is commercially sensitive to the Aurizon Group); and
- ~~(v)~~(vi) upon the User Funding Agreement being agreed by Aurizon Network and the Expansion Funders, 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 Expansion Funders and other relevant parties (for example, the State, ~~if applicable~~), as applicable; and
  - (B) Aurizon Network will execute the User Funding Agreement in accordance with its requirements.
- (b) Aurizon Network will use reasonable endeavours to procure the State to enter into a User Funding Agreement.

### **8.8.2 *Inconsistency with a User Funding Agreement***

To the extent of any inconsistency, but except for **clauses 8.9.3** and **8.9.4**, the terms of an executed User Funding Agreement prevail over the terms of this Undertaking as between Aurizon Network and the Expansion Funders (and their Customers, if relevant).

### **8.8.3 *Tax rulings***

- (a) Aurizon Network must seek an appropriate form of statutory severance, severing any Expansion funded under a User Funding Agreement from the land on which it sits. The QCA must assist Aurizon Network in obtaining that statutory severance.
- (b) Aurizon Network must prepare an application to the Australian Taxation Office for an administratively binding advice in respect of the

matters set out in **clause 8.8.3(f)** for a Standard User Funding Agreement.

- (c) In preparing that application Aurizon Network must:
- (i) notify Access Seekers, Access Holders and their Customers, if any, and any relevant coal industry groups representing those parties that it is preparing the application;
  - (ii) work collaboratively with Access Seekers, Access Holders and their Customers, if any, and any coal industry groups representing those parties in preparing that application, including making the application jointly with interested Access Seekers, Access Holders and their Customers;
  - (iii) include any Access Seeker, Access Holder and their Customers, if any, and any coal industry groups representing those parties that has expressed an interest in the application in any negotiations with the Australian Taxation Office; and
  - (iv) provide copies of all correspondence between it and the Australian Taxation Office in respect of the application (including any decision) to the QCA and any Access Seeker, Access Holder or their Customers and any coal industry groups that represent those parties that request that information.
- (d) If Aurizon Network and the interested Access Seekers, Access Holders or their Customers or a coal industry group that represents those parties cannot agree (on content or process for the application), then any party may refer the matter to the QCA for a binding determination.
- (e) No party is required to submit anything to the Australian Taxation Office which is false or misleading.
- (f) The application referred to in **clause 8.8.3(b)** must seek an administratively binding advice that addresses the following matters:
- (i) that the User Funding Trust will not join the Aurizon Consolidated Group (as defined in the Standard User Funding Agreement);
  - (ii) that the costs incurred by the User Funding Trustee in respect of issuing the ordinary units and preference units under the Standard User Funding Agreement will be deductible over five (5) years in accordance with section 40-880 of the Tax Act;
  - (iii) that the preference units issued under the Standard User Funding Agreement will not satisfy the 'debt test' in the debt/equity rules in Division 974 of the Tax Act;

- (iv) that the fee paid by the User Funding Trustee under the rail corridor agreement that forms part of the Standard User Funding Agreement will be deductible to the User Funding Trustee under section 8-1 of Tax Act;
- (v) that the rent receivable under the extension infrastructure sub-lease that forms part of the Standard User Funding Agreement will be:
  - (A) assessable to the User Funding Trustee on a due and receivable basis under section 6-5 of the Tax Act; and
  - (B) deductible to Aurizon Network under section 8-1 of the Tax Act;
- (vi) that the sub-lease under the extension infrastructure sub-lease that forms part of the Standard User Funding Agreement will not give rise to a capital gain to the trust established under the Standard User Funding Agreement as a result of capital gains tax event F1 in section 104-110 of the Tax Act;
- (vii) that the transfer and lease-back of the commissioned railway transport infrastructure under **clause 3.1** of the extension infrastructure head lease that forms part of the Standard User Funding Agreement will not give rise to:
  - (A) an assessable or deductible balancing adjustment event under Division 40 of the Tax Act;
  - (B) capital gain or capital loss to the User Funding Trustee or QTH under Part 3-1 of the Tax Act; or
  - (C) assessable or deductible balancing adjustment event to QTH under Division 40 of the Tax Act;
- (viii) that the User Funding Trust will not be a 'prescribed trust' for the purposes of Division 6B of the Tax Act;
- (ix) that the User Funding Trust will not be a 'public trading trust' for the purposes of Division 6C of the Tax Act;
- (x) that the User Funding Trust will not be a 'closely held trust' for the purposes of Division 6D of the Tax Act;
- (xi) that the User Funding Trust is the 'holder' of the assets comprising the "extension infrastructure", as defined in the Standard User Funding Agreement, under section 40-40 of the Tax Act and is eligible to claim depreciation on all assets comprising the extension infrastructure, including the User Funding Trust's cost in respect of the assets and whether the assets comprise a composite or single asset;

- (xii) that the User Funding Trust is entitled to a deduction for any capital works relating to the extension under Division 43 of the Tax Act;
  - (xiii) that a distribution of the User Funding Trust's income in excess of the User Funding Trust's taxable income will not be assessable income of a preference unit holder and that any such amounts will be characterised as tax deferred distributions that reduce the preference unit holder's cost base in their preference units under capital gains tax event E4 in section 104-70 of the Tax Act;
  - (xiv) that the User Funding Trust is a 'fixed trust' including any relevant exercise of the Commissioner of Taxation's discretion with regard to tracing through listed public companies;
  - (xv) that the Taxation of Financial Arrangements rules in Division 230 of the Tax Act will not apply to alter the time when receipts or payments due under the Standard User Funding Agreement are assessable or deductible for tax purposes;
  - (xvi) that the general anti-avoidance provisions in Part IVA of the Tax Act will not apply to the arrangements contemplated by the Standard User Funding Agreement;
  - (xvii) that the lease under the extension infrastructure head lease that forms part of the Standard User Funding Agreement will not give rise to a capital gain to the User Funding Trust as a result of capital gains tax event F1 in section 104-110 of the Tax Act;
  - (xviii) that section 21A of the Tax Act will not apply to include an amount in Aurizon Network's assessable income in relation to the construction of the extension under the Standard User Funding Agreement; and
  - (xix) that there will be no capital gain to Aurizon Network arising from the grant of a licence under the rail corridor agreement that forms part of the Standard User Funding Agreement as a result of capital gains tax event D1 in section 104-35 of the Tax Act.
- (g) SUFA documentation will govern Aurizon Network's obligation to seek a tax ruling on relevant aspects of executed SUFA documentation.
- (h) [For clarity, nothing in this clause 8.8.3 requires Aurizon Network to disclose any information to any Access Seeker, Access Holder or its Customer \(or a coal industry group that represents those parties\) that is commercially sensitive to the Aurizon Group.](#)

#### 8.8.4 Development and ~~r~~Review of the SUFA

- (a) Within three (3) months after the Approval Date, Aurizon Network must submit to the QCA:
  - (i) a proposed Standard User Funding Agreement (based on the standard user funding agreement developed and submitted to the QCA for approval under the 2010 Undertaking and taking into account the QCA's decision in respect of that document); and
  - (ii) a draft amending access undertaking incorporating amendments to this Undertaking it considers reasonably necessary.
- (b) The QCA must assess the proposed Standard User Funding Agreement and draft amending access undertaking and, if deemed appropriate, seek submissions from stakeholders on that proposal.
- (c) If the QCA agrees with Aurizon Network's proposal submitted under **clause 8.8.4(a)**, it must give notice to Aurizon Network and relevant stakeholder of its approval, specifying a date upon which the proposed amendments will take effect.
- (d) If:
  - (i) Aurizon Network does not make any submission under **clause 8.8.4(a)** within the applicable timeframe; or
  - (ii) the QCA does not agree with the proposal submitted by Aurizon Network under **clause 8.8.4(a)**,

then:

  - (iii) the QCA must notify Aurizon Network and relevant stakeholder of the reasons for its disagreement; and
  - (iv) the QCA may require Aurizon Network to amend the proposed Standard User Funding Agreement in the way the QCA considers appropriate to enhance the workability of the document and resubmit for approval.
- ~~(h)~~(e) Promptly after any of the following:
  - (i) executing the first User Funding Agreement in the form of the SUFA (or in the event that Aurizon Network and the Expansion Funders are unable to agree on any User Funding Agreement for execution after at least forty (40) Business Days of good faith negotiations);
  - (ii) within sixty (60) Business Days of the date of a written request from the QCA; or
  - (iii) receipt of the Australian Taxation Office's response to the application referred to in **clause 8.8.3(b)** which is either:

- (A) an administratively binding advice that sets out matters in the SUFA that must be amended; or
- (B) provides an indication of matters that should be amended in order to achieve a desirable administratively binding advice,

Aurizon Network will:

- (iv) undertake a review of the SUFA including having regard to the principles developed by Aurizon Network in consultation with industry participants; and
- (v) consult with the Expansion Funders and Access Seekers about the workability of the SUFA for User Funding,

and, after doing so:

- (vi) 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
- (vii) 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.

~~(f)~~ (f) If:

- (i) Aurizon Network does not make any submission under **clause 8.8.4(e)** ~~8.8.6(a)~~ within the timeframe specified; or
- (ii) the QCA refuses to approve the proposed amendments submitted by Aurizon Network or disagrees with Aurizon Network's reasons provided for not amending the SUFA,

then:

- (iii) the QCA must notify Aurizon Network of the reasons for its refusal or disagreement (as applicable); and

- (A) where the review has been initiated by the QCA under **clause 8.8.4(e)** ~~8.8.6(a)~~, the QCA may require Aurizon Network to amend the proposed amendments in a way the QCA considers appropriate to enhance the ~~develop amendments to the SUFA to improve its~~ workability of the document and resubmit for approval.

~~(g)~~ (g) Nothing in this **clause 8.8.4** prevents Aurizon Network from submitting to the QCA for approval proposed amendments to the SUFA it considers necessary to improve its workability, even if the QCA has previously refused to accept proposed amendments in relation to the SUFA.

## 8.9 Contracting for Capacity

### 8.9.1 *Access Agreements conditional on an Expansion*

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

- (a) that Access Agreement is subject to a condition precedent that requires the relevant Expansion to have been completed and commissioned;
- (b) that Access Agreement includes terms and conditions so that the Access Rights relevant to the Expansion are limited to the available Capacity created by the Expansion; and
- (c) either:
  - (i) the Access Seeker and Aurizon Network have agreed the scope of work for the Expansion; or
  - (ii) the scope of work for the Expansion has been determined through resolution of ~~the a Dispute~~ [dispute](#) in accordance with **clause 11.1**.

### 8.9.2 *Capacity analysis*

~~(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 (6) 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:

- (a) the Existing Capacity at the time; less
- (b) the Existing Capacity of the system in the absence of the Expansion, using consistent System Operating Parameters. Aurizon Network must notify all of the relevant Conditional Access Holders and the QCA of the conclusions of that assessment and the basis for those conclusions.

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

### 8.9.3 *Capacity shortfall*

- (a) If Aurizon Network's assessment under **clause 8.9.2(a)** ~~8.9.2~~ indicates that there is a Capacity Shortfall in relation to Conditional Access Holders, then:



- (i) the Conditional Access Rights of each Conditional Access Holder are proportionally reduced in accordance with this Undertaking or as agreed by all affected Conditional Access Holders; and
  - (ii) subject to **clause 8.9.3(b)**, where those Conditional Access Rights are reduced, each Conditional Access Holder will be deemed to have lodged an Access Application with Aurizon Network for Access Rights equivalent to that reduction if they notify Aurizon Network within twenty (20) Business Days after the reduction occurs that they wish to seek Access Rights equal to that reduction.
- (b) For the purpose of a Conditional Access Holder's Access Application under **clause 8.9.3(a)**~~8.9.3~~:
- (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(c)**; and
  - (iii) **clause 4.4(d)** applies to the Access Application.
- (c) If the scope of works (including the standard of work) for an Expansion is altered or determined by unanimous agreement of Conditional Access Holders or through resolution of the ~~Dispute~~ [dispute](#) in accordance with **clause 11.1** and:
- (i) the Expansion is constructed in accordance with that altered or determined scope and standard; and
  - (ii) the Expansion results in a Capacity Shortfall (determined in accordance with the process in **clause 8.9.3(a)**),
- then Aurizon Network (acting reasonably) must calculate the Capacity Shortfall, if any, that would have existed if the scope of work (including standard of work) previously proposed by Aurizon Network had been constructed (**AN Shortfall**).
- (d) ~~If the AN Shortfall is less than the Capacity Shortfall, then:~~ [Aurizon Network must comply with clause 8.9.4\(ii\) in respect of any AN Shortfall and give the Affected Access Holders a priority allocation of Capacity arising out of the resulting Shortfall Expansion.](#)
- (i) ~~Aurizon Network must:~~
    - (A) ~~fund an Expansion to deliver the additional Capacity needed to address the AN Shortfall; and~~

~~(B) — give the Affected Access Holders a priority allocation of Capacity arising out of that Expansion; and~~

- (e) In addition to clause 8.9.3(d), if the AN Shortfall is less than the Capacity Shortfall, then the Affected Access Holders may:
- (i) make an irrevocable election (subject to their right to seek an Expansion at a later date) to have their rights of Access remain compressed (in accordance with the process for compression in this Undertaking) in relation to that Expansion as a result of any remaining Capacity Shortfall after the AN Shortfall is addressed, in which case their Access Rights in their Access Agreements will be amended to reflect the compression; or
  - ~~(f)(ii)~~ (ii) elect to seek to fund an Expansion to address the difference in Capacity between the AN Shortfall and the Capacity Shortfall in which case Aurizon Network must give the Affected Access Holders a priority allocation of Capacity in an existing or future process for the scoping and funding of a related Expansion that can be utilised to address the Capacity Shortfall.

~~(g) — If the AN Shortfall is equal to or greater than the Capacity Shortfall:~~

~~(i) — Aurizon Network must fund an Expansion to deliver the additional Capacity needed to address the Capacity Shortfall; and~~

~~(ii) — give the Affected Access Holders a priority allocation of Capacity arising out of that Expansion.~~

~~(h)~~ (f) Aurizon Network will not breach this **Part 8** by giving the Affected Access Holders priority allocation of Capacity in accordance with this **clause 8.9.3**.

#### **8.9.4 Funding a Shortfall Expansion**

- (a) Subject to any obligation on Aurizon Network to fund an Expansion to address an AN Shortfall under clause 8.9.4(a)(ii) or an election by the Affected Access Holders to fund an Expansion to address the difference in Capacity between the AN Shortfall and a Capacity Shortfall as set out in **clause 8.9.3**, where an Expansion (**Shortfall Expansion**) is required as a result of a Capacity Shortfall arising in respect of an earlier Expansion (**Earlier Expansion**) and that Shortfall Expansion is technically and economically feasible:
- (i) subject to **clause 8.9.4(a)(ii)** ~~and 8.9.4(a)(iii)~~, 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 must bear the cost of the Shortfall Expansion if they require it, failing which its Access Rights will be reduced in accordance with **clause 8.9.5**;

(ii) if the Capacity Shortfall was ~~either or both~~ caused (partly or wholly) by a default by, or the negligent acts or omissions of, Aurizon Network (and for the purposes of this clause an AN Shortfall is deemed to have been caused by a default by, or the negligent act or omission of, Aurizon Network), Aurizon Network will bear the cost of:

(A) the Shortfall Expansion if the Capacity Shortfall was caused wholly by a default by or the negligent act or omission of Aurizon Network; or

~~(D)~~(B) the part of the Shortfall Expansion relating to the AN Shortfall, if the Capacity Shortfall included an AN Shortfall and the Capacity Shortfall (other than the AN Shortfall) was not otherwise caused by a default by, or the negligent act or omission of, Aurizon Network.

~~(E) caused by Aurizon Network's failure to deliver the agreed, determined or approved scope of work for the relevant Expansion and that failure is not excused under the SUFA or the Access Conditions relating to that Expansion; or~~

~~(F) equal to or less than the AN Shortfall;~~

~~(G) Aurizon Network will bear the cost of the Shortfall Expansion; and~~

~~(ii) if the Capacity Shortfall included an AN Shortfall, then despite this **clause 8.9.4**, Aurizon Network must fund that part of the Shortfall Expansion to deliver the additional Capacity needed to address the AN Shortfall.~~

~~(b) Nothing in this **clause 8.9** obliges Aurizon Network to do or not to do anything that would cause or contribute to Aurizon Network failing to comply with this Undertaking, any legal obligation or any agreement. **[Drafting Note: The QCA is inclined to delete this clause. Accordingly, the QCA is seeking advice from stakeholders on the purpose of this clause and the risk it is intended to manage.]**~~

### 8.9.5 *Reduction of Conditional Access Rights due to Capacity Shortfall*

- (a) If an Access Agreement nominates a Train Service Type as being conditional on completion and commissioning of an Expansion, then:
- (i) the Access Rights for that Train Service Type under the Access Agreement are Conditional Access Rights for that Train Service Type; and
  - (ii) despite the Train Service Commitment Date specified in the Train ~~Service~~-Description for the Conditional Access Rights, the Train Service Commitment Date for the Conditional Access Rights will be taken to be the later of:
    - (A) the Train Service Commitment Date for the Conditional Access Rights specified in the Train ~~Service~~-Description for the Conditional Access Rights; and
    - (B) the date upon which all Segments are completed and commissioned.

~~(b) If Aurizon Network's assessment under **clause 8.9.2(a)** indicates that there is a Capacity Shortfall in relation to Conditional Access Holders, then:~~

~~(i) the Conditional Access Rights of each Conditional Access Holder are proportionally reduced in accordance with this Undertaking or as agreed by all affected Conditional Access Holders;~~

~~(#)(b) Where **clause 8.9.3(a)(i)** applies, the Reduced Conditional Access Rights for a Segment which has a Capacity Shortfall will be calculated in accordance with the following formula:~~

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

where:

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

- number of whole Train Services)
- EAR = the lesser of:
- (a) the sum of CC and IAC; and
  - (b)  $\sum \text{CAR}_{(\text{Original})}$ ,  
(expressed as a number of ~~Network~~-Train Services)
- CC = the Capacity Change for the relevant Segment of the Expansion (expressed as a number of ~~Network~~-Train Services)
- IAC = the amount (expressed as a number of ~~Network~~-Train Services) specified as the “Initial Available Capacity” for the Segment in the Train ~~Service~~-Description for the Conditional Access Rights in the relevant Access Agreement
- $\text{CAR}_{(\text{Original})}$  = the Conditional Access Rights (expressed as a number of Train Services) in the relevant Access Agreement
- $\sum \text{CAR}_{(\text{Original})}$  = the sum of:
- (i) the Conditional Access Rights (expressed as a number of ~~Network~~-Train Services) in the relevant Access Agreements; and
  - (ii) for each ~~Other~~-other Conditional Access Holder for the Segment of the Expansion, the ~~Other~~-other Conditional Access Holder’s ~~Other~~-other Conditional Access Rights for the Expansion (expressed as a number of ~~Network~~-Train Services) in each of their Access Agreements.

~~(iii)~~(i) within thirty (30) days after the completion of Aurizon Network’s assessment under ~~clause 8.9.28-9.2(a)~~, Aurizon Network must give each ~~affected~~-Affected Access Holder a notice (**Capacity Assessment Notice**) which specifies:

- (A) the Conditional Access Rights;
- (B) the amount of the Capacity Change for each Segment of the Expansion;
- (C) whether or not there is a Capacity Shortfall in respect of any Segment of the Expansion; and
- (D) if there is a Capacity Shortfall in respect of any Segment of the Expansion, the Reduced Conditional Access Rights for each such Segment of the Expansion (calculated in accordance with the formula in **clause 8.9.5(b)**), including reasonable details of the calculation of the Reduced Conditional Access Rights for each Segment.

- (c) The Conditional Access Rights in the relevant Access Agreement will be taken to be varied to the lowest of the Reduced Conditional Access Rights for a Segment of the Expansion as:
- (i) specified in the Capacity Assessment Notice; or
  - (ii) as agreed or determined through the dispute resolution process,
- with effect on the later of:
- (iii) twenty (20) Business Days from receipt by the Access Holders of the Capacity Assessment Notice; and
  - (iv) if the Capacity Assessment Notice has been referred to the QCA for resolution of a Dispute, ten (10) Business Days after the Dispute is agreed or determined.

## Part 9: Connecting Private Infrastructure

### 9.1 Connecting Infrastructure

- (a) The Private Infrastructure Owner must give Aurizon Network a written proposal for the proposed connection to the Rail Infrastructure. The written proposal must provide reasonably sufficient details about the proposed connection to allow it to be properly assessed by Aurizon Network against the criteria in **clause 9.1(b)** and for development of a Rail Connection Agreement.
- (b) Within ~~two (2) Months~~ (or such longer period as may be agreed between Aurizon Network and the Private Infrastructure Owner) of receiving the written proposal, Aurizon Network must assess the proposal, acting reasonably and in good faith, and decide whether or not it meets the following criteria:
- (i) the proposed Connecting Infrastructure is for the purpose of connecting to the Rail Infrastructure in order to allow Trains operating on that Private Infrastructure to enter or exit from the Rail Infrastructure for the purpose of Access;
  - (ii) the proposed Connecting Infrastructure will meet the technical specifications required by Aurizon Network (acting reasonably) for connection to the ~~Network~~ Rail Infrastructure;
  - (iii) the proposed Connecting Infrastructure is to be constructed to a standard appropriate to the nature of the traffic and the current service standards of the adjoining Rail Infrastructure (including any planned or anticipated Expansion);
  - (iv) the proposed Connecting Infrastructure will not adversely impact on safety; and
  - (v) the proposed Connecting Infrastructure will not, after completion and commissioning of the proposed connection and any related Expansion, reduce Capacity or Supply Chain Capacity.
- (c) Connecting Infrastructure must be owned by Aurizon Network -or, where Aurizon Network holds the Rail Infrastructure of which that Connecting Infrastructure will form a part under a lease, must be included under that lease as part of the leased infrastructure.
- (d) Within ~~five (5) Business Days~~ of making its decision under **clause 9.1(b)**, Aurizon Network must notify the Private Infrastructure Owner and the QCA of that decision:
- ~~(i) Aurizon Network's decision; and~~
  - (ii)(e) If Aurizon Network decides the proposal meets the criteria under clause 9.1(b), then within two (2) Months of notifying the Private Infrastructure Owner under clause 9.1(d), Aurizon Network must

agree with the Private Infrastructure Owner the timeframes within which Aurizon Network (acting reasonably) will:

~~(A)~~(i) enter into a Rail Connection Agreement with the Private Infrastructure Owner;

~~(B)~~(ii) design and construct any Connecting Infrastructure; and

~~(C)~~(iii) commission any Connecting Infrastructure; and;

(iv) complete any other matters Aurizon Network and the Private Infrastructure Owner consider necessary.

(each a **Connection Milestone**) which must be supported by reasons explaining the length of the timeframe selected by Aurizon Network.

~~(f)~~ Aurizon Network and the Private Infrastructure Owner may agree to delay setting the Connection Milestones under **clause 9.1(e)** until an Access Agreement which requires the proposed connection to the Rail Infrastructure to be completed has been entered into between the parties.

~~(g)~~ Within five (5) Business Days of reaching agreement under **clause 9.1(e)** or agreeing under **clause 9.1(f)** to delay setting the Connection Milestones, Aurizon Network must notify the QCA of either each Connection Milestone (and the reasons supporting each Connection Milestone) or the decision to delay.

~~(e)~~(h) Where Aurizon Network decides that the criteria set out in **clause 9.1(b)**~~9.1(e)~~ are, or will be, satisfied; and that **clause 9.1(c)**~~9.1(d)~~ will be complied with, it must permit the connection of the Private Infrastructure to the Rail Infrastructure subject to:

(i) Aurizon Network and the Private Infrastructure Owner entering into a Standard Rail Connection Agreement (unless the Private Infrastructure Owner agrees with Aurizon Network to vary the terms of the Standard Rail Connection Agreement, in which case any amendments proposed to those terms must be negotiated by both Aurizon Network and the Private Infrastructure Owner acting reasonably and in good faith);

(ii) Aurizon Network gaining access, on terms acceptable to Aurizon Network (acting reasonably and in good faith), to the land necessary to construct, operate, use and maintain the Connecting Infrastructure; and

(iii) Aurizon Network and the Private Infrastructure Owner or any other relevant person entering into any other agreements in relation to:

(A) the design, construction, project management or commissioning of the Connecting Infrastructure; or



(B) other works relating to the proposed connection, required under the Rail Connection Agreement or any Law.

~~(f)~~(i) If Aurizon Network decides, acting reasonably and in good faith, ~~either~~ ~~or both~~:

- (i) in accordance with **clause 9.1(b)**, that the criteria set out in **clause 9.1(b)** have not been satisfied; and
- (ii) to refuse to enter into a Rail Connection Agreement as a result,

then Aurizon Network must, within ~~{~~five (5) Business Days~~}~~ of making its decision:

- (iii) notify the Private Infrastructure Owner and the QCA of its decision, if it has not already done so under **clause 9.1(d)**; ~~9.1(d)(i) and~~
- (iv) provide reasons for its decision to the Private Infrastructure Owner and the QCA; and
- (v) specify the amendments it requires to be made to the Private Infrastructure Owner's proposal in order to satisfy the criteria in **clause 9.1(b)** and ~~to~~ enable Aurizon Network to enter into a Rail Connection Agreement.

~~(g)~~(j) If a Private Infrastructure Owner is notified by Aurizon Network under **clause 9.1(i)(iii)**, the Private Infrastructure Owner may re-submit its proposal to Aurizon Network under **clause 9.1(a)**, in which case Aurizon Network must recommence the assessment and decision-making process under **clause 9.1(a)**.

~~(h)~~(k) If connection of the Private Infrastructure to the Rail Infrastructure is permitted under this **clause 9.1**, then unless otherwise agreed with the Private Infrastructure Owner, Aurizon Network:

- (i) must be responsible for designing, constructing, project managing and commissioning the Connecting Infrastructure;
- (ii) must do so in accordance with the relevant Rail Connection Agreement, Construction Agreement and any other relevant agreement without unreasonable delay;
- (iii) is entitled to payment for that design, construction, project management and commissioning consisting only of reimbursement of its reasonable direct costs and excluding any and all profit, margin or overhead relating to the Connecting Infrastructure; and
- (iv) must not in the technical specifications required by Aurizon Network for connection to the ~~Network~~Rail Infrastructure, require higher standards for the design or construction than those required under the relevant legislation and safety standards.

~~(i)~~(l) Aurizon Network must pay all reasonable costs (excluding Consequential Loss) incurred by the Private Infrastructure Owner, an Access Seeker or Access Holder, arising out of Aurizon Network's unreasonable delay in:

- (i) entering into:
  - (A) a Rail Connection Agreement;
  - (B) an agreement relating to the design and construction, project management and/or commissioning of any Connecting Infrastructure required under the Rail Connection Agreement or any Law; and
  - (C) an agreement relating to any other works required for the connection or proposed connection under the Rail Connection Agreement or any Law;
- (ii) designing and constructing any Connecting Infrastructure; ~~and~~
- (iii) commissioning any Connecting Infrastructure; ~~and~~
- (iv) completing any other matters that Aurizon Network and the Private Infrastructure Owner consider necessary.

For the purposes of this **clause 9.1(l)**~~9.1(j)~~, "Consequential Loss" means:

- (v) loss of revenue, loss of profits, or loss of production;
- (vi) loss of whatever nature concerning supply of product from a mine to any third party or to make product available to transport;
- (vii) loss of business opportunities;
- (viii) loss of or damage to reputation or good will;
- (ix) wasted overheads;
- (x) loss of or damage to credit rating; and
- (xi) ~~loss of coal sales and~~ loss or damage that does not naturally, according to the usual course of things, flow from the delay.

~~(j)~~(m) In **clause 9.1(l)**~~9.1(j)~~, "unreasonable delay" includes, but is not limited to, Aurizon Network's failure to comply with a Connection Milestone, except to the extent that Aurizon Network's failure to meet the Connection Milestone is a direct result of an event or factor outside Aurizon Network's reasonable control.

~~(k)~~(n) Without limiting clause 11.1.1, if the Private Infrastructure Owner, the Access Seeker or Access Holder and Aurizon Network cannot agree as to:

- (i) the negotiation of an agreement on the Connection Milestones under clause 9.1(e); whether the Connection Milestone is reasonable, having regard to the reasons provided by Aurizon Network under clause 9.1(e)(ii);
- (ii) whether either party Aurizon Network has unreasonably delayed the formation of the agreements mentioned in **clause 9.1(l)(i)**~~9.1(i)(i) to (iii)~~; or
- (iii) the amount of reasonable costs incurred by the Private Infrastructure Owner, the Access Seeker or Access Holder,

any party may seek to resolve the Dispute in accordance with **Part 11**.

Nothing in this **Part 9** requires or obliges either Aurizon Network or the Private Infrastructure Owner to agree that the technical specifications or the completed construction of either the Private Infrastructure or any Connecting Infrastructure is required to the standards or condition for the design or construction of any relevant Rail Infrastructure (including any planned or anticipated Expansion).

## Part 10: Reporting, compliance and audits

**[Under review]**

### 10.1 Overview **[New Clause]**

This Part 10 sets out various provisions relating to the reporting requirements for Aurizon Network, in particular:

- (a) **clause 10.3** sets out the reports that Aurizon Network must provide in respect of network performance, including maintenance cost reports and network performance reports;
- (b) **clause 10.4** sets out the reports that Aurizon Network must provide in respect of other matters, particularly the annual financial statements, the Regulatory Asset Base roll-forward report and the findings on the conditions based assessment;
- (c) **clause 10.5** sets out the actions that Aurizon Network must take and the reports that Aurizon Network must provide to assist with showing its compliance with this Undertaking;
- (d) **clause 10.6** sets out the audits that Aurizon Network must undertake and the rules that relate to any audits required by this Undertaking; and
- (e) **clause 10.7** sets out general matters relating to provision of information, errors in reports and certification by Aurizon Network's Executive Officer.

### 10.2 General Principles **[New clause]**

Unless otherwise required by this Undertaking or agreed between Aurizon Network and the QCA, any report required under this Part 10 must report separately:

- (a) in respect of each Coal System;
- (b) to the extent applicable, in respect of each Reference Tariff; and
- (c) in respect of the conditions based assessment under **clause 10.4.3**, for each User Funded Expansion.

### 10.3 Network performance

#### 10.3.1 *Annual maintenance plan* **[Note: previously clause 10.1.3]**

- (a) Aurizon Network must provide Access Holders, and their Customers, if applicable, with a briefing in the form of a report and presentation on:
  - (i) details of the planned scope of maintenance for the forthcoming Year, three (3) Months before the commencement of each Year; and

- (ii) the contents of the maintenance cost reports, within one (1) Month after the submission of the maintenance cost report to the QCA.

**10.3.2 ~~Annual~~ Quarterly maintenance cost report [Note: previously clause 10.1.4]**

- (a) Within six (6) Months after the Approval Date or such longer time as agreed by the QCA, Aurizon Network must submit to the QCA a draft format (including the content) of a quarterly maintenance cost report. In considering whether to approve the draft format, the QCA must take into account the extent:
  - (i) ~~Within~~ to which Aurizon Network consulted stakeholders in developing the draft format; and
  - (ii) of any stakeholder support for the draft format.
- (b) If the QCA considers that the draft format (and content) is not sufficiently detailed or does not provide sufficient transparency, the QCA may determine, and Aurizon Network must vary accordingly, the format for the report to ensure it does satisfy the QCA's requirements. The format (including the content) of the report may be varied from time to time by agreement between Aurizon Network and the QCA, or failing agreement, as required by the QCA.
- (c) Following the QCA's approval of the format, within one (1) Month after the end of each Quarter in the Term, Aurizon Network must publish on the Website a maintenance cost report for the relevant Quarter utilising the format (and including the content) approved or determined by the QCA under **clause 10.3.2(a) or 10.3.2(b).**

**10.3.3 Annual maintenance cost report [Note: Previously clause 10.1.4]**

- (a) Within four (4) Months after the end of each Year in the Term, or such longer time as agreed by the QCA, Aurizon Network must publish on the Website a maintenance cost report for the relevant Year which includes the content required by **clause 10.3.3(c).** ~~in the format agreed between Aurizon Network and the QCA.~~ The format and the manner in which the report is to be published or provided may be varied from time to time by agreement between Aurizon Network and the QCA or, failing agreement, as required by the QCA.
- (b) The maintenance cost report will be certified as accurate by Aurizon Network's Executive Officer.
- (c) The maintenance cost report required by **clause 10.3.3(a)** ~~10.1.4(a)~~ must:
  - (i) provide a detailed report of Aurizon Network's actual maintenance costs in the relevant Year compared to the forecast maintenance costs accepted by the QCA for the purpose of determining Reference Tariffs for the relevant Year:

(A) for:

- ~~(B)(1)~~ General Track Maintenance;
  - ~~(C)(2)~~ structures and facilities maintenance;
  - ~~(D)(3)~~ trackside systems maintenance;
  - ~~(E)(4)~~ electrical overhead maintenance; and
  - ~~(F)(5)~~ telecommunications maintenance;
- ~~separately for each Coal System;~~

~~(G)(B)~~ for mechanised maintenance:

- (1) separately for each type of maintenance (including ballast cleaning, rail grinding, and rail resurfacing); ~~and~~
- (2) ~~separately in addition to a report~~ for each Coal System, ~~and~~ in aggregate for all Coal Systems; and
- (3) unless otherwise agreed between the QCA and Aurizon Network, for any section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted an estimate of Aurizon Network's forecast maintenance costs for the purposes of assessing the relevant Reference Tariff(s);

~~provided that the Goonyella to Abbot Point System and the Newlands to Abbot Point System will not be reported on an independent basis separately from the other Coal Systems and the Goonyella Newlands Connection will be treated as though it was part of the Newlands System;~~

(ii) provide a detailed report of Aurizon Network's actual scope of maintenance compared to the forecast scope of maintenance accepted by the QCA for the purpose of determining Reference Tariffs for the relevant Year:

(A) for the maintenance activities set out in **clause 10.3.3(c)(i)(A)** ~~10.1.4(e)(i)(A)~~ in aggregate for all Coal Systems:

- ~~(B)(1)~~ for mechanised maintenance, separately for each Coal System and in aggregate for all Coal Systems, ~~provided that the Goonyella to Abbot Point System will not be reported on an independent basis separately from the other Coal Systems~~

~~and the Goonyella Newlands Connection will be treated as though it was part of the Newlands System;~~ and

~~(c)(2)~~ unless otherwise agreed between the QCA and Aurizon Network, for any section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted an estimate of Aurizon Network's forecast scope of maintenance for the purposes of assessing the relevant Reference Tariff(s);

- (iii) provide an explanation of significant variations between:
  - (A) the actual and forecast maintenance costs; and
  - (B) the actual and forecast scope of maintenance;
- (iv) report the actual MCI and the forecast MCI accepted by the QCA for the purposes of determining Reference Tariffs for the relevant Year (including the indices, if any, comprised in the MCI) and provide an explanation of how any significant differences have or will impact on Aurizon Network's maintenance costs;
- (v) report for ~~individual coal systems~~:
  - (A) annual Below Rail Transit Times;
  - (B) OTCI results; and
  - (C) the number of major reportable safety incidents reported to the Safety Regulator, excluding those reported under **clause 10.3.3(c)(vi)** ~~10.1.4(e)(vi)~~;
- (vi) report on the number of derailments where the cost to Aurizon Network of recovery from the derailment exceeded AUD\$100,000, including the effect of action taken to restore Aurizon Network's rail network after such derailments on the completion of planned maintenance work; and
- (vii) report details of all capital expenditure related to asset renewal incurred in place of planned maintenance work during the relevant Year.

~~10.3.3~~ 10.3.4 ~~Monthly Quarterly Network Performance Report~~ [Note: previously clause 10.1.5]

(a) \_\_\_\_\_ Unless otherwise agreed between Aurizon Network and the QCA, Aurizon Network must, within ~~ten~~ twenty (20) Business Days after the end of each ~~calendar Month~~ Quarter in the Term, ~~or~~ publish on the Website a report (which Aurizon Network must ensure is accurate and not misleading) in relation to each Month in the relevant ~~Month~~

Quarter containing the information set out in **clauses 10.3.4(b)** ~~10.1.5(b)~~ to **10.3.4(i)** ~~10.1.5(i)~~, inclusive.

~~(a)~~(b) Information on the number and reliability of Train Services that operated each Month in the relevant ~~Month~~Quarter, as follows:

- (i) the number and percentage of Train Services that reached their destination within the Allotted Time Threshold;
- (ii) the number and percentage of Train Services that did not reach their destination within the Allotted Time Threshold:
  - (A) due primarily to the acts or omissions of Aurizon Network;
  - (B) due primarily to delays attributed to a Railway Operator; **and**
  - (C) due primarily to other matters not identified in either **paragraph (A) or (B)**; and
- (iii) the total number of Train Services.

~~(b)~~(c) Information on the average transit times of Train Services that operated each Month in the relevant ~~Quarter~~Month, as follows:

- (i) the average Above Rail Delay;
- (ii) the average Below Rail Delay; and
- (iii) the average Unallocated Delay,

in minutes per 100 train kilometres, for all Train Services.

~~(c)~~(d) Information on the availability of the network for Train Services in each Month in the relevant ~~Month~~Quarter, as follows:

- (i) number and percentage of Train Services cancelled due to a reason that can be attributed directly to Aurizon Network as Railway Manager;
- (ii) number and percentage of Train Services cancelled due to a reason that can be attributed directly to a Railway Operator; and
- (iii) number and percentage of Train Services cancelled due to a reason that cannot be clearly assigned as directly attributable to a Railway Operator or to Aurizon Network as Railway Manager.

~~(d)~~(e) Information on the safety of Train Services that have operated in each Month in the relevant ~~Quarter~~Month, being the number of major reportable incidents, as reported to the Safety Regulator.

~~(e)~~(f) Information on network service quality, as follows:

- (i) speed restrictions in each Month in the relevant ~~Quarter~~Month, being the average percentage and the



average number of kilometres of Track under temporary speed restriction; and

- (ii) the most recent measure of Track quality for the network measured by a quality index with component measures including gauge, top, twist and versine.

~~(f)~~(g) Information ~~for each Coal System~~ on coal carrying Train Services that have operated in each Month in the relevant Quarter~~Month~~, being:

- (i) the aggregate gtk;
- (ii) the aggregate nt;
- (iii) the aggregate ntk;
- (iv) the aggregate egtk;
- (v) the average actual Below Rail Transit Time Percentage (including the methodology for calculating that percentage);
- (vi) the aggregate Train Paths used by the relevant Train Services;
- (vii) the aggregate Train Paths contracted for relevant Train Services in accordance with the relevant Train Service Entitlements; and
- (viii) the aggregate number of Train Paths available for coal carrying Train Services;

~~(g)~~(h) Subject to **clause 10.3.4(k)**~~10.1.5(j)~~, information for ~~each Coal System for each Month in~~ the relevant Month~~Quarter~~ in respect of:

- (i) the aggregate number of Train Paths scheduled;
- (ii) the aggregate number of Train Paths used for planned maintenance;
- (iii) the aggregate number of Train Paths used for unplanned maintenance; and
- (iv) the percentage of Train Paths available but not used.

(i) Information on the outcome of the Contested Train Path decision making process contained in **clause 8 of Schedule G** in respect of:

- (i) the number of contests run each Month; and
- (ii) the number and percentage of Train Paths allocated under each of the Contested Train Path principles set out in **clause 8.3 of Schedule G**.

~~(h)~~(j) Subject to **clause 10.3.4(k)**~~10.1.5(j)(i)~~ and **(l)**, for the purposes of **clauses 10.1.5(b)**~~10.3.4(b)~~ to ~~10.1.5(d)~~**10.3.4(d)**, the Train Services will be aggregated as follows, Train Services operated for the purpose of:

- (i) transporting coal ~~within each Coal System~~;

- (ii) transporting freight products, and bulk minerals (other than coal); and
- (iii) providing long distance passenger transport.

~~(j)~~ ~~Other than for clause 10.1.5(e), the Goonyella to Abbot Point System is not subject to the reporting requirements in this clause 10.1.5. For the purposes of reporting under clauses 10.1.5(b) to 10.1.5(h), the Goonyella Newlands Connection is part of the Newlands System.~~

(k) In addition to the report published under ~~clause 10.3.4(a)~~ **10.1.5(a)**, unless otherwise agreed between Aurizon Network and the QCA, Aurizon Network must, within ~~ten~~ twenty (20) Business Days after the end of each Quarter in the Term, publish on the Website a report (which Aurizon Network must ensure is accurate and not misleading) containing:

- (i) the information set out in ~~clauses 10.3.4(b)~~ **10.3.4(i)** ~~10.1.5(b) to 10.1.5(h)~~ inclusive for the previous Quarter; and
- (ii) a comparative presentation against the aggregate, published information, for the corresponding Quarter of the preceding Year.

~~(j)~~ provided that for the reports in respect of the Quarters in the first Year during the Term, the information for the preceding Year shall be that published for the Quarters in that preceding Year under the 2010 Undertaking.

~~(k)~~ (l) Aurizon Network will, in conjunction with its public release of a report under this ~~clause 10.3.4~~ **10.1.5**, provide to the QCA a supplementary report that presents the information included in the published report for each Railway Operator. If a supplementary report relates to a Railway Operator, Aurizon Network will provide to that Railway Operator those parts of the supplementary report that relate to that Railway Operator.

## 10.4 Reports

### ~~10.4.1~~ Annual Financial Report [Note: previously clause 10.1.1]

~~1.~~ (a) [previously 10.1.1(b)] The financial statements referred to in **clause 10.1.3.7.1(a)** ~~1(a)~~ must be certified as ~~accurate~~ being in accordance with this Undertaking by Aurizon Network's Executive Officer.

(b) [previously 10.1.1(d)] Within ~~four~~ six (6) Months after the end of each Year in the Term, or such longer time as agreed by the QCA, Aurizon Network must publish on the Website the financial statements relating to the relevant Year which have been prepared and certified under **clause 10.4.1(a)** ~~10.1.1(b)~~.

(c) Within six (6) Months after the later of the Approval Date and the QCA approving the Costing Manual, Aurizon Network must publish on the Website the financial statements for any Year prior to the Approval

Date that have not been published, but is not required to publish for any Year commencing prior to 1 July 2010. Aurizon Network must ensure the financial statements are prepared, audited and certified in accordance with this Undertaking.

~~10.4.1~~**10.4.2** ***Annual Public annual Regulatory Asset Base roll-forward report***  
***[Note: previously clause 10.1.6]***

- (a) To the extent that the ~~capital expenditure~~ QCA has accepted Aurizon Network's proposed roll-forward of the in the report Regulatory Asset Base under ~~clause 1.3~~**1.4** of ~~Schedule E~~**Schedule E** ~~has been accepted as prudent in cost~~, Aurizon Network must, within four (4) weeks after the QCA's acceptance, publish on the Website a report of changes to the Regulatory Asset Base for the relevant Year, containing the information set out in ~~clause 10.4.2(b)~~**10.1.6(b)** ~~for each Coal System~~.
- (b) Aurizon Network will, in the Regulatory Asset Base roll-forward report, include details of:
- (i) the opening value of the Regulatory Asset Base for the relevant Year;
  - (ii) indexation of the Regulatory Asset Base;
  - (iii) depreciation of the Regulatory Asset Base;
  - (iv) capital expenditure that is included in the Regulatory Asset Base, separately identifying individual projects with a value in excess of \$10 million;
  - (v) disposals and transfers from the Regulatory Asset Base;
  - (vi) the closing value of the Regulatory Asset Base for the relevant Year; and
  - (vii) for comparative purposes, the value of the Capital Indicator for the subject Year;

~~separately reported for each Coal System.~~

~~10.4.2~~**10.4.3** ***Conditions Based Assessment*** ***[Note: previously clause 10.4]***

- (a) Aurizon Network must procure a condition based assessment of the Rail Infrastructure:
- (i) no later than six (6) Months prior to the Terminating Date;  
and
  - (ii) if the Term is extended beyond four (4) Years, at the QCA's request.
- ~~(a)~~ in accordance with this **clause 10.4.3** ~~no later than six (6) Months prior to the Terminating Date~~ **(Condition Based Assessment)**.

- (b) Aurizon Network will appoint an independent qualified consultant, who has been accepted by the QCA, to conduct the Condition Based Assessment (**Assessor**).
- (c) The Assessor will have a duty of care to the QCA in the conduct of the Condition Based Assessment and, in the event of a conflict between the Assessor's obligations to Aurizon Network and its duty of care to the QCA, the Assessor's duty of care to the QCA will take precedence.
- (d) Prior to commencing the Condition Based Assessment, the Assessor must agree an assessment plan with Aurizon Network, document that assessment plan and obtain the QCA's approval of that assessment plan.
- (e) The assessment plan will:
  - (i) consist of a proposed work program for conducting the Condition Based Assessment;
  - (ii) provide for the establishment of an assessment liaison group, comprising the Assessor, Aurizon Network and the QCA, during the course of the Condition Based Assessment to provide a forum for the resolution of any issues that arise; and
  - (iii) propose a methodology for assessing ~~track~~-Track condition to be agreed between Aurizon Network and the QCA and in the absence of agreement determined by the QCA, but which in any case must be such as to allow for a comparison of results to relevant prior condition based assessments.
- (f) Aurizon Network must provide the Assessor with any relevant information and access to land or sites, as reasonably required by the Assessor for the purposes of conducting the Condition Based Assessment.
- (g) To the extent Aurizon Network is requested to provide confidential information to the Assessor, the Assessor will be required to enter into an agreement with Aurizon Network in relation to any information provided by Aurizon Network, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the Condition Based Assessment and completing the assessment report.
- (h) The Assessor must provide to Aurizon Network and the QCA a report on the findings of the Condition Based Assessment, including (as far as reasonably practicable) identifying the extent to which the Rail Infrastructure has deteriorated by more than would have been the case had good operating practice and prudent and effective maintenance and asset replacement policies and practices been pursued.

- (i) Aurizon Network must publish the report on the findings of the Condition Based Assessment on the Website.
- (j) Aurizon Network must provide, or make available in accordance with this **clause 10.4.3(j)**, the report on the findings of the Condition Based Assessment as a complete and transparent document:
- (i) to the QCA on an unredacted basis; and
- (ii) to stakeholders and when published on its Website:
- (A) to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the report (and if those obligations permit disclosure if required by this Undertaking then Aurizon Network is required to disclose the information contained in the report), on an unredacted basis; and
- (B) if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
- (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the report on an unredacted basis;
- (2) in respect of the information referred to in **paragraph (i)** or for which consent is obtained under **paragraph (ii)(A)**, on an unredacted basis; and
- (3) in respect of the information that does not satisfy **paragraph (i)** or for which consent is not obtained under **paragraph (ii)(A)**:
- to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
  - to the extent not possible, on a redacted basis.
- (k) Aurizon Network must not agree to any confidentiality obligations which prevent the disclosure of the information contained in the report on the findings of the Condition Based Assessment or that does not permit disclosure of information required by this Undertaking.
- ~~(h)~~(l) For ~~the avoidance of doubt~~ clarity, the costs and expenses incurred by Aurizon Network in relation to the Condition Based Assessment will

be included in the calculation of the AT2-4 components of Reference Tariffs.

## **10.5 Compliance with this Undertaking**

### **10.5.1 *Compliance Officer* [Note: previously clause 10.5]**

- (a) Aurizon Network must appoint a Compliance Officer and ~~shall~~ advise the QCA as to the identity of the Compliance Officer and of any changes to the identity of the Compliance Officer during the Term.
- (b) The Compliance Officer will be appropriately resourced by Aurizon Network to perform their role, which will include responsibility for:
  - (i) management of the governance framework through systems and practices reasonably required to ensure Aurizon Network complies with its obligations in this Undertaking; and
  - (ii) notifying Aurizon Network's Executive Officer as soon as possible of any material breach of ~~this the~~ Undertaking by Aurizon Network and advising of any remedial action proposed or taken by Aurizon Network in respect of the breach.

### **10.5.2 *Annual compliance report* [Note: previously clause 10.1.2]**

- (a) Within four (4) Months of the end of each Year in the Term, or such longer time as agreed by the QCA, Aurizon Network must publish on the Website an annual compliance report in relation to the subject Year containing the information set out in **clauses 10.5.2(c)**~~10.1.2(e)~~ and **(d)** and which will be accompanied by an audit report prepared in accordance with **clause 10.6.3**~~10.8~~ in respect of Aurizon Network's compliance with its obligations under this **clause 10.5.2**~~10.1.2~~.
- (b) Aurizon Network must, in conjunction with the publication on the Website of an annual compliance report in accordance with **clause 10.5.2(a)**~~10.1.2(a)~~, provide to the QCA a supplementary report that presents the information included in the public annual compliance report for each of the following classes of Access Holders (on an aggregated basis):
  - (i) Third Party Access Holders; and
  - (ii) Aurizon Party Access Holders.
- (c) Information in relation to Aurizon Network's compliance with this Undertaking over the relevant Year as follows:
  - (i) the number and percentage of Access Applications acknowledged in accordance with this Undertaking and within the applicable timeframe nominated in **clauses 4.3(c)** and **4.4(a)**;

- (ii) for those Access Applications received in accordance with this Undertaking and that have not been acknowledged within the applicable timeframe nominated in **clauses 4.3(c)** and **4.4(a)** the average delay (in days) taken to acknowledge the Access Applications;
- (iii) the number of requests for Capacity Information and percentage acknowledged in accordance with the applicable timeframe nominated in **clause 4.2(c)**;
- (iv) the number and percentage of Indicative Access Proposals provided in accordance with this Undertaking within the applicable timeframe nominated in **clause 4.6(d)**;
- (v) the number and percentage of Access Applications received in accordance with this Undertaking for which the time for the provision of an Indicative Access Proposal was extended in accordance with either **clause 4.6(d)** (or **4.6(h)**);
- (vi) for those Indicative Access Proposals provided in accordance with this Undertaking but that have not been provided within the applicable timeframe nominated in **clauses 4.6**, the average delay (in days) taken to provide the Indicative Access Proposals;
- (vii) the number of instances where a Dispute arose and was referred for resolution under **Part 11**;
- (viii) the number of instances where a ~~dispute~~ Dispute arose and was referred for resolution under **Part 11** and Aurizon Network was found to have committed a breach of this Undertaking;
- (ix) the number of instances where Aurizon Network has received a written complaint from a Third Party that it has allegedly breached one or more of its obligations in **Part 3**;
- (x) the number of instances where Aurizon Network has received a written complaint from a Third Party that it has allegedly breached one or more of its obligations in **Part 3** and Aurizon Network was found to have committed a breach of those ringfencing obligations;
- (xi) the percentage of Aurizon Network's Personnel receiving, in the course of performing their duties, Confidential Information who have completed training in accordance with **clause 3.15(a)**;
- (xii) the number of instances where an Access Holder has made a written complaint to Aurizon Network about an incorrectly calculated invoice, and where Aurizon Network's investigation into the complaint identifies that the invoice was materially incorrectly calculated;

- (xiii) in respect of written complaints that Aurizon Network has made a decision in breach of Aurizon Network's traffic management decision making matrix contained in **clause 9 of Schedule G** (for each of the Railway Operators collectively and Related Operators as Access Holders collectively):
  - (A) the number of complaints received by Aurizon Network;
  - (B) of the complaints received by Aurizon Network, the number which are currently being assessed by Aurizon Network; and
  - (C) of the complaints received by Aurizon Network, the number which, after being assessed by Aurizon Network, were verified as breaches; and
- (xiv) in respect of written complaints that Aurizon Network has made a decision in breach of Aurizon Network's Contested Train Path decision making process contained in **clause 8 of Schedule G** (for each of the Railway Operators collectively and Related Operators as Access Holders collectively):
  - (A) the number of complaints received by Aurizon Network;
  - (B) of the complaints received by Aurizon Network, the number which are currently being assessed by Aurizon Network; and
  - (C) of the complaints received by Aurizon Network, the number which, after being assessed by Aurizon Network, were verified as breaches.
- (d) Information in relation to the outcome of Aurizon Network's negotiations with Access Seekers over the relevant Year as follows:
  - (i) the average length of the Negotiation Period (in days), where the Negotiation Period has ceased as the result of the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker;
  - (ii) the average length of the Negotiation Period (in days), where the Negotiation Period ceased as the result of any reason other than the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker; and
  - (iii) the number of instances where a Negotiation Period ceased as the result of the execution of an Access Agreement, or



variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker,

with such information to be reported separately for Access Agreements and Train Operations Deed ~~and~~.

- (e) Information on the average length of time (in days) from the date of receipt of a written request for a Transfer (completed and submitted in accordance with the requirements of the relevant Access Agreement), to the date of execution by Aurizon Network of the new Access Agreement giving effect to the Transfer.

### **10.5.3 Breach reports to the QCA [Note: previously clause 10.2]**

- (a) Aurizon Network must report to the QCA any breaches of this Undertaking of which Aurizon Network is aware, including advising the QCA of the nature of the breach and the remedial action proposed or taken by Aurizon Network in respect of the breach, at the following times:
  - (i) within ten (10) Business Days after the end of each calendar Month, in relation to any breaches of obligations with respect to timeframes that occurred within that calendar Month; and
  - (ii) in relation to other breaches, as soon as Aurizon Network becomes aware of the breach.
- (b) If Aurizon Network is obliged to report a breach to the QCA in accordance with this **clause 10.5.3~~10.2~~** and that breach directly and adversely affects the interests of an Access Seeker, Access Holder or, if applicable, a Train Operator, then Aurizon Network must also provide the information reported to the QCA in respect of that breach to the relevant Access Seeker, Access Holder or Train Operator.
- (c) Aurizon Network must maintain an Issues Register that includes all information in its possession or knowledge in relation to:
  - (i) any breaches of this Undertaking, of which Aurizon Network is aware, that have occurred on or after the Commencing Date;
  - (ii) any alleged breaches of this Undertaking, of which Aurizon Network is aware, that are alleged to have occurred on or after the Commencing Date;
  - (iii) any written complaints by an Access Seeker or an Access Holder in relation to Aurizon Network's performance of its obligations under this Undertaking on or after the Commencing Date of which Aurizon Network is aware; and
  - (iv) the steps taken by Aurizon Network to remediate or otherwise address, and the current status of, all matters recorded on the Issues Register under **clauses 10.5.3(c)(i)~~10.2(e)(i)~~ to 10.5.3(c)(iv)~~10.2(e)(iii)~~**.

(d) The QCA, and any Auditor appointed under this **Part 10**, may, at any time, make a written request to Aurizon Network to:

- (i) inspect the Issues Register; and/or
- (ii) be provided with an electronic copy of any information recorded on the Issues Register and any documents stored on, or referred to in, the Issues Register,

and Aurizon Network must facilitate such an inspection, and/or provide the relevant information and documents (as applicable), within five (5) Business Days of its receipt of the written request.

## 10.6 Audit

### 10.6.1 *Report auditing* [Note: previously clause 10.7]

- (a) An audit of Aurizon Network's compliance with all or a part of its reporting obligations under this **Part 10** will ~~must~~ be conducted ~~if required in writing by the QCA~~:
  - (i) annually and as otherwise required in writing by the QCA; and
  - (ii) subject to this ~~clause 10.6.1~~**10.7**, in accordance with ~~clause 10.6.4~~**10.10**.
- (b) The Auditor will compile an audit report identifying:
  - (i) whether Aurizon Network has complied in all material respects with its reporting obligations under this **Part 10** and, if not, details as to the relevant non-compliance; and
  - (ii) the process adopted for the conduct of the audit.
- (c) If the QCA requires an audit of Aurizon Network's compliance with all or a part of its obligations under this **Part 10** in relation to a relevant report, then the date by which that report must be provided to the QCA or published will be extended by twenty (20) Business Days.

### 10.6.2 *Conflicts audit* [Note: previously clause 10.9]

- (a) An audit of:
  - (i) Aurizon Network's compliance with its obligations under **Part 3**; and
  - ~~(ii) any one or more of the following (to the extent that the QCA specifically requests that the Auditor consider such matters);~~
  - ~~(A) Aurizon Network engaging in cost shifting between regulated and non-regulated activities;~~
  - ~~(B) Aurizon Network engaging in margin squeezing (with special reference to non-reference train services);~~
  - ~~(C) Aurizon Network refusing to provide access to associated facilities or discrimination between~~

~~Related Operators and Third Party Railway Operators in respect of such access;~~

~~(D) — discrimination between Related Operators and Third Party Railway Operators in decisions regarding live run variations from train plans;~~

~~(E) — Aurizon Network's compliance with Capacity allocation under this Undertaking;~~

~~(F) — Aurizon Network's compliance with the negotiation framework in this Undertaking;~~

~~(G) — Aurizon Network's compliance with the Expansion obligations in this Undertaking;~~

~~(H) — conduct of Aurizon Network in respect of which the QCA has received a complaint from an Access Seeker, Access Holder or Customer, or a breach report in relation to this Undertaking; or~~

~~(+)(ii)~~ other issues (to the extent that the QCA specifically requests that the Auditor consider such matters) for which the QCA reasonably believes that an audit is necessary.;

must be conducted annually and as otherwise requested by the QCA (under ~~either clause 3.13(a) or clause 10.6.310.8~~) in accordance with ~~clause 10.6.410.10~~.

- (b) In considering Aurizon Network's compliance with its obligations under **Part 3**, the Auditor may take into account Aurizon Network's compliance with any relevant internal procedures.
- (c) The Auditor will compile an audit report identifying whether Aurizon Network has complied in all material respects with its obligations under **Part 3** and, if not, details as to the relevant non-compliance.

### **10.6.3 Compliance audit requested by the QCA [Note: previously clause 10.8]**

- (a) Despite any other provisions of this Undertaking that require the conduct of an audit, the QCA may request Aurizon Network in writing to, and on receipt of that request Aurizon Network must, engage an Aauditor to undertake an audit, in accordance with **clause 10.6.410.10**, in relation to whether any specific conduct or decisions of Aurizon Network comply with this Undertaking.
- (b) The audit will be conducted in accordance with **clause 10.6.410.10**.
- (c) The Auditor will compile an audit report identifying:
  - (i) whether Aurizon Network has complied in all material respects with its obligations which were the subject of the requested audit and if not, details as to the relevant non-compliance; and
  - (ii) the process adopted for the conduct of the audit.

- (d) To the extent approved by the QCA, costs incurred by Aurizon Network in complying with this **clause 10.6.3~~10.8~~** will be incorporated in the Adjusted Allowable Revenue in accordance with **clause 3.3 of Schedule F**.

**10.6.4 *Audit Process* [Note: previously clause 10.10]**

An audit process under this Undertaking must be conducted in accordance with the following process:

- (a) ~~the QCA Aurizon Network~~ will appoint, ~~and may replace from time to time,~~ an Auditor (or Auditors) who will be available to conduct audits required in accordance with this Undertaking. The appointment will be made in the first year of the Term;
- (b) the Auditor must:
- (i) be independent of Aurizon Network and all other Aurizon Parties;
  - (ii) be appropriately qualified and experienced; ~~and~~
  - ~~(iii)~~ be subject to professional standards of ethics and independence; ~~and~~
  - ~~(iii)~~ (iv) be approved by the QCA. Once approved, the approval will be effective for the Term, subject to the QCA having a right to require the appointment of a replacement Auditor.;
- (c) the Auditor will have a duty of care to the QCA in the provision of the audit and, in the event of a conflict between the Auditor's obligations to Aurizon Network and its duty of care to the QCA, the Auditor's duty of care to the QCA will take precedence;
- (d) the Auditor for a financial matter may be different from the Auditor for another matter;
- (e) prior to commencing an audit, the Auditor must agree on an audit plan with Aurizon Network, document that audit plan, and obtain the QCA's approval of the audit plan;
- (f) the audit plan will:
- (i) consist of a proposed work program for the execution of and scope of the audit, including audit costs (which shall be payable by Aurizon Network);
  - (ii) where necessary, contain any procedural controls necessary to ensure the independence of the ~~a~~ Auditor;
  - (iii) provide for the establishment of an audit liaison group, comprising the Auditor, Aurizon Network and the QCA, during the course of the audit, to provide a forum for the resolution of any audit issues that arise; and

- (iv) include a process for consultation with the QCA during the audit to ensure that the audit addresses the matters and standards required by the QCA for the particular audit being conducted. The QCA may consult with Access Holders and Access Seekers over the matters and standards to be addressed in, and required of, the audit;
- (g) Aurizon Network must provide:
  - (i) any relevant information the Auditor reasonably requires for the purpose of conducting the audit, within a nominated timeframe that is determined by the Auditor to be reasonable after consultation with Aurizon Network; and
  - (ii) if an audit is required of the financial statements referred to in **clause 3.7**~~10.1.1~~, access to Aurizon Network's financial records and information systems necessary for the purpose of conducting the audit;
- (h) the Auditor may be required to enter into a confidentiality deed with Aurizon Network in relation to any information provided by Aurizon Network, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the audit and completing the audit report, provided however that the Auditor will be entitled to provide all information obtained as a result of the audit to the QCA;
  - (i) any drafts of an audit report that are provided to Aurizon Network by the Auditor must, at the same time, be provided to the QCA;
  - ~~(i)~~ (i) the Auditor will provide ~~to~~ Aurizon Network and the QCA a copy of:
    - (i) the audit report; and
    - (ii) any letter or report from the Auditor accompanying the audit report which explains the audit findings in greater detail,
 both of which the QCA may, if it considers it appropriate to do so, publish to parties thought appropriate by the QCA having regard to the scope of the audit and its findings; ~~and~~
- (k) Aurizon Network must:
  - (i) prepare and provide to the QCA an implementation plan;  
and
  - (ii) use reasonable endeavours to implement,
    - ~~(i)~~ any recommendations made by the Auditor in the audit report or any other letters or reports provided under **clause 10.6.4(j)**~~10.10(i)~~, including recommendations in relation to the amendment of this Undertaking where required; (except to the extent the non-implementation is approved by the QCA) as soon as reasonably practicable after the documents are provided by the Auditor;

~~(k)(l)~~ After at least three (3) Months have elapsed following the provision of an audit report to the QCA ~~of an audit report~~ in accordance with **clause 10.6.4(j)** ~~10.10(i)~~, then:

- (i) QCA may, at its discretion, request that Aurizon Network provide evidence that it has implemented any or all of the recommendations made by the Auditor in the relevant audit report in accordance with the implementation plan prepared under clause 10.6.4(k); and
- (ii) if Aurizon Network cannot provide such evidence to the satisfaction of the QCA (in its discretion), the QCA may direct Aurizon Network to take the necessary actions required to implement the relevant recommendations within a specified timeframe; ~~and~~

~~(+)(m)~~ a failure by Aurizon Network to comply with a direction issued by the QCA under **clause 10.6.4(l)** ~~10.10(k)~~ will constitute a breach of this Undertaking by Aurizon Network.

## 10.7 General

### 10.7.1 ~~Information Provision~~ previously: clause 10.3.1 and 10.3.2

(a) Upon request by the QCA, Aurizon Network must provide to the QCA signed Access Agreements (including details of Access Charges) to allow the QCA to satisfy itself that the Below Rail aspects of the Access Agreement do not offend the provisions of this Undertaking or the Act.

~~(a)(b)~~ In addition to clause 10.7.1(a), ~~the~~ the QCA may, by notice, request that Aurizon Network provide to the QCA information or a document that the QCA reasonably requires for the purpose of:

- (i) performing its obligations or functions under this Undertaking; or
- (ii) determining whether it should exercise powers in this Undertaking.

The notice must include a description of the information or document required, the purpose for which it is required, and the day by which it is required, provided that the day stated in the notice must be reasonable.

(c) Except as provided for in clause 10.7.1(d), Aurizon Network will permit the public disclosure of the Below Rail aspects of Access Agreements (including Access Charges) for all coal carrying Train Services for new or renewed Train Services except that the Below Rail aspects of Access Agreements will not include:

- (i) the insurance provisions;
- (ii) the contact details included in the Interface Coordination Arrangement;

- (iii) the Rollingstock and Rollingstock Configuration performance characteristics;
- (iv) the IRMP; and
- (v) the Environmental Management Plan.
- (d) If a party to an Access Agreement considers that specified parts of the Access Agreement should not be publicly disclosed, it may make a request to the QCA for non-disclosure of those specified parts. The QCA must agree to the request if it is satisfied that disclosure of the information would be likely to damage that party's commercial activities and that disclosure would not be in the public interest.
- ~~(b)~~(e) Aurizon Network must comply with a request by the QCA under **clause 10.7.1(a)**~~10.6.1(a)~~ by the day stated in the notice, unless Aurizon Network has a reasonable excuse for noncompliance.
- ~~(c)~~ ~~In the absence of the prior written consent of Aurizon Network and the relevant Access Holder, the QCA will not publish or otherwise disclose any aspect of an Access Agreement provided to it in accordance with this **clause 10.6.1** or otherwise.~~
- ~~(d)~~(f) Except for documents that are to be made public in accordance with the terms of this Undertaking, nothing in this **clause 10.7**~~10.6~~ permits the QCA to disclose any information (including the contents of a document) provided to it under this clause 10.7.1.

#### 10.7.2 ***Errors in reports*** *[previously clause 10.1.7]*

- (a) If a report has been published under **clause 10.1 Part 10** and Aurizon Network has actual knowledge of a material error in that report, Aurizon Network must, as soon as practicable but no later than three (3) Months after acquiring knowledge of the material error, publish on the Website either, at Aurizon Network's discretion, an erratum or a corrected report identifying the material errors. An error will be a material error where:
  - (i) if the error is a numerical error, the number reported deviates from the correct number by an amount of more than 2%; or
  - (ii) otherwise, Aurizon Network or the QCA considers the error to be material.
- (b) Aurizon Network must notify the QCA of any errors that Aurizon Network has actual knowledge of in the annual compliance report unless the QCA has otherwise been notified or is aware of the error.

#### 10.7.3 ***Certifications required from Aurizon Network's Executive Officer*** *[previously clause 10.6]*

- (a) All certifications provided by Aurizon Network's Executive Officer in accordance with the requirements of this Undertaking, including the requirements for the provision of certifications of accuracy required in

respect of financial statements and cost reports under this **Part 10**, are provided subject to **clause 10.7.3(b)**~~10.6(b)~~.

- (b) If in providing a certification required by this Undertaking Aurizon Network's Executive Officer relies on information or professional or expert advice, given or prepared by:
- (i) ~~an~~ Aurizon Network Personnel whom Aurizon Network's Executive Officer believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
  - (ii) a professional adviser or expert in relation to matters that Aurizon Network's Executive Officer believes on reasonable grounds to be within the person's professional or expert competence;
  - (iii) another director or officer of Aurizon Network in relation to matters within the director's or officer's authority; or
  - (iv) a committee of directors on which Aurizon Network's Executive Officer did not serve in relation to matters within the committee's authority; and:
    - (A) the reliance was made:
      - (1) in good faith; and
      - (2) after making an independent assessment of the information or advice, having regard to Aurizon Network's Executive Officer's knowledge of Aurizon Network and the complexity of the structure and operations of Aurizon Network; and
    - (B) the reasonableness of Aurizon Network's Executive Officer's reliance on the information or advice arises in legal proceedings or an arbitration to determine whether Aurizon Network's Executive Officer has performed with due care and diligence in providing the certification,

Aurizon Network's Executive Officer's reliance on the information or advice is deemed to be reasonable unless the contrary is proved.



## Part 11: Dispute Resolution and Decision Making

### 11.1 Dispute Resolution

#### 11.1.1 *Disputes*

- (a) Any dispute ~~or question~~ (**Dispute**) arising:
- (i) as between Aurizon Network and an [prospective Access Seeker](#), Access Seeker or a Railway Operator in relation to:
    - (A) the negotiation or grant of Access; or
    - (B) the negotiation of a Train Operations Deed;
  - (ii) in relation to the operation of, or anything required to be done [or not done](#) by Aurizon Network under, this Undertaking; or
  - (iii) in respect of any matters expressly required by this Undertaking to be resolved in accordance with this **Part 11**, ~~(iv) shall~~ [must](#) be resolved in accordance with this **Part 11** and any party to the Dispute may give to the other party or parties a Dispute Notice.
- (b) For ~~the avoidance of doubt~~ [clarity](#), any Dispute in relation to the entry into and completion of schedules for any Standard Agreement, or agreement substantially in the form of a Standard Agreement, is a Dispute for the purpose of **clause 11.1.1(a)** and must be resolved in accordance with this **Part 11**, [but a dispute regarding a party refusing to vary the terms of a Standard Agreement is not a Dispute for the purpose of clause 11.1.1\(a\)](#).
- (c) Unless otherwise agreed by the parties in writing, [any Disputes disputes arising in respect of any right or obligation \(or in respect of the enforcement\) in connection with the subject matter](#) of an Access Agreement ~~or~~, a Train Operations Deed, [a Studies Funding Agreement, a User Funding Agreement or a Rail Connection Agreement](#) ~~shall~~ [must](#) be dealt with in accordance with the provisions of that ~~Access Agreement or the Train Operations Deed, as applicable agreement~~ (even if the Dispute relates to provisions included in that ~~Access Agreement or Train Operations Deed agreement~~ that are similar to, required by, or inconsistent with this Undertaking); and are not to be dealt with under this Undertaking.
- (d) Despite **clause 11.1.1(c)**, ~~Disputes~~ [disputes](#) between parties to an Access Agreement ~~or~~, a Train Operations Deed, [a Studies Funding Agreement, a User Funding Agreement or a Rail Connection Agreement](#) may be dealt with under this Undertaking to the extent the ~~Dispute~~ [dispute](#) is not [in respect of any right or obligation \(or in respect of the enforcement\) in connection with the subject matter](#) of the Access Agreement, ~~or~~ the Train Operations Deed, [the Studies](#)

[Funding Agreement, the User Funding Agreement or the Rail Connection Agreement.](#)

- (e) For the purposes of this **clause 11.1**, where:
- (i) a Dispute involves an Access Seeker who is not also a Train Operator; or
  - (ii) a Dispute involves a Train Operator,
- then:
- (iii) Aurizon Network must provide the relevant Train Operator(s) (where **paragraph (i)** applies) or the relevant [Customer or Access Seeker](#) ~~Holder~~ (where **paragraph (ii)** applies) with a copy of the Dispute Notice and any subsequent notices or correspondence given by Aurizon Network to the [Customer, Access Seeker or Train Operator](#), as applicable, in connection with the Dispute; and
  - (iv) any such [Customer, Access Seeker or](#) Train Operator ~~or Access Holder~~ may elect, by giving notice to Aurizon Network and the other parties to the Dispute within [five \(5\)](#) Business Days after receiving the Dispute Notice under **clause 11.1.1(e)(iii)**, to become a party to the Dispute for the purposes of **clauses 11.1.2 to 11.1.6**.
- (f) All parties to, and other persons involved in resolving, a Dispute must use reasonable endeavours to facilitate the resolution of the Dispute in a timely manner.
- (g) Aurizon Network must:
- (i) [promptly](#) provide the QCA with a copy of any Dispute Notice and any subsequent notices or formal correspondence exchanged between the parties in connection with the Dispute;
  - (ii) [promptly](#) notify the QCA when the Dispute is referred to mediation under **clause 11.1.3** or an expert under **clause 11.1.4** for resolution or determination; and
  - (iii) otherwise keep the QCA regularly informed of the progress of the resolution of the Dispute, including its outcome.

**11.1.2 Chief executive resolution**

- (a) Unless otherwise agreed in writing by the parties to the relevant Dispute, any Dispute ~~shall~~[must](#), within [five \(5\)](#) Business Days of the receipt of a Dispute Notice, be referred in the first instance to each party's chief executive (or his or her nominee) for resolution.
- (b) All communications between the parties to a Dispute, including by, to or through each party's chief executive (or his or her nominee), as part of an attempt to resolve the Dispute under this **clause 11.1.2** are made on a without prejudice and confidential basis.

- (c) Where the Dispute is resolved under this **clause 11.1.2**, [Aurizon Network must promptly notify the QCA of the resolution and must be documented in writing and signed by the parties to the Dispute.](#) ~~Aurizon Network must~~ provide a copy of [that notice](#) ~~the agreement~~ to the [other parties to the Dispute](#) ~~QCA~~.
- (d) If the Dispute is not resolved within ten (10) Business Days after the referral under this **clause 11.1.2**, [the parties may agree to refer the Dispute to:](#)
  - (i) ~~to~~ mediation to be resolved in accordance with **clause 11.1.3**;
  - (ii) ~~to~~ an expert to be resolved in accordance with **clause 11.1.4**; or
  - (iii) ~~to~~ the QCA to be resolved in accordance with **clause 11.1.5**, and, failing agreement [under this clause 11.1.2\(d\)](#) within fifteen (15) Business Days after the referral under **clause 11.1.2(a)** ~~11.1.2~~, either party may refer the Dispute to the QCA to be resolved in accordance with **clause 11.1.5**.

### 11.1.3 *Mediation*

- (a) If the parties agreed to ~~refer~~ the relevant Dispute to mediation, then the mediation must be administered by the Australian Commercial Disputes Centre (**ACDC**) in accordance with ACDC's guidelines for mediation. The costs charged by ACDC for the mediation shall be borne equally by the parties and each party shall bear its own costs of preparing for and attending the mediation.
- (b) All communications made between the parties to a Dispute, including to or through the mediator, as part of an attempt to resolve the Dispute under this **clause 11.1.3** are made on a without prejudice and confidential basis.
- (c) Where mediation resolves the Dispute, the resolution must be documented in writing and signed by the parties to the Dispute. ~~The mediator must provide a copy of the agreement by which the Dispute was resolved to the QCA. -If the mediator fails to do so, Aurizon Network must provide a copy of the agreement to the QCA.~~
- (d) If the matter is referred to mediation under **clause 11.1.3(a)** and either:
  - (i) the mediator notifies the parties to the mediation that the mediator considers:
    - (A) the parties to the relevant mediation cannot achieve a mediated resolution of the Dispute; or
    - (B) a party to the relevant mediation has failed to participate in the mediation process in good faith; or

- (ii) mediation fails to resolve the Dispute within four (4) Months after the matter is referred ~~referral~~ to mediation under **clause 11.1.3(a)**,

then:

- (iii) the parties may agree to refer the Dispute for resolution by an expert in accordance with **clause 11.1.4**; or
- (iv) ~~failing such agreement if the parties fail to agree to refer the Dispute to an expert~~ within five (5) Business Days in accordance with clause 11.1.3(d)(iii), either party may refer the Dispute to the QCA for a determination of the Dispute in accordance with **clause 11.1.5**.

#### 11.1.4 *Expert* ~~Determination~~ determination

(a) Where:

- (i) the parties to a Dispute agree to refer a matter to an expert for determination; and
- (ii) the Dispute is referred to ~~not resolved by~~ the chief executives (or their nominee) and has not been resolved under **clause 11.1.2**,

the Dispute must be referred to the expert for determination in accordance with this **clause 11.1.4**.

(b) Where a Dispute is referred to an expert:

- (i) the expert shall be:
  - (A) appointed by agreement between the parties to the Dispute; or
  - (B) in default of such appointment within ten (10) Business Days after the requirement or right (as applicable) to refer the matter to an Expert arose, the person nominated by (at request of any party to the Dispute) the QCA.

~~(ii) if the expert is to be nominated by a person referred to in **clause 11.1.4(c)(i)**, then the parties to the Dispute must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne by the parties in equal shares)) that must be satisfied or complied with as a condition of that person agreeing to nominate an expert;~~

~~(iii) if the expert is to be nominated by a person referred to in **clause 11.1.4(c)(i)** and that person declines to nominate a person as the expert but provides a list of people that could be appointed as the expert, then:~~

- ~~(A) — the first person specified in that list will be taken to be nominated as the Expert;~~
- ~~(B) — if the first person specified in that list does not accept the appointment as the Expert, then the next person specified in that list will be taken to be nominated as the Expert; and~~
- ~~(C) — the process specified in **clause 11.1.4(c)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the Expert accepts the appointment as the Expert;~~
- ~~(iv) — subject to **clause 11.1.4(c)(iii)**, if the expert is to be nominated by a person referred to in **clause 11.1.4(c)(i)** and the person nominated as the expert does not accept appointment as the expert, then an alternative person is to be nominated as the expert at the request of any party to the Dispute by the relevant person referred to in **clause 11.1.4(c)(i)**;~~
- (v)(ii) the parties to the Dispute must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated expert (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne by the parties in equal shares)) that must be satisfied or complied with as a condition of that person accepting the appointment as an expert;
- (vi)(iii) the expert shall:
  - (A) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
  - (B) have no interest or duty which conflicts or may conflict with their function as expert, the expert being required to fully disclose any such interest or duty by notice to the parties before their appointment;
  - (C) not be, or have been in the last five (5) ~~y~~Years, an employee of any of the parties to the Dispute or of a Related Party of any of them;
  - (D) not be permitted to act until the expert has given notice to each party that the expert is willing and able to accept the appointment;
  - (E) have regard to the provisions of this Undertaking and consider all submissions (including oral submissions by each party provided that such oral

submissions are made in the presence of the other parties to the Dispute), supporting documentation, information and data with respect to the matter submitted by the parties;

- (F) not make a determination in relation to a Dispute that is directly inconsistent with an express provision of this Undertaking, although an expert may make a decision (without limitation) relating to:
    - (1) the interpretation or application of any provision of this Undertaking; ~~or~~
    - (2) whether a party has complied with the terms of [this](#) ~~the~~ Undertaking; ~~or~~
    - (3) any matter not expressly stated in this Undertaking; or
    - (4) any part of a matter that is not expressly covered by this Undertaking even if another part of the matter is expressly covered by this Undertaking;
  - (G) have regard to the matters specified in section 120(1)(a) to (l) of the Act;
  - (H) provide to the parties a copy of the expert's determination in relation to the Dispute in the form of a report setting out reasonable details of the reasons for the expert's determination within a reasonable time after their appointment;
  - (I) be required to undertake to keep confidential all matters coming to their knowledge by reason of their appointment and performance of their duties (including, if required by a party, by entering into a confidentiality agreement in favour of the parties to the relevant Dispute); and
  - (J) be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration (including the *Commercial Arbitration Act 2013* (Qld)), shall not apply to the expert or to the determination or the procedures by which the expert may reach a determination.
- (c) Any Dispute subject to expert determination under this **clause 11.1.4** must be determined in accordance with the ~~Institute of Arbitrators & Mediators Australia's~~ Expert Determination Rules [of the Resolution Institute](#) to the extent those rules are not inconsistent with the terms of this **clause 11.1.4**.

- (d) If, at any time during the determination, the expert becomes aware of circumstances that might reasonably be considered to adversely affect the expert's capacity to act independently or impartially, the expert must:
- (i) inform the parties to the Dispute immediately; ~~and~~
  - (ii) unless the parties to the Dispute agree otherwise in writing, terminate the engagement; ~~and~~;
  - (iii) in which case any determination of the expert will be of no effect and a new expert must be appointed in accordance with the procedure outlined in this **clause 11.1.4**.
- (e) The parties shall do everything reasonably requested by the expert to assist the expert in determining the Dispute, including providing or making available to the expert, as soon as reasonably practicable, all information and materials in their possession or control requested by the expert and attending any hearing convened by the expert.
- (f) If the parties to a Dispute agree it is appropriate appoint multiple experts to determine the Dispute, each expert must:
- (i) cooperate with the other experts appointed to determine the Dispute;
  - (ii) endeavour to reach a unanimous decision with the other appointed experts; and
  - (iii) agree between the experts the procedure for drafting the written determination.
- (g) If a party believes that there has been a manifest error or fraud in the expert's decision, it may refer the matter to the QCA for a determination. If the QCA determines that there has been a manifest error or fraud, then the parties may agree to refer the Dispute to another expert in accordance with this **clause 11.1.4**, or failing such agreement, either party may refer the Dispute to the QCA for resolution in accordance with **clause 11.1.5**.
- (h) Unless otherwise agreed by the parties to the Dispute:
- (i) the following must be borne by the parties in equal shares:
    - (A) the costs of the expert (and the costs of any advisers to the expert), including fees and disbursements; and
    - (B) any transcript fees;
  - (ii) each party shall bear their own costs of and incidental to participating in the expert determination process, including their own costs of and incidental to the preparation of a confidentiality deed or agreement for the engagement of the expert.

- (i) An expert appointed under this **clause 11.1.4** must not, without the prior written consent of the parties to the Dispute, accept an appointment to act as arbitrator, or act as an advocate or adviser to either party, in any subsequent arbitral or judicial proceedings arising out of or in connection with the Dispute.

#### 11.1.5 *Determination by the QCA*

- (a) If this Undertaking requires that a Dispute be resolved by the QCA under this **clause 11.1.5**, then that Dispute may be referred to the QCA after **clause 11.1.1** has been complied with in relation to that Dispute.
- (b) Despite ~~this the~~ Undertaking requiring a Dispute to be resolved by the QCA, the parties may jointly request the QCA to refer the matter to an expert for determination in accordance with **clause 11.1.4** in which case the QCA may, but is not required to, refer the matter to an expert.
- (c) If a Dispute is referred to the QCA under this Undertaking or otherwise, the parties agree that Division 5 of Part 5 of the Act ~~shall apply~~applies~~-. For clarity, nothing in this Undertaking is intended to derogate from section 119(1)(a) of the QCA Act. The parties agree that any Dispute that is referred to the QCA under this Undertaking is a Dispute about increased access to a declared service for the purposes of section 112(3) of the Act.~~
- (d) Any referral of a Dispute to the QCA must be accompanied by a Dispute Notice setting out the information required by section 113 of the Act.
- (e) If a Dispute is referred to the QCA in accordance with this Undertaking, the QCA must provide notices of the Dispute to the parties specified in section 114 of the Act.
- (f) If a Dispute is referred to the QCA in accordance with this Undertaking, the QCA must seek the advice of the Safety Regulator on any aspect of the Dispute that either party to the Dispute or the QCA considers to be a safety related matter and must not make any decision that is inconsistent with advice it receives from the Safety Regulator to the extent that the advice relates to any aspect of safety. The QCA must provide to the parties a copy of any advice it receives from the Safety Regulator.
- ~~(d)~~(g) Notwithstanding any provision in this Undertaking, an access determination made by the QCA will not be inconsistent with this Undertaking if it relates to (without limitation):
  - (i) the interpretation or application of any provision of this Undertaking; ~~or~~
  - (ii) whether a party has complied with the terms of ~~this the~~ Undertaking; ~~or~~



- (iii) any matter not expressly stated in this Undertaking; or
- (iv) any part of a matter that is not expressly covered by this Undertaking even if another part of the matter is expressly covered by this Undertaking.

#### 11.1.6 *Procedure*

- (a) Where a Dispute is referred to either an expert or the QCA (**decision maker**) for determination:
  - (i) the parties to the Dispute must provide written submissions to the decision maker outlining their respective views on the matter(s) in dispute, including reasons why their view should be preferred and an outline of how they would like to see the Dispute resolved;
  - (ii) each party to a dispute will be provided with a reasonable opportunity to respond to submissions made to the decision maker by the other party; and
  - (iii) where the matter in Dispute arises under a provision of this Undertaking which sets out the relevant matters to be taken into account by Aurizon Network or the decision maker in making a decision, -the submissions to the decision maker by the parties to the Dispute must address those matters.
- (b) In the absence of manifest error or fraud, ~~if~~ The decision maker's determination ~~shall be~~ final and binding upon the parties and the parties to the Dispute must comply with the directions or determinations of the decision maker, unless:
  - (i) in the case of an expert, **clause 11.1.4(g)** applies; or
  - (ii) a determination by the QCA is challenged on the basis of a breach of a requirement in **clause 11.2**.

#### 11.1.7 *Application to Part 8 Disputes*

- (a) Part 8 expressly sets out additional requirements in relation to resolution of specified ~~disputes~~ Disputes.
- ~~(a)~~ (b) Part 8 prevails to the extent of any inconsistency with this Part 11.

#### 11.2 **QCA decision-making**

- (a) The QCA may not make a decision (**Decision**) under this Undertaking (including a determination under this **Part 11**) that may affect Aurizon Network (including to require Aurizon Network to do, give or submit anything to the QCA, to resolve a Dispute or to refuse to approve, approve or consent to or grant anything), unless:
  - (i) the QCA observed the rules of natural justice;
  - (ii) the QCA observed any procedures that were required by law or this Undertaking;

- (iii) the QCA had jurisdiction to make the Decision under this Undertaking;
  - (iv) the QCA was authorised to make the Decision under this Undertaking;
  - (v) the QCA's Decision would not be an improper exercise of the power conferred by this Undertaking. An improper exercise of power includes a reference to:
    - (A) taking an irrelevant consideration into account in the exercise of a power;
    - (B) failing to take a relevant consideration into account in the exercise of a power;
    - (C) an exercise of a power for a purpose other than a purpose for which the power is conferred;
    - (D) an exercise of a discretionary power in bad faith;
    - (E) an exercise of a personal discretionary power at the discretion or behest of another person;
    - (F) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of a particular case;
    - (G) an exercise of a power that is so unreasonable that no reasonable person could so exercise the power;
    - (H) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
    - (I) any other exercise of a power in a way that is an abuse of the power;
  - (vi) the QCA's Decision did not involve an error of law (whether or not the error appears on the record of the Decision);
  - (vii) the QCA's Decision was not induced or affected by fraud;
  - (viii) to the extent that any matters were required to be established before the Decision could be made or taken, there was some material or evidence from which the QCA could reasonably be satisfied the matter was established to justify the Decision or, to the extent that the existence of a particular fact forms the basis on which the Decision is made, the fact did or does exist; and
  - (ix) the Decision was not otherwise contrary to law or this Undertaking. For the avoidance of doubt, the terms of this **clause 11.2(a)** are intended to have the same meaning as used in the *Judicial Review Act 1991* (Qld).
- (b) If the QCA's Decision or conduct is challenged on the basis of a breach of a requirement in this **clause 11.2**, Aurizon Network and the

QCA agree that Aurizon Network may seek an order suspending the operation of the Decision and a stay of any proceedings under the Decision.

- (c) This **clause 11.2** does not affect the right of any party to seek any other form of remedy or relief including relief by way of the equitable remedies of injunction or declaration or to seek review under the *Judicial Review Act 1991* (Qld).

## Part 12 Definitions and Interpretation

### 12.1 Definitions

In this Undertaking these terms have the following meanings:

<b>\$/NT Basis</b>	Converted to a single \$/nt value on the basis of the applicable Nominal Train Payload.
<b>2001 Undertaking</b>	The access undertaking prepared by Queensland Rail and approved by the QCA pursuant to the Act which commenced on 1 March 2002 (as amended during the term of that access undertaking).
<b>2005 Undertaking</b>	The access undertaking prepared by Queensland Rail and approved by the QCA pursuant to the Act which commenced on 30 June 2006 (as amended during the term of that access undertaking).
<b>2008 Undertaking</b>	The access undertaking prepared by Aurizon Network (previously named QR Network Pty Ltd) and approved by the QCA pursuant to the Act which commenced on 23 October 2008 (as amended during the term of that access undertaking).
<b>2010 Undertaking</b>	The access undertaking prepared by Aurizon Network and approved by the QCA pursuant to the Act which commenced on 1 October 2010 (as amended during the term of that access undertaking).
<b>Above Rail Delay</b>	<p>A delay to a Train Service from its scheduled Train Path in the DTP, where that delay can be attributed directly to an Access Holder (including, if applicable, its Nominated Railway Operator) in operating its Train Services, but excludes:</p> <ul style="list-style-type: none"><li>(a) cancellations;</li><li>(b) delays resulting from compliance with a Passenger Priority Obligation; and</li><li>(c) delays resulting from a Force Majeure Event.</li></ul>
<b>Above Rail Services</b>	Those activities, other than Below Rail Services, required to provide and operate Train Services <u>(which, including Rollingstock provision <a href="#">for providing Train Services, maintenance of that</a> Rollingstock <del>maintenance</del>, non Network Control related communications, train crewing, terminal provision and services, freight handling and marketing and administration of those services)</u> and <b>Above Rail</b> has a similar meaning.

**Absolute Capacity** The aggregate of all Committed Capacity and all Available Capacity.

**Access**

The non-exclusive utilisation of a specified section of Rail Infrastructure for the purposes of operating Train Services including, to the extent necessary for the operation of Train Services:

- (a) the use of passing loops and Train queuing and staging including before and after loading and unloading of Trains;
- (b) the loading and unloading of Trains at facilities that are Rail Infrastructure;
- (c) Train marshalling and shunting:
  - (i) in preparation for running of a Train Service;
  - (ii) before or after loading or unloading of a Train; and
  - (iii) before or after maintenance and provisioning of a Train;
- (d) Stowage;
- (e) the benefit of other Below Rail Services essential to the use of the Rail Infrastructure such as:
  - (i) signalling;
  - (ii) Network Control Services and associated communication;
  - (iii) access to walkways immediately adjacent to, and crew changeover points connecting to, Track; and
  - (iv) the provision of electric transmission infrastructure on electrified sections of the Track so as to permit the acquisition of electric energy for traction ~~(but, for the avoidance of doubt, not including the sale or supply of electric energy)~~; and
- (f) entry upon land:
  - (i) to the extent that entry upon the land is incidental to and essential for the use of Rail Infrastructure; or
  - (ii) for access to walkways and crew changeover points referred to in **paragraph (e)(iii)** of this definition to the same degree as is available to Related Operators,

provided that:

- (i) the land is owned by Aurizon Network, or Aurizon Network has, through a lease, licence or other arrangement with the owners of the land or in accordance with the TIA, the authority to authorise access to that land; and
- (ii) the entry is not inconsistent with the terms of any lease, licence or other arrangement to which Aurizon Network is a party in respect of the land.

**Access Agreement**

An agreement between Aurizon Network and an Access Holder for the provision of Access.

**Access Application**

A written request for Access:

- (a) using the application form for such requests published on the Website from time to time; and
- (b) which satisfies:
  - (i) the information requirements set out in **Schedule B** and **Part 4**; and
  - (ii) any additional information or clarification requested by Aurizon Network in accordance with **Part 4**.

**Access Charge**

The price paid to Aurizon Network [for Access under an Access Agreement](#) and for clarity includes: ~~for Access under an Access Agreement~~

- (a) any:
  - (i) Take or Pay charges;
  - (ii) revenue cap adjustments;
  - (iii) charges and penalties associated with the operation of a Train Service on the Rail Infrastructure (including, for example, overload charges); and
- (b) amounts paid to Aurizon Network in accordance with any Access Conditions, Studies Funding Agreement, User Funding Agreement or Rail Connection Agreement, where such amounts are included in the cost build up for Reference Tariffs or are otherwise included in Access Charges for Train Services.

**Access Charge Rates**

~~for~~ [For](#) a Train Service Type, ~~means~~ the rates specified in the Access Agreement for that Train Service Type.—

**Access Charge Provisions**

~~The provisions set out in~~ **Schedule F**.

<b>Access Conditions</b>	<p>Conditions additional to those in the <del>relevant</del> Standard Access Agreement, whether the conditions are contained in an Access Agreement or a separate agreement, that mitigate Aurizon Network's or the relevant Access Seeker's exposure to any additional costs or risks associated with providing Access for that Access Seeker's proposed Train Service(s) and which are not, or would not, be included in the calculation of the Reference Tariff based on the Approved WACC, including conditions requiring:</p> <ul style="list-style-type: none"> <li>(a) an upfront contribution;</li> <li>(b) a payment of an Access Facilitation Charge;</li> <li>(c) a prepayment of all or part of an Access Facilitation Charge;</li> <li>(d) a bank guarantee or other security that is unconditional, irrevocable, payable on demand and otherwise in a form acceptable to Aurizon Network, acting reasonably, to support payment of an amount (including, for example, payment of an Access Facilitation Charge);</li> <li>(e) the forfeiting of any right to relinquish Access Rights that may arise under this Undertaking; or</li> <li>(f) Access Charges being calculated on the basis of a Varied WACC or other risk adjustments to projected cash flows,</li> </ul> <p>but which are not inconsistent with the Act. Such Access Conditions are subject to approval by the QCA in accordance with <b>clause 6.13.2</b> of this Undertaking.</p>
<b>Access Facilitation Charge</b>	An ongoing charge separate to an Access Charge for the facilitation of Access which is payable irrespective of the actual use of the Rail Infrastructure.
<b>Access Holder</b>	Unless expressed to the contrary, a person that has been granted Access Rights to operate Train Services on all or part of the Rail Infrastructure.
<b>Access Provision Period</b>	A Month or, where the period specified in the relevant Access Agreement in provisions relating to Claims and exclusions in respect of non-provision of <del>access</del> Access Agreement is different, that different period.
<b>Access Rights</b>	An entitlement to Access in accordance with a specified Train Service Entitlement.
<b>Access Seeker</b>	Subject to <b>clause 4.8(a)</b> and unless expressed to the contrary, the entity that provides Aurizon Network with a properly completed Access Application.

<b>Access Seeker Nomination</b>	The meaning given to that term in <b>clause 8.4.3(b)(i)(B)(2)</b> .
<b>AGDC</b>	<del>The Australian Commercial Disputes Centre.</del>
<b>Acknowledgement Notice</b>	A notice given to an Access Seeker under <b>clause 4.4(a)</b> acknowledging the receipt of an Access Application.
<b>Act</b>	<i>Queensland Competition Authority Act 1997</i> (Qld).
<b>Ad Hoc Train Service</b>	A Train Service: <ul style="list-style-type: none"> <li>(a) which is additional to the number of Train Services permitted to operate in a Month under a Train Service Entitlement for that Train Service but which is otherwise in accordance with the Train Service Entitlement under the relevant Access Agreement; or</li> <li>(b) where <b>paragraph (a)</b> does not apply, that varies from the Train Service Entitlement under the relevant Access Agreement but which Aurizon Network permits to operate.</li> </ul>
<b>Additional Information</b>	The information required to be provided by Aurizon Network to an Access Seeker under <b>clause 2</b> of <b>Schedule A</b> .
<b>Adjusted Allowable Revenue</b>	The amount described as such under <b>clause 4.3(c)</b> of <b>Schedule F</b> .
<b>Adjustment Amount</b>	The meaning given to that term in <b>clause 6.1(a)</b> <del>6.1(a)</del> of <b>Schedule F</b> .
<b>Adjustment Charge</b>	<del>F</del> for a Billing Period <del>means</del> the amount calculated in accordance with <b>clause 7.6.1</b> of <b>Schedule F</b> <del>for the Billing Period</del> .
<b><u>Adjustment Date</u></b>	<u>1 July 2013.</u>
<b>Advice Date</b>	<del>in</del> <u>In</u> respect of <del>a</del> <u>the</u> Change in Reference Tariff Provisions for the purposes of <b>Schedule F</b> <del>means</del> the date on which the QCA's decision making or approving the Change in Reference Tariff Provisions is first published by the QCA.
<b>Affected Access Holder</b>	An Access Holder whose Access Rights are affected by a Capacity Shortfall.
<b>Affected Person</b>	The meaning given to that term in <b>clause 7A.2.4(c)(i)</b> .
<b><del>Allocated Tariff 1 Charge or ALT1</del></b>	<del>for a Train Service Type for a Billing Period means the amount calculated in accordance with clause 3.5 of Schedule F for the Train Service Type and Billing Period.</del>
<b><del>Allocated Tariff 2 Charge or ALT2</del></b>	<del>for a Train Service Type for a Billing Period means the amount calculated in accordance with clause 3.6 of Schedule F for the Train Service Type and Billing Period.</del>



<b>Allotted Time Threshold</b>	The threshold within which a Train Service is considered to be on time as follows, for a Train Service operated for the purpose of: <ul style="list-style-type: none"> <li>(a) transporting coal, 30 minutes;</li> <li>(b) transporting bulk minerals (other than coal), 60 minutes;</li> <li>(c) transporting freight products, 60 minutes; and</li> <li>(d) providing long distance passenger transport, 30 minutes.</li> </ul>
<b>Allowable Revenue</b>	In relation to a Reference Tariff for a Year, the amount described as such in accordance with <b>clause 4.2</b> of <b>Schedule F</b> .
<b>Ancillary Revenues</b>	Charges for services that are ancillary to other services supplied under an Access Agreement (including, for example, <del>charges for storage</del> , repositioning, and license arrangements) to the extent that <u>the</u> QCA determines from time to time should be included in this definition.
<b>Applicable Undertaking</b>	This Undertaking, the 2010 Undertaking, the 2008 Undertaking, the 2005 Undertaking or the 2001 Undertaking that applied at the relevant time.
<b>Approval Date</b>	The date on which this Undertaking was approved by the QCA.
<b>Approved Capital Expenditure</b>	All capital expenditure approved by the QCA in accordance with <b>Schedule E</b> .
<b><u>Approved PIC</u></b>	<u>For the purposes of <b>clause 6.3</b>, Private Incremental Costs that have been approved by the QCA as prudently and efficiently incurred in accordance with <b>clause 6.3.1</b>.</u>
<b>Approved Undertaking</b>	This Undertaking, the 2010 Undertaking, the 2008 Undertaking, the 2005 Undertaking and the 2001 Undertaking.
<b>Approved WACC</b>	The post-tax nominal (vanilla) weighted average cost of capital as determined by the QCA for the period specified by <u>the</u> QCA for the purposes of this Access Undertaking.
<b>Assessor</b>	The meaning given to <del>the that</del> term in <b>clause 10.4.3(b)</b> <del>Error! Reference source not found.</del>
<b>Asset Management Plan</b>	The asset management plan accepted by the QCA under <b>clause 3 of</b> , <b>Schedule E</b> , as amended from time to time.

**Asset Replacement and Renewal**

Capital projects required to maintain the Existing Capacity of the Rail Infrastructure including without limitation:

(a) the replacement of life expired or obsolete assets; and

(b) the replacement of assets which are lost, damaged or destroyed as a result of a Force Majeure Event,

and which are required for Aurizon Network to meet its existing contractual obligations under Access Agreements. ~~(for example, the replacement or renewal of life expired or obsolete assets).~~

**Asset Replacement and Renewal Expenditure**

Expenditure on Asset Replacement and Renewal.

**AT<sub>1</sub>**

The meaning given in **clause 2.2 of Schedule F.**

**AT<sub>2</sub>**

The meaning given in **clause 2.2 of Schedule F.**

~~**Asset Replacement Expenditure**~~

~~Expenditure on capital projects required to maintain the Existing Capacity of the Rail Infrastructure including without limitation:~~

~~(a) the replacement of life expired or obsolete assets; and~~

~~(b) the replacement of assets which are lost, damaged or destroyed as a result of a Force Majeure Event,~~

~~and which are required for Aurizon Network to meet its existing contractual obligations under Access Agreements.~~

**AT<sub>2-4</sub>**

The aggregate of the AT<sub>2</sub>, AT<sub>3</sub> and AT<sub>4</sub> components of Access Charges.

**AT<sub>2-4</sub> Revenue Adjustment Amount**

For a Coal System, the amount calculated under **clause 4.3(a) of Schedule F** for that Coal System.

**AT<sub>3</sub>**

The meaning given in **clause 2.2 of Schedule F.**

**AT<sub>4</sub>**

The meaning given in **clause 2.2 of Schedule F.**

**AT<sub>5</sub>**

The meaning given in **clause 2.2 of Schedule F.**

**AT<sub>5</sub> Revenue Adjustment Amount**

For a Coal System, the amount calculated under **clause 3.3(b)4.3(b)** of **Schedule F** for that Coal System.

**Auditor**

An auditor appointed under **clause 10.6.4(a)** and compliant with the requirements of that **clause 10.6.4(b)** ~~in accordance with **Part 10.**~~

~~**Aurizon Associate**~~

~~(a) Aurizon Network; or~~

~~(b) an Aurizon Party.~~

<b>Aurizon Group</b>	The group of companies for which the holding company (as defined under the Corporations Act) is the Ultimate Holding Company.
<b>Aurizon Holdings</b>	Aurizon Holdings Limited ACN 146 335 622.
<b>Aurizon Network</b>	Aurizon Network Pty Ltd ACN 132 181 116.
<b>Aurizon Network Cause</b>	<p>Where Aurizon Network is unable to make Rail Infrastructure available for the operation of Train Services in accordance with any Access Holder's Train Service Entitlement, as a result of:</p> <ul style="list-style-type: none"> <li>(a) Planned Possessions, Emergency Possessions or Urgent Possessions;</li> <li>(b) an Operational Constraint; or</li> <li>(c) any other action by Aurizon Network which directly resulted in the Rail Infrastructure not being so available,</li> </ul> <p>where such inability by Aurizon Network is not attributable:</p> <ul style="list-style-type: none"> <li>(a) to Aurizon Network complying with its Passenger Priority Obligations;</li> <li>(b) to the unavailability of the relevant Access Holder's loading facility or an unloading facility;</li> <li>(c) to the failure to load a Train at the relevant Access Holder's loading facility within the maximum time at loading facility (as specified in the relevant Access Agreement) for that Train Service, or unload a Train at the relevant Access Holder's unloading facility within the maximum time at unloading facility (as specified in the relevant Access Agreement) for that Train Service; or</li> <li>(d) in respect of a Train Service that will operate on Private Infrastructure prior to entering and/or after exiting the Rail Infrastructure as part of its journey, to the unavailability of, or cancellation of train services on, that Private Infrastructure.</li> </ul>
<b><del>Aurizon Network's Executive Officer</del></b>	<del>The person who is, from time to time, the chief executive of Aurizon Network.</del>
<b>Aurizon Network's Personnel</b>	<p>The:</p> <ul style="list-style-type: none"> <li>(a) directors and officers of Aurizon Network; and</li> <li>(b) employees, contractors and agents of Aurizon Network and any other person under the control or supervision of Aurizon Network involved in the provision of Below Rail Services (including secondees working in the</li> </ul>

business of Aurizon Network).

<a href="#"><u>Aurizon Network's Executive Officer</u></a>	<a href="#"><u>The person who is, from time to time, the chief executive of Aurizon Network.</u></a>
<b>Aurizon Operations</b>	Aurizon Operations Limited ACN 124 649 967.
<b>Aurizon Party</b>	A Related Party of Aurizon Network other than a Related Party of Aurizon Network who is a User Funding Trustee.
<b>Australian Taxation Office</b>	The Australian Government's principal revenue collection agency.
<b>Authority</b>	The Crown (in right of the State or the Commonwealth), a minister of the Crown, a federal, state or local government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority, a court, a tribunal and any officer or agent of the foregoing acting as such.
<b>Available Capacity</b>	Capacity, excluding all Committed Capacity (other than where the circumstances in <b>clause 7.3(d)(iii)</b> or <b>(iv)</b> apply).
<b>Baseline Capacity</b>	The Capacity as approved by the QCA as a result of a Baseline Capacity <del>Review</del> <a href="#"><u>Assessment</u></a> conducted in accordance <del>with</del> <a href="#"><u>with</u></a> <b>clause 7A.4.1</b> .
<a href="#"><u>Baseline Capacity Assessment</u></a>	<a href="#"><u>The Capacity assessment undertaking in accordance with clause 7A.4.1.</u></a>
<b>Baseline Capacity Assessment Report</b>	The meaning given to <del>the</del> <a href="#"><u>that</u></a> term in <b>clause 7A.4.1(a)(ii)</b> .
<b>Below Rail Delay</b>	A delay to a Train Service from its scheduled Train Path in the DTP, where that delay can be attributed directly to Aurizon Network, but excludes: <ul style="list-style-type: none"><li>(a) cancellations;</li><li>(b) delays resulting from compliance with a Passenger Priority Obligation; and</li><li>(c) delays resulting from a Force Majeure Event.</li></ul>
<b>Below Rail Services</b>	The activities <a href="#"><u>required to supply the declared services contemplated by section 250(1)(a) of the Act, including those activities</u></a> associated with the provision and management of Rail Infrastructure <a href="#"><u>and Access and which,</u></a> including the construction, maintenance and renewal of Rail Infrastructure assets, and the network management services required for the safe operation of Train Services on the Rail Infrastructure, including Network Control Services and the implementation of Safeworking

	Procedures and <b>Below Rail</b> has a similar meaning.
<b>Below Rail Transit Time</b>	For a Train Service travelling between its origin and destination, the sum of: <ul style="list-style-type: none"> <li>(a) the relevant nominated section running times (in the direction of travel) as specified in the Train Service Entitlement;</li> <li>(b) identified Below Rail Delays for that Train Service;</li> <li>(c) the time taken in crossing other Trains to the extent that such time is not contributed to by Above Rail causes or Force Majeure Events or otherwise included in <b>paragraph (a)</b> of this definition; and</li> <li>(d) delays due to Operational Constraints directly caused by the activities of Aurizon Network in maintaining the Rail Infrastructure, provided such delays are not contributed to by Above Rail causes or Force Majeure Events or otherwise included in <b>paragraphs (b)</b> and <b>(c)</b> of this definition.</li> </ul>
<b>Below Rail Transit Time Percentage</b>	For a type of Train Service specified in a Train Service Entitlement, the proportion (expressed as a percentage) calculated by dividing the Below Rail Transit Time by the maximum sectional running times (as set out in the relevant Access Agreement) for all relevant sections (as set out in the relevant Access Agreement).
<b><u>Billing Period</u></b>	<u><a href="#">The meaning given to that term in the relevant Access Agreement.</a></u>
<b>Blackwater System</b>	The Rail Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory, Minerva and Rolleston mines, and all branch lines directly connecting coal mine loading facilities to those corridors with the exception of the corridor to Oaky Creek (and beyond) and the corridor to Moura mine (and beyond).
<b>Business Day</b>	A day which is not a Saturday, Sunday or special or public holiday in Brisbane or, if and to the extent that this Undertaking expressly refers to another place, in that other place.
<b>Capacity</b>	The aggregate of all Existing Capacity and all Planned Capacity.
<b>Capacity Analysis</b>	A static and dynamic simulation modelling assessment of the Available Capacity of the Rail Infrastructure, based on the Network Management Principles, System Operating Parameters, System Rules <del>Access Holder's</del> <u><a href="#">Train Operator's</a></u> Operating Plans and any requested Access

Seeker's Access Rights, to determine:

- (a) Available Capacity;
- (b) whether there is sufficient Available Capacity to accommodate Committed Capacity;
- (c) whether there is sufficient Available Capacity to accommodate the requested Access Rights;
- (d) if there is not sufficient Available Capacity to accommodate Committed Capacity, the Expansions required to provide the Shortfall Capacity to accommodate Committed Capacity (and an indicative estimate of the cost of such works and timing for completion);
- (e) if there is not sufficient Available Capacity to accommodate requested Access Rights, the Expansions required to provide the additional Capacity to accommodate the requested Access Rights (and an indicative estimate of the cost of such works and timing for completion); and
- (f) the operational impacts of the requested Access Rights including the impact of the requested Access Rights on the, Network Management Principles, System Operating Parameters, System Rules and Train Operator's Operating Plans,

and which provides a sufficient basis to enable Aurizon Network to finalise the relevant Train Service Entitlement, initial timetable, applicable Access Charges and associated funding arrangements (subject to other variations identified in the negotiation process).

**Capacity Assessment**

An assessment undertaken under **clause 7A.4.2(a)**.

**Capacity Assessment Notice**

A notice given under **clause 8.9.5(b)(i)**.

**Capacity Assessment Report**

The meaning given to ~~the~~ that term in **clause 7A.4.2(c)**.

**Capacity Deficit**

The meaning given to ~~the~~ that term in **clause 7A.4.3(a)**.

**Capacity Information**

The information required to be provided by Aurizon Network to an Access Seeker under **clause 3** of **Schedule A**.

**Capacity Notification Register**

The register maintained by Aurizon Network under **clause 7.2.2**.

<b>Capacity Shortfall</b>	A circumstance where the Capacity is: <ul style="list-style-type: none"> <li>(a) less than the Committed Capacity of the relevant Coal System, Track Segment, Segment or other part of the Rail Infrastructure, as the context requires; or</li> <li>(b) less than the Committed Capacity of an Expansion where the Access Rights are conditional on that Expansion being completed and commissioned.</li> </ul>
<b>Capacity Shortfall Access Application</b>	An Access Application that is taken to have been lodged with Aurizon Network in accordance with <b>clause 8.9.3</b> .
<b>Capital Expenditure Carryover Account</b>	The account maintained by Aurizon Network recording the difference between Approved Capital Expenditure and the Capital Indicator in the manner specified in <b>clause 5 of Schedule E</b> .
<b>Capital Indicator</b>	The annual capital expenditure allowance approved by the QCA, from time to time, for the purpose of assessing the relevant Reference Tariffs.
<b>CDMP</b>	The meaning given to that term in <b>clause 1.2 of Schedule J</b> .
<b>Change in Law</b>	Any of the following: <ul style="list-style-type: none"> <li>(a) any amendment, repeal or enactment of any Law;</li> <li>(b) any change in the interpretation or application, including by the exercise of delegated authority, of any Law resulting from a decision of a court or Authority;</li> <li>(c) the making of any new directive, or any change in an existing directive, of any Authority;</li> <li>(d) the imposition of a requirement for authorisations not required as at the Commencing Date;</li> <li>(e) after the date of grant of any authorisation, a change in the terms and conditions attaching to that authorisation or the attachment of any new terms or conditions; or</li> <li>(f) any such authorisation as has been granted ceasing to remain in full force and effect or, if granted for a limited period, not being renewed on a timely basis on application therefore being duly made, or being renewed on conditions which are materially less favourable than those attached to the original authorisation.</li> </ul>

<b>Change in Reference Tariff Provisions</b>	<p><del>means a</del>Any change (including variation, repeal or replacement) of:</p> <p>(a) the Reference Tariff Provisions; or</p> <p>(b) the Reference Tariffs (including the creation of a new Reference Tariff),</p> <p>made or approved by the QCA from time to time.</p>
<b>Change in Relevant Taxes</b>	<p>Any of the following:</p> <p>(a) the imposition of a new Relevant Tax;</p> <p>(b) an increase in the rate of a Relevant Tax; or</p> <p>(c) a change in the basis of calculation of a Relevant Tax.</p>
<b>Claim</b>	<p>Any action, proceeding, claim, demand, damage, loss, cost, liability or expense, including the costs and expenses of defending or settling any action, proceeding, claim or demand.</p>
<b>Changes in Market Circumstances</b>	<p>Changes in circumstances which have occurred in any market and which have had, or will have, a material effect on an Access Holder's ability to pay the Access Charges.</p>
<b>Coal Loss Mitigation Provisions</b>	<p>The provisions set out in <b>Schedule J</b>.</p>
<b>Coal System</b>	<p>Any one of the following:</p> <p>(a) the Newlands System;</p> <p>(b) the Goonyella System;</p> <p>(c) the Blackwater System;</p> <p>(d) the Moura System; <u>or</u></p> <p><del>(e) the Goonyella to Abbot Point System; or</del></p> <p><del>(f) the Newlands to Abbot Point System</del></p>
<b>Commencing Date</b>	<p>1 July 2013.</p>
<b>Committed Capacity</b>	<p>That portion of the Capacity that is required:</p> <p>(a) to meet Train Service Entitlements;</p> <p>(b) to satisfy Aurizon Network's obligations under <b>clause 7.3(d)</b> in respect of a Renewing Access Seeker;</p> <p>(c) to comply with any Passenger Priority Obligation or Preserved Train Path Obligation;</p> <p>(d) to provide Access Rights to Access Seekers where Aurizon Network has, in relation to those Access Rights, contractually committed to construct an</p>



Expansion; and

- (e) to provide Access Rights for Access Holders where Aurizon Network has, in relation to those Access Rights, contractually committed to construct a Customer Specific Branch Line.

**Committed Capacity Register**

The register maintained by Aurizon Network under **clause 7.2.3**.

**Common Corridor**

That part of the Rail Infrastructure that:

(a) either:

- (i) would be utilised by a ~~a~~ [Railway](#) Operator to operate Train Services for the Access Holder utilising the Nominated Access Rights; or
- (ii) if the Access Holder has not nominated a ~~a~~ [Railway](#) Operator to operate Train Services utilising the Nominated Access Rights, would have been utilised by a ~~a~~ [Railway](#) Operator had the Access Holder nominated a ~~a~~ [Railway](#) Operator to operate the relevant Train Services; and

(b) will also be utilised by the ~~t~~[T](#)ransferee's Train Services.

**Common Costs**

Those costs associated with provision of Rail Infrastructure that are not Incremental Costs for any particular Train Service using that Rail Infrastructure.

**Comparative Length**

In respect of a Train, the length of that Train calculated as:

- (a) the Static Length of that Train multiplied by 1.02; plus
- (b) 125mm multiplied the number of items of Rollingstock comprising or to comprise that Train (including the locomotive/s).<sup>2</sup>

**Compliance Officer**

The Aurizon Network employee designated as such by the Aurizon Network's Executive Officer.

**Complainant**

The meaning given to ~~the that~~ term in **clause 3.20(a)**~~Error! Reference source not found.~~

**Completion Date**

The meaning given to ~~the that~~ term in **clause 8.6(a)(i)(C)**.

**Concept Study**

A study that enables a preliminary assessment of the potential costs, benefits and risk involved in providing the capacity required in respect of a potential Expansion and includes:

<sup>2</sup> By way of explanation, this comparative Train length comprises the following: static Train length (which is the straight addition of individual Rollingstock lengths) plus an allowance of 2% of this static Train length for train handling accuracy plus 125mm per vehicle for slack movement in drawgear (includes free slack in the drag box, compression of the draftgear, clearance/free slack due to coupler wear and pin clearance at the yoke).

- (a) identification of a possible technical solution to provide the capacity required for the potential Expansion;
- (b) unless otherwise agreed by Aurizon Network and an Access Seeker, includes an indicative assessment of:
  - (i) project objectives;
  - (ii) a broad cost estimate of the potential solution with a +/-50% accuracy;
  - (iii) preliminary financial analysis;
  - (iv) preliminary risk assessment; and
  - (v) indicative timeframes for the development and delivery of the project;
- (c) ~~includes~~ a Pre-feasibility Study execution plan, including a proposed scope of work (taking into account the scope of work required by the definition of “Pre-feasibility Study” in this Undertaking), budget, time schedule and deliverables; and
- (d) ~~includes~~ a written report on the outcome of the analysis and the reasons for the selection(s) made and the preliminary scope, cost and program details of the selected alternatives.

**Conditional Access Holders**

The meaning given to that term in **clause 8.9.28.9.2(a)**.

**Conditional Access Provisions**

The provisions set out in **clause 8.9.5**.

**Conditional Access Rights**

The meaning given to that term in **clause 8.9.28.9.2(a)**.

**Condition Based Assessment**

The meaning given to ~~the that~~ term in **clause 10.4.3**~~Error! Reference source not found.~~

**Confidential Information**

Any information, data or other matter (“information”) disclosed to a party by, or on behalf of, another party where:

- (a) the disclosure of the information by the recipient might reasonably be expected to affect the commercial affairs of the owner of the Confidential Information; or
- (b) the information is marked confidential by a party when disclosed,

provided that such information:

- (c) is not already in the public domain;
- (d) does not become available to the public through means other than a breach of the confidentiality

provision in this Undertaking or any confidentiality deed contemplated in **clause 3.12(f)**;

- (e) was not in the other party's lawful possession prior to such disclosure; and
- (f) is not received by the other party independently from a third party free to disclose such information, data or other matter,

and provided further that information will cease to be Confidential Information if the information has ceased to retain its confidential nature, for example:

~~(g) the disclosure of the information by the recipient would no longer reasonably be expected to affect the commercial affairs of the owner of the information;~~

~~(h)~~(g) the information is now in the public domain through means other than a breach of the confidentiality provisions in this Undertaking or any confidentiality deed contemplated in **clause 3.12(f)**; or

(h) the information has been received by the recipient independently from a third party free to disclose the information;

but does not include:

(i) information which relates solely in material respects to matters other than the supply of the declared services contemplated by section 250(1)(a) of the Act; or

~~(i)~~(i) if a document or discussion is comprised of information only some of which would be Confidential Information as a result of paragraph (i) of this definition, the remainder of the information in the document or discussion to the extent that Aurizon Network can clearly separate the remainder of the information from the Confidential Information.

**Confidential Information Register**

The register established and maintained under **clause 3.143-20**.

**Connecting Infrastructure**

The rail transport infrastructure (including track, signalling and overhead electric traction (if applicable)) which connects the Private Infrastructure to the Rail Infrastructure and that on completion forms part of the Rail Infrastructure and, where Connecting Infrastructure is the subject of a Rail Connection Agreement, is more particularly defined in the relevant Rail Connection Agreement.

**Connection**

The meaning given to ~~the~~that term in **clause 9.1(e)9.1(h)**.

## Milestone

### Construction Agreement

The meaning given to ~~the~~ that term in the Standard Rail Connection Agreement.

### Contested Train Path

A Train Path in respect of which more than one Access Holder has expressed an interest in operating a Train Service in the week in question.

### Corporations Act

The *Corporations Act 2001* (Cth) and the regulations made under it, as amended from time to time.

### Corresponding Train Service

~~for a Train Service Type means a Network Train Service which:~~

~~(a) has an origin and destination which is the same as the Origin and Destination for the Train Service Type;~~

~~(b) has the same Access Holder for the Train Service Type; and~~

~~(c) is subject to the same type of Reference Tariff as the Reference Tariff Type for that Train Service Type,~~

~~and operated under an Access Agreement.~~

### Costing Manual

The cost allocation manual either:

(a) A manual prepared by Aurizon Network and approved by the QCA ~~from time to time that identifies the following matters;~~ or

— Prepared by the QCA under section 159(1) of the Act, as revised by the QCA from time to time under sections 159(2) and (3) of the Act.

~~(a) for financial statements prepared in accordance with **clause** Error! Reference source not found., the process for identifying, from the Aurizon Network's audited general purpose financial statements, the cost base for Below Rail Services, separate from other services provided by Aurizon Network; and~~

~~(b) the format of financial statements.~~

### CPI

The Consumer Price Index: All Groups – Brisbane (Australian Bureau of Statistics Publication No.6401.0).

### Cross Subsidy

Where the Access Charges payable in respect of one Train Service or combination of Train Services are insufficient to meet:

(a) the Incremental Cost imposed on the Rail Infrastructure by that Train Service or combination of Train Services; and

(b) in respect of a combination of Train Services, the

Common Costs related specifically to sections of Rail Infrastructure that are used solely for the purpose of Train Services within that combination of Train Services,

and the shortfall is contributed to by another Train Service or combination of Train Services.

**Cross System Train Service**

A coal carrying Train Service that requires Access in respect of more than one Coal System (excluding any Train Service that operates solely within the Goonyella to Abbot Point System even though it might otherwise require Access to more than one Coal System – for example, the Goonyella System and the Newlands System).

**Customer**

A person in respect of which an Access Holder or an Access Seeker is or is intending to use Access Rights to provide Train Services for that person (in that Access Seeker's or Access Holder's capacity as a Railway Operator).

**Customer Access Seeker**

(a) Where:

- (i) two or more Access Seekers have submitted Access Applications for the same Access Rights; and
- (ii) one of those Access Seekers (**Principal Access Seeker**) is the Customer for one of the other Access Seekers,

the Principal Access Seeker; or

(b) in all other cases, an Access Seeker who is not and will not be the ~~Railway~~-Train Operator in relation to the Access Rights sought.

**Customer Specific Branch Line**

An extension, enhancement, expansion, augmentation, duplication or replacement of all or part of the Rail Infrastructure:

- (a) to be constructed solely to connect an Access Holder's or a Customer's loading facility to Rail Infrastructure; and
- (b) that on completion will form part of the Rail Infrastructure,

excluding:

- (c) Connecting Infrastructure; and
- (d) any capital expenditure project to the extent that it involves Asset Replacement and Renewal Expenditure.

<b>Cyclic Traffic</b>	A traffic, <del>whose the</del> Train Service Entitlements <a href="#">in respect of which</a> are defined in terms of a number of Train Services within a particular period of time, for example, a year, Month, week or day. Coal traffic is an example of such traffic.
<b>Daily Train Plan or DTP</b>	The meaning given to <del>the that</del> term in <b>clause 5.1 of Schedule G</b> .
<b>Decision</b>	The meaning given to <del>the that</del> term in <b>clause 11.2(a)</b> .
<b>Demand Assessment</b>	<p>An estimation (acting reasonably) of:</p> <ul style="list-style-type: none"><li>(a) the demand for Capacity beyond Available Capacity and Committed Capacity; and</li><li>(b) the estimated time for which the Capacity referred to in <b>paragraph (a)</b> is required,</li></ul> <p>having regard to the relevant information in accordance with <b>clause 8.2.4(b)</b>.</p>
<b>Depreciated Optimised Replacement Cost or DORC</b>	<p>The value of assets determined in the following manner:</p> <ul style="list-style-type: none"><li>(a) the replacement value of the assets will be assessed as the cost of the modern engineering equivalent replacement asset;</li><li>(b) optimisation of the asset base will occur, but such optimisation will only consider whether or not the infrastructure standard and infrastructure capacity are excessive, given the current and likely future requirements of Access Holders; and</li><li>(c) depreciation of the optimised replacement asset value will be undertaken over the useful life of the assets.</li></ul>
<b>Destination System</b>	<ul style="list-style-type: none"><li>(a) For any Train Service which originates in the Blackwater System and uses the Goonyella Newlands Connection, the Goonyella to Abbot Point System; or</li><li>(b) in all other cases, the Coal System on which the Nominated Unloading Facility is located.</li></ul>
<b>Destination Tariff</b>	The relevant Reference Tariff applying to the relevant Cross System Train Service in the Destination System.
<b>Discount Rate</b>	The rate equivalent to the ROA, as defined in <b>clause 6.6.3(c)</b> .

<b>Dispute</b>	The meaning given to that term in <b>clause 11.1.1(a)</b> .
<b>Dispute Notice</b>	A notice given under <b>clause 11.1.1</b> specifying the nature of the <del>dispute</del> <u>Dispute</u> and the proposed resolution.
<b>Dispute Provisions</b>	<del>The provisions set out in Part 11.</del>
<b>Distribution Entities</b>	The meaning given to that term in the <i>Electricity Act 1994</i> (Qld).
<b>Draft System Rules</b>	The meaning given to <del>the</del> <u>that</u> term in <b>clause 7A.2.3(b)</b> .
<b>DTMR</b>	The Department of Transport and Main Roads for the State of Queensland or other department from time to time responsible for the administration of the TIA.
<b>Dwell</b>	Where a Train stops for a short period on Rail Infrastructure at locations specified by Aurizon Network as required for crew changes, meal breaks and maintenance, examination and provisioning of that Train.
<b>EC</b>	The electric energy charge defined as “EC” in <b>clause 2.2(a)</b> of <b>Schedule F</b> .
<b>Efficient Cost</b>	The cost for each Year during the Evaluation Period, that reflects the cost that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices in the provision of the Rail Infrastructure to the required service standard, having regard to any matters particular to the environment in which Aurizon Network operates, and including any transitional arrangements agreed between Aurizon Network and the QCA to reflect the transition from Aurizon Network’s actual cost to that efficient cost.
<b>egtk</b>	The electric gross tonne kilometres attributed to the relevant Train Service, being: <ul style="list-style-type: none"> <li>(a) the gtk for the Train Service, if that Train Service uses electric traction; and</li> <li>(b) zero, if the Train Service does not use electric traction.</li> </ul>
<b>Electric Energy Charge or EEC</b>	<del>for a Train Service Type for a Billing Period means the amount calculated in accordance with <b>clause 3.8</b> of <b>Schedule F</b> for the Train Service Type and Billing Period.</del>
<b>Electric Tariff Charge or ET</b>	<del>for a Train Service Type for a Billing Period means the amount calculated in accordance with <b>clause 3.7</b> of <b>Schedule F</b> for the Train Service Type and Billing Period.</del>

**Emergency Possession**

A Possession required to rectify a serious fault with the Rail Infrastructure that Aurizon Network (acting reasonably) considers dangerous to any person, or where severe speed restrictions have been imposed affecting the scheduled Train Services of Railway Operators and that Aurizon Network, complying with the Possession Protocols, will use reasonable endeavours to carry out within seven days after the detection of the fault giving rise to the need for that Possession.

**Emergency Response Plan**

The meaning given to ~~the~~ that term in **clause 12(a)(i)(B)** of the Standard Train Operations Deed.

**Endorsed Variation Event**

The occurrence of any of the events listed in **clause 5.2 of Schedule F**.

**Environment Compliance Charge**

A charge determined by Aurizon Network equal to the aggregate of any fine, penalty, cost, impost or other amount incurred by, or imposed on, Aurizon Network by an Authority under any Environmental Law (including the EP Act) in relation to any non-compliance with the CDMP:

- (a) as a result of or in connection with any act or omission of the Access Holder (excluding good faith acts and omissions in accordance with an express request by Aurizon Network in relation to compliance); or
- (b) where the Access Holder fails to do, or not do, anything requested by Aurizon Network that would have avoided or reduced the amount incurred by, or imposed on, Aurizon Network.

**Environmental Authorities**

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

**Environmental Harm**

Serious environmental harm, material environmental harm or environmental nuisance as those terms are defined in the EP Act.

**Environmental Laws**

A Law relating to the environment (as defined under the EP Act), including:

- (a) a Law relating to planning, health, toxic or contaminating materials, dangerous goods, waste disposal or pollution; and



- (b) environmental protection policies, guidelines, regulations and relevant approved codes of practice, and the conditions of all licences, notices, directions, approvals, consents, permissions or permits, issued under any such Law.

<b>Environmental Management Plan</b>	The meaning given to <del>the</del> <u>that</u> term in <b>clause 12.1(f)</b> of the Standard Train Operations Deed.
<b>Environmental Risks</b>	All risks to the environment (as defined under the EP Act) arising or potentially arising from the Access Seeker's or Access Holder's proposed operations (including risks associated with the matters identified in item 3 of schedule 7 of the Train Operations Deed).
<b>EP Act</b>	<i>Environmental Protection Act 1994 (Qld)</i> .
<del><b>Escalation Date</b></del>	<del>means each 1 July.</del>
<b>Evaluation Period</b>	<ul style="list-style-type: none"> <li>(a) When in reference to an individual Train Service, the period which is equal to the length of the expected duration of the existing or proposed Access Right under the Access Agreement in respect of the relevant Train Service;</li> <li>(b) when in reference to a combination of Train Services for the purpose of determining a Reference Tariff to apply for some or all of those Train Services, the period for which that Reference Tariff will apply; or</li> <li>(c) when in reference to a combination of Train Services other than referred to in <b>paragraph (b)</b> of this definition, the period which is equal to the length of the expected duration of the longest existing or proposed Access Right under an Access Agreement in respect of any of the Train Services comprising the combination of Train Services, provided that such period does not exceed 10 years.</li> </ul>
<b>Existing Capacity</b>	<p>All Committed Capacity and all Available Capacity, after taking into account:</p> <ul style="list-style-type: none"> <li>(a) Aurizon Network's reasonable requirements for the exclusive or partial utilisation of the Rail Infrastructure for the purposes of performing activities associated with the maintenance and repair of the Rail Infrastructure, including the operation of work Trains;</li> <li>(b) Aurizon Network's allowances for "day of operations" losses, speed restrictions and other operational losses or restrictions applicable to the Rail Infrastructure the System Operating Parameters; and</li> <li>(c) Planned Capacity.</li> </ul>

<u><b>Expanding User</b></u>	<u>The meaning given to that term in <b>clause 6.4.1(a)</b>.</u>
<b>Expansion</b>	An extension, enhancement, expansion, augmentation, duplication or replacement of all or part of the Rail Infrastructure that on completion forms part of the Rail Infrastructure, excluding: <ul style="list-style-type: none"> <li>(a) Customer Specific Branch Lines;</li> <li>(b) Connecting Infrastructure; and</li> <li>(c) <del>any capital expenditure project to the extent that it involves</del> Asset Replacement and Renewal Expenditure.</li> </ul>
<u><b>Expansion Costs</b></u>	<u>The meaning given to that term in <b>clause 6.4.3(a)(ii)</b>.</u>
<b>Expansion Funder</b>	An Access Seeker, Access Holder or its Customer who has entered into a User Funding Agreement with Aurizon Network and includes the Preference Unit Holder nominated by the Access Seeker or Access Holder if it has nominated another party to hold the preference units created under the User Funding Agreement.
<b>Expansion Tariff</b>	The tariff determined in accordance with <b>Part 6</b> for a specified Reference Train Service in relation to an Expansion.
<b>Expected Access Revenue</b>	<ul style="list-style-type: none"> <li>(a) For an individual Train Service, the revenue reasonably expected from the Access Charge from that Train Service; and</li> <li>(b) for a combination of Train Services, the aggregate revenue reasonably expected from the Access Charges for all Train Services comprising that combination of Train Services, where the expected Access Charges for different Train Services will be developed on a basis consistent with: <ul style="list-style-type: none"> <li>(i) if a Reference Tariff is to be developed for a Train Service, the proposed Reference Tariff;</li> <li>(ii) the terms of the relevant Standard Access Agreement; and</li> <li>(iii) if <b>paragraph (b)(i)</b> of this definition does not apply, current applicable Access Charges, except as provided in <b>clause 6.7.1(b)(iv)</b>.</li> </ul> </li> </ul>
<del><b>Expression of Interest</b></del>	<del>An expression of interest, request for proposals or other similar process.</del>
<del><b>Extension Request</b></del>	<del>A written request for an extension of time that sets out the cause or causes of Aurizon Network's delay, a proposed new compliance date and any other information the QCA may reasonably require in determining the request for an</del>

~~extension of time.~~

**Feasibility Funder** An Access Seeker or a Customer who is a party to a Studies Funding Agreement with Aurizon Network in respect of a Feasibility Study for an Expansion.

**Feasibility Study** A study with the following scope of work:

- (a) detailed assessment of technical and operating requirements of the proposed Expansion (utilising the preferred alternative identified in the Pre-~~F~~feasibility Study but having regard to the options identified in that Pre-feasibility Study);
- (b) all necessary survey and geotechnical investigations to support the level of design and cost accuracy commensurate with the procurement strategy developed as part of the Feasibility Study;
- (c) detailed design of the proposed Expansion solution to a level commensurate with the procurement strategy developed as part of the Feasibility Study;
- (d) independent design verification, if required by the Feasibility Funders; and
- (e) a written report.

The written report referred to above must include:

- (a) the outcome of the analysis, decisions and specifications referred to above (with reasons, where applicable);
- (b) the project objectives for the proposed Expansion;
- (c) a “for construction level” specification for the proposed Expansion;
- (d) definition of an optimised project configuration that will provide the target capacity for an Expansion in accordance with the capacity requirements specified as part of the Feasibility Study scope of works;
- (e) confirmation of the technical and economic feasibility of the preferred alternative identified in the Pre-~~F~~ffeasibility Study;
- (f) financial evaluation of the proposed Expansion, including:
  - (i) the estimated impact on the System Reference Tariff and Expansion Tariff (including an appropriate ~~common~~ Common ~~cost~~ Cost contribution);

- (ii) the anticipated Expansion Tariff; and
- (iii) an estimate of the ~~common~~ Common cost Cost contribution,  
(determined in accordance with this ~~the~~ Undertaking);
- (g) Capacity Analysis for the proposed Expansion to identify the target Capacity of the Expansion;
- (h) a detailed cost estimate for the proposed Expansion with a +/-10% level of accuracy (or a lower accuracy if agreed with the Feasibility Funders);
- (i) detailed design and construct project schedule for the proposed Expansion that includes:
  - (i) a fully stated program showing critical path;
  - (ii) time tolerances and project budget with a +/-10% margin (or lower accuracy if agreed with the Feasibility Funders);
  - (iii) an estimate of time and cost contingency supported by risk assessment and cost analysis;
  - (iv) probabilistic risk assessment analysis to establish the basis of project contingency; and
  - (v) a fully developed procurement methodology (including a report on previous approaches to the construction market undertaken by Aurizon Network, whether for the proposed Expansion or other works); and
- (j) a fully developed project management plan which includes:
  - (i) resource management plan;
  - (ii) cost management plan;
  - (iii) design management plan;
  - (iv) quality management plan;
  - (v) safety management plan;
  - (vi) schedule management plan;
  - (vii) risk management plan;
  - (viii) project packaging and delivery strategy;
  - (ix) procurement management plan;
  - (x) interface management plan;
  - (xi) change management plan;

- (xii) environmental plan;
- (xiii) project phases, milestones and deliverables;
- (xiv) project risk assessment report; and
- (xv) regulators notification, if needed.

**Field Incident Management**

The field management of incidents and accidents occurring on or affecting the Rail Infrastructure.

**Force Majeure Event**

Any cause, event or circumstance or combination of causes, events or circumstances which:

- (a) is beyond the reasonable control of the affected party; and
- (b) by the exercise of due diligence the affected party was not reasonably able to prevent or is not reasonably able to overcome,

and, provided that the requirements in **paragraphs (a) and (b)** of this definition are satisfied, includes:

- (c) compliance with a lawful requirement, order, demand or direction of an Authority or an order of any court having jurisdiction other than where that requirement, order, demand or direction results from any act or omission of the affected party;
- (d) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the affected party is a party to industrial action or would be able to influence or procure the settlement of such industrial action;
- (e) act of God;
- (f) war, invasion, terrorist act, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade or civil commotion;
- (g) equipment failure or breakdown where such failure or breakdown could not have been prevented by Good Engineering Practices;
- (h) malicious damage or sabotage;
- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (j) failure of electricity supply from the electricity grid;
- (k) delay, restraint, restriction, embargo or other material adverse effect arising from any act or omission of any

Authority;

- (l) fire, flood, storm surge, cyclone, tornado, earthquake, washaway, landslide, explosion severe weather conditions or other catastrophe or natural calamity;
- (m) epidemic or quarantine restriction; and
- (n) delay of a supplier due to any of the foregoing whether any such cause of delay exists before or after the Commencing Date.

**Force Majeure Provisions**

The provisions outlined in **clause 7.77-6**.

**General Track Maintenance**

Includes maintenance of ~~track~~Track, structures, civil, signalling, electrical overhead and telecommunication systems.

**Good Engineering Practices**

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

**Goonyella Newlands Connection**

The Rail Infrastructure between the North Goonyella mine junction and the Newlands mine junction.

**Goonyella System**

The Rail Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Hail Creek mine, Blair Athol mine, North Goonyella mine and the junction with the Gregory mine branch line and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of:

- (a) the branch line to Gregory mine; and
- (b) the corridor beyond North Goonyella mine to Newlands mine (and beyond).

**Goonyella to Abbot Point System**

The Rail Infrastructure comprising:

- (a) the Goonyella Newlands Connection; and
- (b) that part of any other Coal System which is used by a Train Service that also uses or connects to any part of the Goonyella Newlands Connection, except where that Train Service originates or terminates south of Gregory.

**Gross Tonnes**

~~F~~for a Train Service (whether loaded or empty) operated for a Train Service Type ~~means~~ the amount which is the sum of:

- (a) for each locomotive comprised in the Train Service, the

Maximum Gross Mass for that locomotive;

- (b) for each loaded or partly loaded ~~Wagon~~ wagon comprised in the Train Service:
- (i) if there is a functioning ~~Weighbridge~~ weighbridge located en route between the ~~Origin~~ origin and ~~Destination~~ destination for the Train Service Type, the mass of the ~~Wagon~~ wagon as determined at such ~~Weighbridge~~ weighbridge (provided that if there is more than one functioning ~~Weighbridge~~ weighbridge located en route between the ~~Origin~~ origin and ~~Destination~~ destination for the Train Service Type, the mass will be determined by the ~~Weighbridge~~ weighbridge that is located closest to the ~~Origin~~ origin for the Train Service Type); and
- (ii) if there is no functioning ~~Weighbridge~~ weighbridge located en route between the ~~Origin~~ origin and ~~Destination~~ destination for the Train Service Type, the amount (expressed in tonnes rounded to two decimal places) calculated in accordance with the following formula for each loaded or partly loaded ~~Wagon~~ wagon comprising the Train Service:

$$(MGM - TW) \times LEF + TW$$

where:

MGM = the Maximum Gross Mass for the ~~Wagon~~ wagon

TW = the Tare Weight for the ~~Wagon~~ wagon

LEF = the Loading Efficiency Factor for the Train Service

- (c) for each empty ~~Wagon~~ wagon comprised in the Train Service, the Tare Weight for the ~~Wagon~~ wagon; and
- (d) for all other Rollingstock comprised in the Train Service, the Maximum Gross Mass for the Rollingstock.

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

**gtk** ~~For~~ For an operated Train Service (whether loaded or empty) for a Train Service Type, ~~means~~ gross tonne kilometres attributed to that Train Service being the amount which is the Gross Tonnes for the Train Service for the Train Service Type multiplied by:

- (a) if the Train Service was operated from the ~~Origin~~ origin

to ~~Destination~~destination for the Train Service Type, the number of kilometres of the loaded distance from ~~Origin~~origin to ~~Destination~~destination for the Train Service Type as specified in the Train Service Description for that Train Service Type; or

- (b) if the Train Service was operated from the ~~Destination~~destination to ~~Origin~~origin for the Train Service Type, the number of kilometres of the empty distance from the ~~Destination~~destination to ~~Origin~~origin for the Train Service Type as specified in the Train ~~Service~~ Description for that Train Service Type.

**Gtk Forecast** The amount indicated as the 'Gtk Forecast' for the relevant Reference Tariff in **Schedule F**.

**High-Risk Personnel or High-Risk Persons** The meaning given to that term in **clause 3.16(b)**.

**High-Risk Personnel Register** The register established and maintained under **clause 3.16**.

~~**Incremental Capacity Charge or ICC** for a Train Service Type for a Billing Period means the amount calculated in accordance with **clause 3.3** of **Schedule F** for the Train Service Type and Billing Period.~~

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

~~**Incremental Maintenance Charge or IMC** for a Train Service Type for a Billing Period is the amount calculated in accordance with **clause 1.1** of **Schedule F** for the Train Service Type and Billing Period.~~

**Indicative Access Proposal or IAP** The meaning given to ~~the~~that term in **clause 4.6**.

**Information Request Notice** The meaning given to that term in **clause 7.6(a)**~~7.7.1(a)~~.

**Infrastructure Enhancement** Expansions and Customer Specific Branch Lines but excluding:

(a) Asset Replacement and Renewal; or

(b) Maintenance Work,

required to deliver Committed Capacity.



<b>Infrastructure Service Providers</b>	Those parties who provide maintenance, construction and other related services in respect of the Rail Infrastructure.
<b>Initial Capacity Assessment</b>	<p>A preliminary Capacity Analysis limited to:</p> <ul style="list-style-type: none"> <li>(a) an indicative assessment of whether there is sufficient Available Capacity to accommodate Committed Capacity and requested Access Rights; and</li> <li>(b) if there is not sufficient Available Capacity, to accommodate the requested Access Rights either: <ul style="list-style-type: none"> <li>(i) an outline of the Expansions required to provide additional Capacity to accommodate the requested Access Rights (and an indicative estimate of the cost of such works and the timing for completion); or</li> <li>(ii) if Aurizon Network has not carried out the investigations required to provide the information in <b>paragraph (i)</b>, an outline of the requirements for an investigation into the works required to accommodate the requested Access Rights.</li> </ul> </li> </ul>
<b>Insolvency Event</b>	<p>Where one of the following events has happened in relation to the Access Seeker:</p> <ul style="list-style-type: none"> <li>(a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;</li> <li>(b) a meeting is convened to pass a resolution to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within 10 Business Days or the resolution fails to pass;</li> <li>(c) an application is made to a court for it to be wound up and the application is not dismissed within 10 Business Days after it is made;</li> <li>(d) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets if that appointment is not revoked within 10 Business Days after it is made;</li> <li>(e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement; or</li> <li>(f) any similar event occurs in respect of the Access Seeker under the laws of any jurisdiction other than Australia.</li> </ul>

<b>Issues Register</b>	The register maintained by Aurizon Network under <b>clause 10.5.3(c)</b> <del>Error! Reference source not found.</del>
<b>Interested Participant</b>	The meaning given to <del>the</del> <u>that</u> term in <b>clause 4.2(a)</b> of <b>Schedule E</b> .
<b><u>Interface Coordination Arrangement</u></b>	<u>An arrangement that identifies the procedures to be followed and the responsible officers from both Aurizon Network and the Access Holder, in respect of all regular operational interfaces between the parties that arise in the exercise of rights and the performance of obligations under a Train Operations Deed other than those specified in the Network Management Principles.</u>
<b>Interface Risk Assessment</b>	<p>An assessment to:</p> <ul style="list-style-type: none"> <li>(a) identify all reasonably foreseeable Interface Risks and Environmental Risks;</li> <li>(b) assess: <ul style="list-style-type: none"> <li>(i) the likelihood of those Interface Risks and Environmental Risks occurring;</li> <li>(ii) the consequences (including commercial consequences) of those Interface Risks and Environmental Risks occurring; and</li> <li>(iii) any factors relevant to the effective management of those Interface Risks and Environmental Risks;</li> </ul> </li> <li>(c) identify appropriate measures to effectively manage those Interface Risks and Environmental Risks within a risk management framework, including: <ul style="list-style-type: none"> <li>(i) an audit, inspection and review regime; and</li> <li>(ii) applicable Safeworking Procedures and Safety Standards having regard to existing Aurizon Network and industry practices; and</li> </ul> </li> <li>(d) identify the party responsible for implementing, complying with and/or ensuring compliance with the measures referred to in <b>paragraph (c)</b> of this definition and ensuring the ongoing effectiveness of such measures.</li> </ul>

<b>Interface Risks</b>	<p>All risks to the safety of persons or property arising or potentially arising from the interaction between the Access Seeker's, Access Holder's or a Train Operator's proposed operations and:</p> <ul style="list-style-type: none"> <li>(a) the Rail Infrastructure;</li> <li>(b) any land relating to the Rail Infrastructure;</li> <li>(c) activities on the Rail Infrastructure (including other Train Services) or any land relating to the Rail Infrastructure; or</li> <li>(d) persons on, using or near the Rail Infrastructure or any land relating to the Rail Infrastructure.</li> </ul>
<b>Intermediate Train Plan or ITP</b>	<p>A plan that details the indicative scheduled times for all Train Services and Planned Possessions, Urgent Possessions and Emergency Possessions on a specified part of the Rail Infrastructure on each day of the relevant period.</p>
<b>IRMP</b>	<p>An interface risk management plan which sets out each of the matters required to be identified and assessed during an Interface Risk Assessment.</p>
<b>JORC Code</b>	<p>The current edition of the <i>Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves</i> prepared by the Australasian Joint Ore Reserves Committee, from time to time.</p>
<b>Law</b>	<ul style="list-style-type: none"> <li>(a) Any statute, rule, regulation, code, proclamation, ordinance or by-law, present or future, whether State, Commonwealth or otherwise; and</li> <li>(b) any requirement, condition, notice, consent, accreditation, order or direction or similar thing of any statutory, public or other competent authority (including the State in any of its regulatory capacities), present or future, given or imposed pursuant to anything specified in <b>paragraph (a)</b> of this definition.</li> </ul>
<b>Line Diagrams</b>	<p>A diagrammatical representation of the rail network identifying:</p> <ul style="list-style-type: none"> <li>(a) the configuration of the rail network; and</li> <li>(b) the parts of the rail network which are managed by Aurizon Network, a Related Operator or a person other than Aurizon Network.</li> </ul>

<b>Load Variation Table</b>	A table published by Aurizon Network in respect of a nominated Reference Train Service or type of Train Service identifying allowable overloads for wagons and bogies and specifying relevant Operational Constraints and additional charges, where applicable, for such overloads.
<b>Loading Efficiency Factor</b>	<p>For a loaded Train Service <del>means</del>:</p> <ul style="list-style-type: none"> <li>(a) if a loading efficiency factor is not specified in Aurizon Network's Access Undertaking, 98%; or</li> <li>(b) if a loading efficiency factor (however described) is specified in Aurizon Network's Access Undertaking, the loading efficiency factor specified in Aurizon Network's Access Undertaking (expressed as a percentage).</li> </ul>
<b>Loading Time</b>	The time between a Train Service arriving at a Nominated Loading Facility and that same Train departing the Nominated Loading Facility, and for the purpose of clarity, this time runs from when a Train Service arrives at the entry signal to the Nominated Loading Facility until it has completed loading, presented at the exit signal, is ready to depart the Nominated Loading Facility and has advised the relevant Network Controller accordingly.
<b>Maintenance Work</b>	Any work involving maintenance or repairs to, or renewal, replacement and associated alterations or removal of, the whole or any part of the Rail Infrastructure (other than Infrastructure Enhancements) and includes any inspections or investigations of the Rail Infrastructure.
<b>Major Periodic Maintenance</b>	Activities that renovate the Rail Infrastructure to retain it in a functional condition completed on Track sections at intervals of more than one year, and includes activities such as re-railing, rail grinding, resurfacing, re-signalling, communications upgrades, renovating structures, ballast cleaning and re-sleepering.
<b>Mainline Path</b>	That part of any Train Path (in relation to a Coal System) that relates to the "Mainline Train Path Track" for that Coal System as shown in the Preliminary Information.
<b>Major Yards</b>	The yards at Callemondah, Jilalan, Coppabella, and Pring.
<b>Master Train Plan or MTP</b>	That document detailing the distribution of Train Service Entitlements as advised by Aurizon Network from time to time for all Train Services and any Planned Possessions on a specified part of the Rail Infrastructure.
<b>Material Default</b>	<ul style="list-style-type: none"> <li>(a) Failure on more than one occasion to comply with any terms or conditions of a relevant agreement where that breach would not lawfully justify termination; or</li> <li>(b) a breach of a term or condition of a relevant agreement</li> </ul>

where that breach would lawfully justify termination,

where a “relevant agreement” is ~~as an agreement~~ described in **clause 4.12(b)(ii)**.

<b>Material Variation</b>	<p>A variation to the relevant Access Application that will be detrimental to another Access Holder or Access Seeker’s Capacity allocation as a result of either (or both):</p> <ul style="list-style-type: none"><li>(a) the relevant Access Rights, if granted, being allocated more Capacity including any increase in tonnages to be carried by Train Services or in the required number of Train Paths; or</li><li>(b) changes:<ul style="list-style-type: none"><li>(i) in the Capacity consumed by Train Services relating to the Access Rights being sought as a result of the variation – except to the extent that the changes are to make the Train Service consistent with the description of the relevant Reference Train Service (if any);</li><li>(ii) the period for which the Access Rights are required, whether shorter or longer;</li><li>(iii) the nature or type of Access Rights (for example, from Cyclic Traffic to Timetabled Traffic); or</li><li>(iv) the origin or destination relevant to the Access Rights.</li></ul></li></ul>
<b>Maximum Allowable Revenue</b>	<p>The maximum revenue that Aurizon Network should be entitled to earn by way of Access Charges from the provision of Access to the relevant Train Service(s) over the Evaluation Period, as determined in accordance with <b>clause 6.6.3</b>.</p>
<b>MCI</b>	<p>The maintenance cost index developed by Aurizon Network for the purposes of the escalation of Reference Tariffs and which has been approved by the QCA (and as adjusted from time to time to replace any index used in the calculation of the maintenance cost index that ceases to be published with the CPI, or an appropriate substitute index approved by the QCA).</p>
<b>Minimum Revenue Contribution</b>	<p><del>The amount calculated in accordance with clause 1.1.1(a).</del> <u>For the purposes of clause 6.3, the amount calculated under clause 6.3.1(c)(ii).</u></p>
<b>Month</b>	<p>A calendar month.</p>
<b>Moura System</b>	<p>The Rail Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine and the loading facility</p>

for Baralaba mine in the vicinity of Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor but excluding the corridor to Blackwater (and beyond).

**Mutually Exclusive Access Applications**

Access Applications where if Aurizon Network grants Access Rights in respect of one or more of those Access Applications then Aurizon Network will have insufficient Available Capacity to grant Access Rights in respect of the remaining Access Applications.

**Negotiation Cessation Notice**

A notice issued by Aurizon Network in accordance with **Part 4**.

**Negotiation Period**

The period during which the terms and conditions of an Access Agreement will be negotiated, as described in **clause 4.10.1**.

**Negotiation Process**

The meaning given to ~~the~~ that term in **clause 5.1(a)**.

**Net Tonnes**

for a Train Service (whether loaded or empty) operated for a Train Service Type means:

- (a) the Gross Tonnes for the Train Service; less
- (b) the sum of:
  - (i) for each locomotive comprised in the Train Service, the Maximum Gross Mass for the locomotive;
  - (ii) for each ~~Wagon~~ wagon (whether loaded or empty) comprised in the Train Service, the Tare Weight for the ~~Wagon~~ wagon; and
  - (iii) for all other Rollingstock (whether loaded or empty) comprised in the Train Service, the Tare Weight for the Rollingstock.

**Network Controller**

A person performing Network Control Services from within a Network Control centre.

**Network Control Services**

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

- (a) recording Train running times on Train diagrams and in Aurizon Network's information systems;
- (b) reporting of incidents occurring on the Rail Infrastructure;
- (c) managing incidents occurring on the Rail Infrastructure

from within a Network Control centre;

(d) Field Incident Management and Yard Control services;  
and

(e) exchanging information with Railway Operators,  
and **Network Control** has a related meaning.

**Network  
Development Plan**

A plan setting out options and indicative plans relating to the short and medium term development, extension, use, or improvement of, or capital investment in, or interaction with, the Coal Systems to promote increased Capacity, which contains the information outlined in **clause 7A.6.8-11(b)**

**Network Incident**

Any derailment, disablement or breakdown of Rollingstock, accident, collision or other unplanned occurrence, on or affecting the use of the Rail Infrastructure which causes or contributes to, or could cause or contribute to:

(a) the death of, or injury to, any person;

(b) damage to any property;

(c) Environmental Harm; or

(d) a disruption to, or cancellation by Aurizon Network of any Train Movement.

**Network  
Management  
Principles**

The principles set out in **Schedule G** and all System Rules existing from time to time.

**New Access  
Agreement**

An Access Agreement to the extent entered into or varied for the purpose of a [transfer of Access Rights Transfer](#) from an [Old pre-existing](#) Access Agreement.

**New Expansion**

[The meaning given to that term in clause 6.4.4\(b\)](#).

**~~Newlands to  
Abbot Point  
System~~**

~~The Rail Infrastructure comprising:~~

~~(a) the branch lines directly connecting Byerwen and Drake mine loading facilities to the corridor from the port of Abbot Point to Newlands mine;~~

~~(b) that part of the Newlands System which is used by a Train Service that also uses the branch lines directly connecting the Byerwen and Drake mine loading facilities to the corridor from the port of Abbot Point to Newlands mine;~~

~~with the exception of:~~

~~(c) the corridor between the Newlands mine and the North Goonyella mine (and beyond).~~

<b>Newlands System</b>	<p>The Rail Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor, with the exception of:</p> <p><del>(a) branch lines directly connecting Byerwen and Drake mine loading facilities to that corridor; and</del></p> <p><del>(b)</del> the corridor between the Newlands mine and the North Goonyella mine (and beyond).</p>
<b>nsk</b>	<p>ntk for a Train Service (whether loaded or empty) operated for a Train Service Type, <del>means</del> the amount which is the Net Tonnes for the Train Service multiplied by:</p> <p>(a) if the Train Service was operated from the <del>Origin</del> <u>origin</u> to <del>Destination</del> <u>destination</u> for the Train Service Type, the number of kilometres of the loaded distance from <u>Origin</u> <u>origin</u> to <u>Destination</u> <u>destination</u> for the Train Service Type as specified in the Train Service <del>Description</del> for that Train Service Type; or</p> <p>(b) if the Train Service was operated from the <del>Destination</del> <u>destination</u> to <u>Origin</u> <u>origin</u> for the Train Service Type, the number of kilometres of the empty distance from the <del>Destination</del> <u>destination</u> to <u>Origin</u> <u>origin</u> for the Train Service Type as specified in the Train <del>Service</del> Description for that Train Service Type.</p>
<b>Nominal Train Payload</b>	<p>The nominal nt that applies to the Train Service as specified under the System Reference Tariff or Expansion Tariff (such as, for the System Reference Tariffs under <b>clause 7.2(e), 8.2(d), 9.2(ed), 10.2(c) and ,11.2(e)11.2(b) or 12.2(b)</b> of <b>Schedule F</b>), as applicable.</p>
<b>Nominated Access Rights</b>	<p>As applicable:</p> <p>(a) in <b>clause 7.4.2</b> <del>7.4.2</del> (Transfers), the meaning given to <del>the that</del> term in <b>clause 7.4.2(b)(i)(A)</b>; and</p> <p>(b) in <b>clause 7.4.3</b> (Relinquishments), the meaning given to <del>the that</del> term in <b>clause 7.4.3(b)(i)</b>.</p>
<b>Nominated Infrastructure</b>	<p>That Rail Infrastructure over which the relevant Reference Train Service travels between the Nominated Loading Facility/ies and Nominated Unloading Facility/ies.</p>
<b>Nominated Loading Facility</b>	<p>A loading facility specified for a nominated Reference Train Service in <b>Schedule F</b>.</p>
<b>Nominated Network FM Reduction Notice</b>	<p>The meaning given to that term in <b>clause 7.7.4(d)</b>.</p>
<b>Nominated</b>	<p>The meaning given to that term in the Standard Access</p>



<b>Network</b>	Agreement.
<b>Nominated Railway Operator</b>	For an Access Holder, a Railway Operator nominated or appointed by that Access Holder in accordance with an Access Agreement for the purpose of operating Train Services for that Access Holder for specified periods in accordance with that Access Holder's Access Rights.
<b>Nominated Unloading Facility</b>	An unloading facility specified for a nominated Reference Train Service in <b>Schedule F</b> .  <del>Unless otherwise specified, the net tonnes attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rollingstock when loaded utilised in the relevant Train Service (including all goods, product, persons or matter carried) less the weight of such Rollingstock (in tonnes) when empty</del>
<b>Nominee Operator</b>	The meaning given to <del>the</del> <u>that</u> term in <b>clause 4.9</b> .
<b>Non-availability Requirements</b>	The following requirements: <ul style="list-style-type: none"> <li>(a) the relevant person has notified Aurizon Network that the evidence or information is not available and is not reasonably able to be produced, procured or otherwise obtained, including providing the relevant supporting facts or circumstances. (For example, the relevant facts or circumstances may relate to the development of the project being at too early a stage for the person to be able to produce or procure the relevant evidence or information.); and</li> <li>(b) having regard to the information provided under <b>paragraph (a)</b> of this definition, Aurizon Network (acting reasonably) is satisfied that: <ul style="list-style-type: none"> <li>(i) the evidence or information is not available and is not reasonably able to be produced, procured or otherwise obtained; and</li> <li>(ii) the failure or inability does not indicate a lack of genuine intention to obtain the requested Access Rights or a reasonable likelihood that the Access Rights will not be utilised at the level sought.</li> </ul> </li> </ul>
<b>Non-Standard Agreement</b>	<del>The meaning given to the term in <b>clause Error! Reference source not found.</b></del>
<b>Notice Date</b>	The meaning given to <del>the</del> <u>that</u> term in <b>clause 7A.4.2(g)(iii)</b> .
<b>Notice of Intention to Relinquish</b>	The meaning given to <del>the</del> <u>that</u> term in <b>clause 7.4.3(a)</b> .
<b>Notice of Intention to Transfer</b>	The meaning given to <del>the</del> <u>that</u> term in <b>clause 7.4.2(a)</b> .

<b>nt</b>	Unless otherwise specified, the net tonnes attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rollingstock when loaded utilised in the relevant Train Service (including all goods, product, persons or matter carried) less the weight of such Rollingstock (in tonnes) when empty.
<b>ntk</b>	The net tonne kilometres attributed to the relevant Train Service, being the nt for the Train Service multiplied by the distance (in kilometres) from origin to destination for the Train Service as set out, from time to time, in the Access Agreement relating to that Train Service or, where there is no Access Agreement or the Access Agreement does not set out that distance, as determined by Aurizon Network (acting reasonably).
<b><u>Old Access Agreement</u></b>	<u><a href="#">In relation to a New Access Agreement, the pre-existing Access Agreement to which the relevant Transfer relates.</a></u>
<b>Operating Plan</b>	A description <u><a href="#">specifying reasonable details</a></u> of how the proposed Train Services are to be operated, including the matters <del>identified</del> <u><a href="#">required</a></u> in <b>Schedule C</b> .
<b>Operational Constraint</b>	Any restriction on the use of any part of the Rail Infrastructure that impacts adversely on Train Services, including speed restrictions, load restrictions, Possessions or signalling or overhead restrictions.
<b>Origin System</b>	The Coal System on which the Nominated Loading Facility is located.
<b>Origin Tariff</b>	The relevant Reference Tariff applying to the relevant Cross System Train Service in the Origin System.
<b>OTCI</b>	The Overall Track Condition Index for Aurizon Network's Below Rail network for each Coal System, and provides a quality measure of Aurizon Network's track.
<b>Out-Of-Course Running</b>	The circumstance that occurs when the actual running of one or more Train Service/s differs by more than the relevant agreed threshold/s as set out in the relevant Access Agreement, from that provided in the DTP.
<b>Overload Charges</b>	Charges that penalise the overloading of train wagons.
<b>Part 8 Dispute</b>	The meaning given to <del>the</del> <u><a href="#">that</a></u> term in <b>clause 11.1.7(a)</b> .
<b>Passenger Priority Obligation</b>	The obligations of a Railway Manager pursuant to sections 265 and 266 of the TIA.
<b>Performance Delay</b>	The meaning given to <del>the</del> <u><a href="#">that</a></u> term in <b>clause 8.6(a)(i)(C)</b> .
<b>Planned Capacity</b>	The increase in Existing Capacity that is expected to result from an Expansion:

- (a) that Aurizon Network is contractually committed to construct; and
- (b) in respect of which construction has commenced.

**Planned Possession**

A Possession that is entered into the MTP and may adversely impact upon the operation of Train Services and is notified to Access Holders at least twenty-one (21) days prior to taking effect; and, for ~~the avoidance of doubt~~ clarity, includes Maintenance Work.

**Possession**

The temporary closure and/or occupation by Aurizon Network on part of the Rail Infrastructure (including closure of Track or isolation of any electrical overhead traction system) for the purposes of carrying out Planned Possession, Urgent Possession or Emergency Possession on or in the proximity of the Rail Infrastructure which may affect the safety of any person or property.

**Possession Protocols**

The protocols developed and advised by Aurizon Network from time to time (as varied in accordance with any Access Agreement) for managing and scheduling Possessions.

**Potential Feasibility Funders**

In respect of a proposed Feasibility Study, the Access Seekers (or if applicable, Customers or Conditional Access Holders) who are required to be given an opportunity to fund that Feasibility Study as determined in accordance with **clause 8.4.3(a)**.

**Potential Pre-feasibility Funders**

In respect of a proposed Pre-feasibility Study, the Access Seekers (or if applicable Customers or Conditional Access Holders) who are required to be given an opportunity to fund that Pre-feasibility Study as determined in accordance with **clause 8.4.2(c)**.

**Pre-30 June 2006 Coal Access Agreements**

- (a) Access Agreements in place on the day immediately prior to 30 June 2006; or
- (b) ~~n~~New Access Agreements entered as part of transferring Access Rights ~~from~~ from such Access Agreements but only to the extent that the terms of the ~~Old~~ Access Agreement described in paragraph (a) apply in respect of the relevant Access Rights.

**Pre-1 October 2010 Coal Access Agreements**

- (a) Access Agreements in place on the day immediately prior to 1 October 2010; or
- (b) new Access Agreements entered as part of transferring Access Rights from such Access Agreements but only to the extent that the terms of the Access Agreement described in paragraph (a) apply in respect of the relevant Access Rights,

but does not include a Pre-30 June 2006 Coal Access

Agreement.

Pre-Approval Date  
Coal Access  
Agreements

- (a) Access Agreements in place on the day immediately prior to the Approval Date; or
- (b) new Access Agreements entered as part of transferring Access Rights from such Access Agreements but only to the extent that the terms of the Access Agreement described in **paragraph (a)** apply in respect of the relevant Access Rights.

but does not include a Pre-30 June 2006 Coal Access Agreement.

**Pre-feasibility  
Funder**

An Access Seeker or a Customer who is a party to a Studies Funding Agreement with Aurizon Network in respect of a Pre-feasibility Study for an Expansion.

**Pre-feasibility  
Study**

A study with the following scope of work:

- (a) identification and assessment of all possible technical solutions to deliver the required Capacity, taking into account the full Supply Chain;
- (b) assessment of technical and operating requirements of the proposed Expansion;
- (c) Capacity Analysis of:
- (i) the proposed Expansion; and
  - (ii) any alternatives identified in **paragraph (b)(iii)** above,

based on the most recent Capacity Analysis undertaken by Aurizon Network;

- (d) all necessary survey and geotechnical investigations to support the level of design and cost accuracy required in **paragraph (g)** below;
- (e) identification of a single preferred solution for the proposed Expansion (to be studied in detail during the Feasibility Study phase);
- (f) high level value engineering assessment of the preferred solution to lower the total cost of ownership, after allowing for risk, of the proposed Expansion; and
- (g) a written report.

The written report referred to above must include:

- (a) the project objectives for the proposed Expansion;
- (b) the outcome of the analysis, decisions and specifications referred to above (with reasons, where

applicable);

- (c) evaluation of all of the project configuration alternatives that would provide the Capacity requirements of the proposed Expansion;
- (d) preliminary risk assessment of the proposed Expansion, including the alternatives identified in **paragraph (h)** above;
- (e) identification of the project configuration alternative (referred to in **paragraph (h)** above) that has the lowest total cost of ownership, after allowing for risk;
- (f) analysis of the technical and economic feasibility of the preferred alternative and provides reasons why it is the preferred alternative;
- (g) design and construct project schedule for preferred alternative for the proposed Expansion that includes time tolerances and project budget with a +/-20% margin;
- (h) potential benefits, including capacity, maintenance and operating benefits of the proposed Expansion;
- (i) the design, estimate and schedule of the preferred alternative for the proposed Expansion, including;
- (j) details of any variation to the budgeted costs to undertake the Pre-feasibility Study; and
- (k) a Feasibility Study execution plan, including the scope of work (taking into account the scope of work required by the definition of “Feasibility Study” in this Undertaking), budget, time schedule and deliverables.

**Preference Unit Holder**

The holder of a preference unit created under a User Funding Agreement.

**Preliminary Information**

The information referred to in **clause 1** of **Schedule A** (as applicable) and, where that information is published on the Website, that information as published on the Website from time to time.

**Preserved Train Path Obligations**

The obligations of a Railway Manager under section 266A of the TIA.

**Pricing Proposal**

The meaning given to that term in **clause 6.4.3(a)**.

<u><b>Private Efficient Cost</b></u>	<u>For the purposes of <b>clause 6.3</b>, the cost for each Year, during the period for which the relevant Reference Tariff will apply, that reflects the costs that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices in the provision of the relevant Private Infrastructure to the required service standard.</u>
<u><b>Private Incremental Costs</b></u>	<p><u>For the purposes of <b>clause 6.3</b>, those costs of providing access to the relevant Private Infrastructure, including capital (renewal and expansions) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Train Service or combination of Train Services (as appropriate) did not operate, where those costs:</u></p> <p><u>(a) are assessed as Private Efficient Costs and based on the assets reasonably required for the provision of access to the relevant Private Infrastructure;</u></p> <p><u>(b) have been reviewed and endorsed by the QCA; and</u></p> <p><u>(c) have been submitted to Aurizon Network by the owner or operator of the relevant Private Infrastructure for the purpose of calculating the relevant tariffs.</u></p>
<b>Private Infrastructure</b>	The rail transport infrastructure (as defined under the TIA), including track, signalling and electrical overhead traction system (if applicable), that is not Rail Infrastructure.
<b>Private Infrastructure Owner</b>	A person who owns, or proposes to construct and own, Private Infrastructure which will connect to the Rail Infrastructure in order to allow Trains operating on that Private Infrastructure to enter or exit from the Rail Infrastructure for the purposes of Access.
<b>Projected Cost</b>	The projected cost, including capital, maintenance and operating costs, (on a “most likely case” basis) of an Expansion applying the costing details and approach specified in the Pre-feasibility Study report for the Expansion to the capacity requirements of the Feasibility Funders in relation to the Feasibility Study for the Expansion.
<b>Proposed Amendments</b>	The meaning given to <del>the that</del> term in <b>clause 7A.2.4(c)(i)(F)</b> <del>7.6.4(c)(i)(F)</del> .
<b>Proposed System Rules</b>	The meaning given to <del>the that</del> term in <b>clause 7A.2.5(a)</b> <del>7.6.5(a)</del> .
<b>Provisional Capacity Allocation</b>	The meaning given to that term in <b>clause 8.5(a)</b> .
<b>PV Amount</b>	The meaning given to that term:

- (a) in respect of **clause 7.4.2** (Transfers), in **clause 7.4.2(p)**; and
- (b) in respect of **clause 7.4.3** (Relinquishments), in **clause 7.4.3(e)(ii)**.

**QCA** The Queensland Competition Authority as established by the Act.

**QCA Levy** The fee allocated to the nominated Train Services to cover the fees imposed by the QCA on beneficiaries of its regulatory services and, for a Reference Train Service, is that amount specified as such for that Reference Train Service in **Schedule F**.

~~**QCA Levy Charge** for a Train Service Type for a Billing Period means the amount calculated in accordance with **clause 3.9** of **Schedule F** for the Train Service Type and Billing Period.~~

**Quarter** Each period of three consecutive Months commencing each 1 July, 1 October, 1 January and 1 April in each year.

[Queensland Rail](#) [Queensland Rail Limited ACN 132 181 090.](#)

[Queue](#) [The meaning given to that term in \*\*clause 7.5.2\(b\)\*\*.](#)

**QTH** Queensland Treasury Holdings Pty Ltd  
ABN 52 011 027 295.

~~**Queue** [The meaning given to that term in \*\*clause 7.5.2\(b\)\*\*.](#)~~

**Rail Connection Agreement** An agreement by which Aurizon Network agrees to the connection of Private Infrastructure to the Rail Infrastructure.

**Rail Infrastructure** Rail transport infrastructure (as defined under the TIA) for which Aurizon Network is the owner or lessee, the use of which is taken to be a service declared for the purposes of **Part 5** of the Act pursuant to section 250(1)(a) of the Act.

**Rail Infrastructure Manager** The meaning given to that term in the Rail Safety Act.

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

**Railway Manager** The meaning given to that term in the TIA.

**Railway Operator** The meaning given to that term in the TIA and, for clarity, includes an Access Holder's nominated Train Operator.

[Rapid Capacity Assessment](#) [A Capacity Analysis which is limited to an analysis of Available Capacity having regard to the Baseline Capacity Assessment or most recent Capacity Assessment \(if any\) to determine if there is sufficient Available Capacity \(if the Nominated Access Rights are deemed to be Available Capacity for the purposes of the Rapid Capacity Assessment\)](#)

	<a href="#">for the Transferred Access Rights.</a>
<b>Reasonable Demand</b>	<del>The current contracted demand, potential future demand within a reasonable timeframe and any spare rail capacity considered appropriate by Aurizon Network.</del>
<b>Recipient</b>	A person or entity to whom Access to or disclosure of Confidential Information is made.
<b>Reduced Conditional Access Rights</b>	The Access Rights for a Segment of an Expansion, as determined in accordance with the formula in <b>clause 8.9.5(b)</b> .
<b>Reduction Factor</b>	The amount calculated in accordance with <b>clause 7.4.4(d)</b> .
<b>Reduction Factor Provisions</b>	The provisions set out in <b>clause 7.4.4(d)</b> .
<b>Reference Tariff Provisions</b>	The provisions set out in <b>Schedule F</b> .
<b>Reference Tariffs</b>	System Reference Tariffs and Expansion Tariffs.
<b>Reference Train Service</b>	A notional Train Service described in <b>clause 1.3 of Schedule F</b> .
<b>Regulatory Asset Base</b>	The asset value for the Rail Infrastructure accepted by the QCA for the purpose of developing Reference Tariffs for coal carrying Train Services.
<b>Rejection Notice</b>	The meaning given to <del>the</del> <a href="#">that</a> term in <b>clause 4.4(h)</b> .
<b>Related Competitors</b>	Functional units within the Aurizon Group or an Aurizon Party that has a direct or indirect interest (whether as owner, lessee, trust unit holder, operator, manager or otherwise and whether alone or together with others) in a: <ul style="list-style-type: none"> <li>(a) port; or</li> <li>(b) coal mine or coal-extraction project,</li> </ul> <a href="#">that is an origin or destination for any good conveyed over the Rail Infrastructure</a> <del>in Queensland.</del>
<b>Related Operators</b>	Functional units within the Aurizon Group that provide Above Rail Services.
<b>Related Party</b>	A related body corporate as defined in the Corporations Act.
<b>Relevant Period</b>	The relevant seven day period commencing at 12:00 am on Monday and immediately prior to 12:00 am on the following Sunday or such other period as expressly specified in the relevant System Rules.
<b>Relevant Tax</b>	Any tax, charge, levy, duty, impost, rate, royalty or imposition which is imposed on Aurizon Network by, or payable by Aurizon Network to, any Authority but does not include any



	income tax, fringe benefits tax, capital gains tax or any tax that replaces any of those taxes.
<b>Relinquishment Date</b>	The meaning given to <del>the</del> <u>that</u> term in <b>clause 7.4.3(b)(ii)</b> .
<b>Relinquishment Fee</b>	The relinquishment fee determined in accordance with <b>clause 7.4.3(e)</b> .
<b>Relinquishment Provisions</b>	The provisions set out in <b>clause 7.4.3</b> .
<b>Renewal</b>	The meaning given to that term under <b>clause 7.3(a)</b> .
<b>Renewing Access Seeker</b>	The meaning given to that term under <b>clause 7.3(a)</b> .
<b>Revenue Adjustment Amounts</b>	Collectively the AT <sub>2-4</sub> Revenue Adjustment Amount and the AT <sub>5</sub> Revenue Adjustment Amount and <b>Revenue Adjustment Amount</b> means one of them.
<b>Review Event</b>	The occurrence of any of the events listed in <b>clause 5.3 of Schedule F</b> .
<b>Resumed Access Rights</b>	For a Train Service Type, <del>has</del> the meaning given to <del>the</del> <u>that</u> term in <del>clause 7.6(e)(ii)(A)</del> <u>7.7(e)(ii)(A)</u> .
<b>Resumption Date</b>	The meaning given to <del>the</del> <u>that</u> term in <del>clause 7.6(e)(ii)(B)</del> <u>7.7(e)(ii)(B)</u> .
<b>Resumption Notice</b>	The meaning given to <del>the</del> <u>that</u> term in <del>clause 7.6(d)</del> <u>7.7(d)</u> .
<b>Resumption Provisions</b>	The provisions set out in <del>clause 7.6</del> <u>7.7</u> .
<b>Resumption Trigger Event</b>	The meaning given to that term <del>clause 7.6(a)</del> <u>7.7(a)</u> .
<b>Review Date</b>	in respect of a Change in Reference Tariff Provisions, <del>means</del> the first day of the Month during which the Change in Reference Tariff Provisions takes effect.
<b>ROA</b>	The meaning given to <del>the</del> <u>that</u> term in <b>clause 6.6.3(c)</b> .
<b>Rollingstock</b>	Locomotives, carriages, wagons, rail cars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicle that operates on or uses the Track.
<b>Rollingstock Configuration</b>	The description of the combination of Rollingstock comprising a Train including identification number and gross mass of individual items of Rollingstock and the order in which those Rollingstock items are placed in the Train.

<b>Rollingstock Interface Standards</b>	The minimum standards relating to Rollingstock and Rollingstock Configurations specified in Aurizon Network’s document entitled “Interface Standards” published on the Website (as amended and replaced from time to time).
<b>rtp</b>	The number of reference Train Paths used by the relevant Train Service calculated in accordance with <b>clause 6.2.3(c)</b> .
<b>Safety Management System</b>	Aurizon Network’s safety management system as required under the Rail Safety Act.
<b>Safety Regulator</b>	The rail safety regulator as defined under the Rail Safety Act.
<b>Safety Standards</b>	All standards relating to safety, including occupational health and safety, established in published guidelines, industry practice or Aurizon Network policies and all standards relating to safety, including occupational health and safety, prescribed by any Laws.
<b>Safeworking Procedures</b>	The procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of worksites on the Infrastructure specified in Aurizon Network’s document entitled Safeworking Procedures as: <ul style="list-style-type: none"> <li>(a) notified by Aurizon Network to the <a href="#">relevant Train Operator</a>; or</li> <li>(b) published on the Website,</li> </ul> (as amended and replaced from time to time).
<b><a href="#">Scheduled Train Path</a></b>	<a href="#">For a Timetabled Traffic, the entitlement of an Access Holder, as identified in its Train Service Entitlement, to use a specified portion of the Rail Infrastructure at the times and between the locations specified in the relevant MTP, so as to allow the passage of one Train.</a>
<b>Second Year Allowable Revenue</b>	The meaning given to that term in <b>clause 4.4(a)(i)</b> of <b>Schedule F</b> .
<b>Segment</b>	Each segment of the Expansion specified as such in the Train <del>Service</del> Description for the Conditional Access Rights in the relevant Access Agreement which are conditional upon the completion and commissioning of the Expansion.
<b>Self-Insurance</b>	Any funds set aside by Aurizon Network for the purpose of allowing Aurizon Network to manage its own financial risks, including all claims that may be made against Aurizon Network or its relevant Access Holders for which Aurizon

Network self-insures.

**Shortfall  
Expansion**

The meaning given to ~~the~~that term in **clause 8.9.4(a)**.

**Stand Alone Costs**

Those costs that Aurizon Network would incur if the relevant Train Service(s) was (were) the only Train Service(s) provided Access by Aurizon Network, where those costs are assessed:

- (a) as the Efficient Costs; and
- (b) on the basis of the assets reasonably required for the provision of Access,

and includes an allowable rate of return expressed in nominal post tax terms (with the cost of debt expressed on a before tax basis), as agreed by Aurizon Network and the QCA or, failing such agreement, as determined by the QCA, and **Stand Alone** has a similar meaning.

**Standard Access  
Agreement**

The standard form Access Agreement set out in Volume 3.

**Standard  
Agreement**

Any agreement that is in the form of a Standard Access Agreement, Standard Rail Connection Agreement, Standard User Funding Agreement, Standard Studies Funding Agreement or Standard Train Operations Deed.

**Standard Rail  
Connection  
Agreement**

The standard form of Rail Connection Agreement set out in Volume 3.

**Standard Studies  
Funding  
Agreement**

The standard form of Studies Funding Agreement set out in Volume 3.

**Standard Train  
Operations Deed**

The standard form of Train Operations Deed set out in Volume 3.

**Standard User  
Funding  
Agreement or  
SUFA**

The standard form of User Funding Agreement set out in Volume 3.

**State**

The State of Queensland.

**Static Length**

In respect of a Train, the length of that Train calculated as the aggregate of the lengths of each item of Rollingstock comprising or to comprise that Train (including the locomotive/s).

**Stowage**

- (a) Dwell; and
- (b) the short-term storage of Trains on the Rail Infrastructure at locations specified by Aurizon Network

where an Access Holder cannot operate its Train Service in accordance with its Train Service Entitlement as the result of a breakdown or other temporary outage of the Access Holder, the loading facility or the unloading facility, and/or the unavailability of Rail Infrastructure, but does not include storage of individual items of Rollingstock or the long-term storage of Trains.

<b>Studies Funding Agreement</b>	In respect of Pre-feasibility Study or a Feasibility Study, as applicable, an agreement with Aurizon Network in relation to the provision of funding to Aurizon Network for that Pre-feasibility Study or Feasibility Study.
<b>Subsidiary</b>	The meaning given to that term in the Corporations Act.
<b>Supply Chain</b>	All aspects that affect the transportation of coal from a mine to the end customer, including loading facilities, Rail Infrastructure, Railway Operators, load out facilities and coal export terminal facilities. For clarity, a number of supply chains can exist within a Coal System and can be denoted by reference to the destination coal export terminal.
<b>Supply Chain Group</b>	(a) A group that has been established as a supply chain coordination group for the purpose of coordinating some or all aspects of the planning or operation of a Supply Chain; and  (b) a group which has the support of sufficient participants in the Supply Chain to effectively perform that coordination purpose.
<b>Supply Chain Master Plan</b>	An integrated plan identifying feasible investment options for increasing the capacity of a Supply Chain (including variations to Supply Chain operating assumptions for the Supply Chain) and evaluating those investment options from a total cost, risk and timing perspective.
<b>Supply Chain Rights</b>	The following rights:  (a) where any Supply Chain infrastructure is required to be accessed or used to operate Train Services, rights on the Rail Infrastructure;  (b) in respect of Train Services that will operate on Supply Chain infrastructure prior to entering and/or after exiting the Rail Infrastructure as part of its journey, rights which are sufficient to allow the Train Services to enter or exit (as applicable) the Rail Infrastructure from or to (as applicable) that Private Infrastructure; and  (c) if the Train Services are to be operated to an unloading

facility or loading facility, rights which are sufficient to allow:

- (i) in relation to an unloading facility:
  - (A) access to the relevant unloading facility with a fully loaded Train which complies with the proposed Train Service Entitlement for the Train Services; and
  - (B) the unloading of all coal from the Train at the relevant unloading facility; and
- (ii) in relation to a loading facility:
  - (A) access to the relevant loading facility with a Train which complies with the proposed Train Service Entitlement for the Train Services; and
  - (B) the loading of coal onto the Train at the relevant unloading facility,

assuming, in either case, 100% utilisation of the Access Rights for the relevant Train Services in accordance with the proposed Train Service Entitlement.

**Suspension Period**

**The meaning given to that term in clause 4.5(I).**

**System Discount**

The amount specified as such, in **Schedule F**, for the relevant Reference Train Service.

**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 in relation to the Supply Chain operating mode, seasonal variations and live run losses, as published on its website from time to time.

**System Path**

A path that can be taken by a Train Service from a specific origin to a Nominated Unloading Facility.

**System Premium**

The amount specified as such, in **Schedule F**, for the relevant Reference Train Service.

**System Reference Tariff**

The tariffs set out in **clauses 7, 8, 9, 10, ~~1~~ and 11** of **Schedule F** for a specified Reference Train Service in relation to a Coal System (as amended, varied or escalated in accordance with this Undertaking or the Act from time to time).

**System Rules**

Rules specifying the way in which Aurizon Network will plan, schedule and control the operation of Train Services on a one or combination of Coal Systems:

- (a) which:
  - (i) are approved for a Coal System under **clause 7A.2.57-6.5**; or
  - (ii) existed under the 2010 Undertaking immediately prior to the Approval Date,
 as amended from time to time under **clause 7A.2.4**; and
- (b) which may include, for example:
  - (i) the declaration of System Paths for a Coal System;
  - (ii) the procedures for Access Holders to submit Train Orders and for Aurizon Network to schedule Train Services in the ITP;
  - (iii) the procedures for Aurizon Network to schedule the DTP from the ITP, provided that these procedures must be consistent with the matters referred to in **clauses 5.2 and 5.4(c) of Schedule G**;
  - (iv) the relevant critical objectives for Train Services operating in one or a combination of Coal Systems to assist decision-making for Network Control under **clause 7 of Schedule G**;
  - (v) a methodology for defining path availability/use for the purpose of calculating ~~take-or-pay~~ TOP Ccharges; and
  - (vi) the identification of any circumstances where a full Initial Capacity Assessment or Capacity Analysis is not required for the purposes of **clause 4.6(b) or clause 4.10.2(a)(v)**.

**Take or Pay**

A charge payable to Aurizon Network in circumstances where contracted Train Services are not operated by or for the relevant Access Holder. For a Reference Tariff, the Take or Pay requirements and calculations are set out in **clause 3 of Schedule F**.

**Target Capacity**

The meaning given to that term in **clause 8.3.3(b)**.

**Tariff Based Access Agreement**

In relation to a Reference Tariff, an Access Agreement to the extent that the Access Charges under that Access Agreement are set by reference to that Reference Tariff.

**Tariff Gtk**

~~in~~ ln respect of a Train Service Type, ~~means~~ the aggregate of the gtk for all coal carrying ~~Network~~ Train Services that are subject to the same type of Reference Tariff as the

	<del>Reference Tariff Type for</del> that Train Service Type.
<b>Tariff Take or Pay</b>	Take or Pay in relation to Train Service Entitlements for which Access Charges are set by reference to the same Reference Tariff.
<b>Tax Act</b>	The <i>Income Tax Assessment Act 1997</i> (Cth) and regulations made under it, as amended from time to time.
<b>Term</b>	The period between the Approval Date and the Terminating Date.
<b>Terminating Date</b>	The earlier of 30 June 2017 and the date on which this Undertaking is withdrawn in accordance with the Act.
<b>Third Party</b>	A person other than an Aurizon Party.
<b>Third Party Access Seeker</b>	A Third Party which is an Access Seeker and, for the purposes of <b>Part 3</b> , includes a Third Party who wants Access, or increased Access whether or not an Access Application has been lodged.
<b>TIA</b>	<i>Transport Infrastructure Act 1994</i> (Qld).
<b>Timetabled Traffic</b>	A traffic, the Train Service Entitlement in respect of which, is defined in terms of a specified Train Path on a particular day and/or week (but excluding any traffic that is a coal carrying Train Service).
<b>TOP Charge</b>	<del>(a) for a Year means the amount which is the sum of the "TOP Charge" (as defined in paragraph (b) of this definition) for each Train Service Type for the Year; and (b) for a Train Service Type for a Year means the amount calculated in accordance with clause 4.3 of Schedule F for the Train Service Type and Year.</del>
<b>TOP Charges</b>	The charge for contracted Train Services where the contracted Train Services are not operated by, or by a Railway Operator for, the relevant Access Holder under the relevant Access Agreement <u>and is the amount determined under clause 3.2 and 3.3 of Schedule F.</u>
<b>TOP Charges (ATPY)</b>	<del>The TOP Charges for the relevant year that would be payable for contracted Train Services if the contracted Train Services are not operated by, or by a Railway Operator for, the relevant Access Holder under the relevant Access Agreement and the TOP Charges under that Access Agreement were calculated in a manner equivalent to the calculation of "ATPY" in item 1.1 of schedule 4 of the Standard Access Agreement.</del>
<b>Total Actual Revenue</b>	(a) For AT <sub>2.4</sub> in relation to an Coal System, the amount calculated in accordance with <b>clauses 4.3(d)</b> to <b>(f)</b>

of **Schedule F**; and

- (b) for the AT<sub>5</sub> component of Access Charges in relation to a Coal System, the amount calculated in accordance with **clause 4.3(gf)** of **Schedule F**.

<b>Track</b>	That part of the Rail Infrastructure comprising the rail, ballast, sleepers and associated fittings.
<b>Track Segment</b>	A part of the Rail Infrastructure comprising a rail corridor shown as a specified "Track Segment" as shown in the Preliminary Information including all branch lines directly connecting coal mine loading facilities to that "Track Segment".
<b>Train</b>	Any configuration of Rollingstock operating as a unit on Track.
<b><u>Train Description</u></b>	<u><a href="#">The meaning given to that term in the relevant Access Agreement.</a></u>
<b>Train Movement</b>	Any operation of a Train on the Rail Infrastructure by a Train Operator or any other Railway Operator.
<b>Train Orders</b>	Railing requests for a nominated period of time submitted to Aurizon Network, by or on behalf of an Access Holder or a Train Operator, after taking into account any restrictions on or unavailability of loading or unloading facilities, Private Infrastructure, Rollingstock or other Above Rail Services, to assist in the scheduling of Train Services.
<b>Train Operations Deed</b>	A Train Operations Deed agreed between Aurizon Network and the relevant Train Operator under <b>clause 5.3(c)</b> .
<b>Train Operator</b>	A person nominated by an Access Seeker or an Access Holder to operate Train Services for that Access Seeker or Access Holder under the terms of a Train Operations Deed.
<b>Train Path</b>	The occupation of a specified portion of Rail Infrastructure, which may include multiple sections in sequential order, for a specified time.
<b>Train Service</b>	A Train operating on the Rail Infrastructure from a specified origin to a specified destination.
<b>Train Service Change</b>	A change to: <p>(a) for Timetabled Traffic, the time or times at which; or</p> <p>(b) for Cyclic Traffic, the Train Path or Train Paths for which,</p> <p>one or more Train Services are planned or scheduled to operate, as applicable, (and not the other terms under which a person has an entitlement to run those Train Services, for example, the Rollingstock or Rollingstock</p>



	Configuration for those Train Services or the Rail Infrastructure on which those Train Services may operate).
<b>Train Service Commitment Date</b>	The date specified as such for a Train Service Type in the relevant Access Agreement.
<b>Train Service Entitlement</b>	An Access Holder's entitlement pursuant to an Access Agreement to operate or cause to be operated a specified number and type of Train Services over the Rail Infrastructure including within a specified time period, in accordance with specified scheduling constraints and for the purpose of either carrying a specified commodity or providing a specified transport service.
<b>Train Service Type</b>	In respect of an Access Holder, a 'Train Service Type' as defined in that Access Holder's Access Agreement.
<b>Transfer</b>	The transfer by an Access Holder of all or part of its Access Rights to another party.
<b>Transfer Cancellation Notice</b>	The meaning given to <del>the</del> <u>that</u> term in <b>clause 7.4.2(r)</b> .
<b>Transfer Date</b>	The meaning given to <del>the</del> <u>that</u> term in <b>clause 7.4.2(b)(i)(C)</b> .
<b>Transferee</b>	The meaning given to <del>the</del> <u>that</u> term in <b>clause 7.4.2(a)</b> .
<b>Transferee Access Agreement</b>	<del>—The meaning given to the term in clause 7.4.2(i)(iii).</del>
<b>Transfer Fee</b>	An amount payable to Aurizon Network <del>pursuant under to clause 7.4.2(n)</del> <b>7.4.2(p)</b> <del>as a pre-condition for a Transfer.</del>
<b>Transfer Period</b>	The <del>meaning given to the term in clause 7.4.2(b)(i)(C)</del> <u>period commencing on the Transfer Date and ending on the date on which the transfer of the Nominated Access Rights is terminated (if any).</u>
<b>Transfer Provisions</b>	The provisions outlined in <b>clauses 7.4.3 and 7.4.4</b> .
<b>Transferred Access Rights</b>	The meaning given to <del>the</del> <u>that</u> term in <b>clause 7.4.2(b)(ii)(A)</b> <del>1.1.1(a)(i)(A).</del>
<b>Transmission Entities</b>	The meaning given to that term in the <i>Electricity Act 1994</i> (Qld).
<b>Ultimate Holding Company</b>	The holding company (as defined in the Corporations Act) of Aurizon Network, which is the ultimate owner of Aurizon Network – being as at the Approval Date, Aurizon Holdings.
<b>Ultimate Holding Company Support Deed</b>	The deed required under <b>clause 2.6(a)</b> <del>1.1.1(a).</del>

<b>Unallocated Delay</b>	A delay to a Train Service from its Train Path scheduled in the DTP that is neither an Above Rail Delay nor a Below Rail Delay.
<b>Undertaking</b>	This document (including all volumes and schedules) which is an access undertaking for the purposes of the Act.
<b>Unloading Time</b>	The time between a Train Service arriving at a Nominated Unloading Facility and that same Train departing the Nominated Unloading Facility, and for the purpose of clarity, this time runs from when a Train Service arrives at the entry signal to the Nominated Unloading Facility until it has completed unloading, presented at the exit signal, is ready to depart the Nominated Unloading Facility and has advised the relevant Network Controller accordingly.
<b>Users</b>	<del>Access Seekers, Access Holders and/or their Customers (if any).</del>
<b>Urgent Possession</b>	A Possession: <ul style="list-style-type: none"> <li>(a) required to correct problems that Aurizon Network (acting reasonably) considers potentially dangerous to any person, or property;</li> <li>(b) notified to Access Holders less than twenty-one (21) days in advance of taking effect; and</li> <li>(c) that Aurizon Network, complying with the Possession Protocols, will use reasonable endeavours to carry out between seven (7) days and three (3) Months after the detection of the fault giving rise to the need for that Possession.</li> </ul>
<b>User Funded Expansion</b>	An Expansion that is funded wholly or partly by Expansion Funders under a User Funding Agreement.
<b>User Funding</b>	The provision of funding to Aurizon Network by an Expansion Funder (including indirectly through a User Funding Trustee or other person) in accordance with a User Funding Agreement.
<b>User Funding Agreement</b>	An agreement, or a number of related agreements, to which Aurizon Network is a party under which, among other things, Access Seekers (and/or their Customers) agree to provide funding for the construction of an Expansion (including agreements in the form of the Standard User Funding Agreement).
<b>User Funding</b>	The trust established under a User Funding Agreement.

**[Drafting note: The QCA is included to replace all references to “Urgent Possession” with “Unplanned Possession” and is seeking stakeholder advice in respect of this change.]**

**Trust****User Funding Trustee**

An entity that is the trustee of a User Funding Trust.

**Users**

[Access Seekers, Access Holders and/or their Customers \(if any\).](#)

**Varied WACC**

A weighted average cost of capital different to that of the Approved WACC.

**Volume Risk**

[The meaning given to that term in clause 6.4.3\(a\)\(iv\).](#)

**Website**

[www.aurizon.com.au](http://www.aurizon.com.au)

**Yard Control**

The control of Train Movements and other activities affecting Train Movements at those locations that are not under the direct control of a Network Controller.

**Year**

A period of twelve (12) Months commencing 1 July.

## 12.2 Interpretation

(a) Unless expressed to the contrary, in this Undertaking:

(i) a reference to:

- (A) a specified position name is a reference to that position name as it changes during the Term, provided that the position retains responsibility for the same or substantially the same tasks;
- (B) a person includes a partnership, an unincorporated joint venture, an unincorporated association, a corporation, a government or statutory body or authority and any other entity recognised by law;
- (C) 'dollars' or '\$' means a reference to Australian dollars;
- (D) any parties by their defined terms includes that party's executors, administrators, permitted assigns or permitted subcontractors or, being a company, its successors, permitted assigns or permitted subcontractors and the obligation of any party extends to those persons;
- (E) a right includes a benefit, remedy, discretion, authority or power;
- (F) conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
- (G) 'includes' means includes without limitation;

- (H) time is to local time in Brisbane, Queensland;
  - (I) this or any other document or agreement includes the document or agreement as varied, amended or replaced from time to time;
  - (J) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (K) this Undertaking includes this Undertaking as amended from time to time in accordance with the Act or this Undertaking;
  - (L) an input of a Reference Tariff or an Access Charge is reference to each amount that is a tariff or input which is applied in the calculation for that Reference Tariff or Access Charge – for example, the amounts for AT<sub>1</sub>, AT<sub>2</sub>, AT<sub>3</sub>, AT<sub>4</sub>, AT<sub>5</sub>, EC and the QCA Levy specified in **clauses 6.2, 7.2, 8.2, 9.2, and 10.2 and 11.2** of **Schedule F**, as applicable for each Reference Tariff, are each inputs for the Reference Tariff; and
  - (M) a component of a Reference Tariff or an Access Charge is a reference to each sub-calculation for that Reference Tariff or Access Charge that involves an input being multiplied by an applicable multiplier – for example, in the formula under **clause 2.2(a)** of **Schedule F** each individual bracketed calculation comprised in that formula is a separate component of the Reference Tariff;
- (ii) words importing the singular number includes the plural number and vice versa;
  - (iii) words importing any gender include the other gender;
  - (iv) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
  - (v) clause headings are for reference purposes only and do not affect the interpretation of this Undertaking;
  - (vi) where:
    - (A) a group of persons are in a partnership, an unincorporated joint venture, an unincorporated association or other similar arrangement; and
    - (B) that group of persons together execute or seek to execute an agreement (including an Access Agreement or a rail haulage agreement) or such an agreement is executed or is sought to be executed for or on behalf of that group of persons,

then:

- (C) that group of persons is deemed to constitute a single person, Customer, Access Seeker or Access Holder (as applicable); and
  - (D) where a notification required to be given under this Undertaking is given by one member of that group of persons it will be deemed to have been given on behalf of all members of that group persons;
- (vii) every agreement or undertaking expressed or implied by which more than one person agrees or undertakes any obligations or derives any benefit binds or ensures for the benefit of those persons jointly and each of them severally;
- (viii) subject to **clause 12.2(a)(ix)**, a reference to:
- (A) a part or clause is a reference to the corresponding part or clause found in **Part 1 to Part 12** of this Undertaking;
  - (B) a volume is a reference to the corresponding volume of this Undertaking; or
  - (C) a schedule is a reference to the corresponding schedule to this Undertaking,
- as amended or replaced from time to time;
- (ix) in a schedule to this Undertaking, a reference to:
- (A) a part or clause, is a reference to a part or clause of that schedule unless otherwise stated; and
  - (B) a part or clause of this Undertaking, is a reference to a part or clause found in **Part 1 to Part 12** of this Undertaking; and
- (x) Subject to **clause 12.2(b)**, if there is any inconsistency between matters contained in a schedule and **Part 1 to Part 12** of this Undertaking, the provisions in **Part 1 to Part 12** of [this](#) ~~the~~ Undertaking prevail.
- (b) A term that is used in this Undertaking but not defined in this **Part 12** and which is defined in a Standard Access Agreement, will have the meaning given to that term in the Standard Access Agreement.
- (c) Where a provision of this Undertaking includes a reference to preventing or hindering an Access Seeker's or Access Holder's Access:
- (i) that reference is solely a reflection of Aurizon Network's obligations under sections 104 and 125 of the Act (as applicable) and does not expand those obligations; and

- (ii) must be given the same meaning as in sections 104 and 125 of the Act (as applicable).
- (d) To the extent that Aurizon Network's obligations under this Undertaking are or become inconsistent with Aurizon Network's obligations under any Law, this Undertaking does not apply to the extent of that inconsistency.
- (e) If this Undertaking obliges Aurizon Network to provide any information, reports, documents or other material (in whatever form) (**Information**) to the QCA or any other person (including an Auditor) then, despite any other provision in this Undertaking, Aurizon Network is not required to comply with that obligation if Aurizon Network claims:
  - (i) on the ground of self-incrimination a privilege Aurizon Network would be entitled to claim against providing the Information were Aurizon Network a witness in a prosecution for an offence in the Supreme Court [of Queensland](#); or
  - (ii) that legal professional privilege applies in respect of that Information.

But if ~~the~~ Aurizon Network does not comply with an obligation on that basis, Aurizon Network must notify the QCA of this and Aurizon Network or the QCA may apply to the Supreme Court of Queensland for a determination of the validity of such a claim of privilege.
- (f) Despite any other provision in this Undertaking, this Undertaking does not expressly or impliedly waive any claim that Aurizon Network may have to legal professional privilege in respect of any information, reports, documents or other material (in whatever form).

### 12.3 Notices

- (a) A notice, consent, approval, undertaking or any other communication or document (**Notice**) connected with this Undertaking has no legal effect unless it is in writing.
- (b) Where this Undertaking requires a Notice be given to a person, the Notice may, in addition to any other lawful means be given by being hand delivered, sent by pre-paid post, facsimile or, if agreed by Aurizon Network, email.
- (c) Unless a later time is specified in it, any Notice takes effect and, subject to **clause 12.3(d)**, is given from the earlier of the time it is actually given or is taken to be given.
- (d) A Notice is taken to be given, in the case of a Notice given by:
  - (i) hand delivery, at the time of delivery;

- (ii) post:
    - (A) three Business Days after the date of posting – if posted within Australia to an Australian address; and
    - (B) 10 Business Days after the date of posting – in any other case;
  - (iii) facsimile, on the sender’s facsimile machine producing a transmission report indicating that the facsimile was sent in full to the facsimile number of the addressee (and that report is conclusive evidence that the addressee received the facsimile in full at the time indicated on that report); and
  - (iv) email, on the next Business Day after being sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.
- (e) If a Notice is given:
- (i) after 5:00 pm in the place of receipt; or
  - (ii) on a day which is not a Business Day in the place of receipt,
- ⊕ it is taken as having been given at 9:00 am on the next Business Day in the place of receipt.

## 12.4 Transitional

- (a) All acts, applications, approvals, approval processes, arrangements, circumstances, conduct, decisions, determinations, dispute resolution processes, events, Force Majeure Events, matters, negotiations, notices, omissions, queues, registers, requests, time periods, votes, warranties or any other process or thing whatsoever (**Matter**) done, agreed, arising, given, received, undertaken, commenced or established (**Done**) or deemed to be Done under the 2010 Undertaking are deemed to be Done and, as applicable, continue under this Undertaking as though the Matter was Done under this Undertaking to the extent that this Undertaking provides for equivalent Matters to be Done.
- (b) For the purposes of this Undertaking, the date of execution for an Access Agreement executed in accordance with Subparagraph 2.5.2(f) of the 2008 Undertaking is deemed to be the date when the Internal Access Agreement (as defined under the 2008 Undertaking) it replaced was put in place.
- (c) If this Undertaking requires Aurizon Network to report to the QCA on a Quarter or a Year that began prior to the Approval Date, then:
  - (i) the relevant report will include information in respect of the period prior to the Approval Date; and

- (ii) Aurizon Network is only obliged to provide information for the period prior to the Approval Date as would have been required to be provided under the 2010 Undertaking in respect of that same type of report.
- (d) If the Approval Date is not the first day of a Year, then this Undertaking will apply in respect of any calculation of Revenue Adjustment Amounts, adjustments to Second Year Allowable Revenue and other relevant revenue cap calculations in relation to the whole of the Year within which the Approval Date falls.
- (e) If the Approval Date occurs prior to the calculation of Revenue Adjustment Amounts, adjustments to Second Year Allowable Revenue and other revenue cap calculations for the preceding Year being undertaken and submitted to the QCA for approval, then those calculations may still be undertaken, and submitted to the QCA, by Aurizon Network as though the provisions under the 2010 Undertaking still applied in respect of those calculations and their approval by the QCA.
- (f) Clause 7.3.7 (Customer Initiated Capacity Transfer) of the 2010 Undertaking continues to apply to each Access Agreement entered into, prior to the Approval Date, by Aurizon Network and an Access Holder who has a Customer (Prior Access Agreement), as though:
  - (i) that clause forms part of this Undertaking but only applies to Prior Access Agreements;
  - (ii) references in that clause to “Adjustment Charges”, “Dispute”, “Take or Pay” and “Undertaking have the meanings given to those terms under this Undertaking;
  - (iii) a reference in that clause to:
    - (A) “QR Network” is a reference to Aurizon Network;  
and
    - (B) “clause 10.1.4” is a reference to clause 11.1.5 (of this Undertaking); and
  - ~~(e)~~(iv) except as provided under clauses 12.4(f)(i) to (iii), that clause otherwise has the same meaning and effect as it had under the 2010 Undertaking.



# Schedule A

## Preliminary, Additional and Capacity Information

### 1 Preliminary Information

The following preliminary information will be made available on the Website for Access Seekers:

- (a) **(Introduction)** The criteria for the use of data and the purpose of the preliminary information.
- (b) **(Civil Infrastructure)** A description of the railway and Track and any operational constraints, e.g. grades and curves.
- (c) **(Telecommunications)** A description of the communication system used.
- (d) **(Electric Traction)** A general system description.
- (e) **(Interface Requirements)** Information on track gauge, axle loads, train speeds, Rollingstock gauge and noise limits.
- (f) **(Locality Information)** Terrain information and climatic conditions and resultant system disruptions.
- (g) **(Committed Corridor Upgrades)** Identification of any relevant committed corridor upgrades.
- (h) **(Maps and Drawings)** Corridor maps and Line Diagrams including plans specifying Track Segments and Mainline Paths.
- (i) **(Level Crossings)** The number of public and occupational level crossings and the type of protection used.
- (j) **(Train Operations)** Sectional running times (calculated based on the projected average sectional running times), maximum Train lengths incident recovery times, crew change locations and facilities forming part of the Rail Infrastructure<sup>3</sup> and stowage infrastructure locations.
- (k) **(Systems)** A description of operational, safeworking and signalling systems.
- (l) **(Rollingstock Interface Standards)** A copy of the relevant Rollingstock Interface Standards.
- (m) **(Description of entitlements)** Information relating to the description of, and calculations in respect of, Train Service Entitlements and Capacity.
- (n) **(Commercial Information)** The applicable Reference Tariffs and Standard Access Agreement and System Rules together with a

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<sup>3</sup> For example, safety matting next to Track to help people safely walk on the ballast.

sample IRMP listing Interface Risks and Environmental Risks that should, at a minimum, be addressed during an Interface Risk Assessment, along with suggested control measures that are [at least industry standard](#) or otherwise [required by Aurizon Network's accreditation requirements under the Rail Safety Act](#) ~~recommended by a relevant government authority.~~

However, the sample IRMP is not exhaustive of the matters that should be considered as part of an Interface Risk Assessment. An IRMP may set out additional or different matters depending on the circumstances (including additional safety and/or Rollingstock issues and associated controls) as long as those additional matters are industry standard or otherwise [required by Aurizon Network's accreditation requirements under the Rail Safety Act](#) ~~recommended by a relevant government authority.~~

## 2 Additional Information

For the purpose of **clause 4.10.2(a)(ii)** of this Undertaking, Aurizon Network is required to provide the following information to an Access Seeker:

<p><b>Access to rail corridor</b></p>	<p>Where Aurizon Network does not have authority to authorise the Access Seeker to access land on which Rail Infrastructure on a route nominated by the Access Seeker is situated, the following information in relation to access to that land:</p> <ul style="list-style-type: none"> <li>(a) the name, address and contact details of the person that the Access Seeker needs approval from to access that land, where this information is reasonably available to Aurizon Network without breaching its confidentiality obligations under this Undertaking or an Access Agreement;</li> <li>(b) advice as to the nature and extent of the rights, if any, that Aurizon Network holds in relation to the relevant land without breaching its confidentiality obligations under this Undertaking or an Access Agreement; and</li> <li>(c) a notice that may be provided to that person indicating that Aurizon Network has no objection to the Access Seeker negotiating for access to that land.</li> </ul>
<p><b>Compliance information</b></p>	<p>Subject to the Access Seeker having entered into an applicable confidentiality agreement with Aurizon Network, the protocols, standards and procedures an Access Holder is required to comply with under the terms of the relevant Standard Access Agreement.</p>

<b>Other information</b>	<p>(a) Information required under section 101(2) of the Act, to the extent not already provided.</p> <p>(b) Other information that is reasonably required by the Access Seeker in accordance with Aurizon Network's obligation under section 101(1) of the Act, provided such information cannot reasonably be obtained from another source.</p>
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### 3 Capacity Information

- (a) This **clause 3** only applies in respect of information which can be provided by Aurizon Network without breaching either Aurizon Network's obligations under **Part 3** of this Undertaking, an Access Agreement or any relevant confidentiality agreement.
- (b) The following information will be provided to an Access Seeker by Aurizon Network on request by that Access Seeker:
- (i) in addition to the Preliminary Information, the Master Train Plan; and
  - (ii) in addition to the Additional Information, the Daily Train Plan (as assessed under **clause 3(c)**) for the relevant part of the Rail Infrastructure,

subject to:

- (iii) the identity of other Access Holders not being detailed; and
- (iv) the terms of other Access Holders' Train Service Entitlements not being detailed.

In addition, the Master Train Plan and the Daily Train Plan may not show all parts of the Rail Infrastructure, and as such may not show all Train Services that may impact on the Existing Capacity detailed. However, Aurizon Network will note those other parts of the Rail Infrastructure where interaction with other Train Services is most likely to impact on the Existing Capacity detailed.

- (c) The relevant current Daily Train Plan will be assessed as, for an Access Application in respect of:
- (i) a Timetabled Traffic, the current Daily Train Plan for the relevant day (or days) of the week; or
  - (ii) a Cyclic Traffic, the current Daily Train Plans for a week, unless Aurizon Network reasonably believes that provision of Daily Train Plans for a longer period of time is required in order that the Daily Train Plans show a use of Existing Capacity that is representative of current utilisation.
- (d) Aurizon Network will also provide access to Network Control diagrams, indicating actual running of Train Services against the

relevant Daily Train Plan, for those days for which the Daily Train Plan has been provided under **clause 3(b)(ii)**.

# Schedule B

## Access Application information requirements

### 1 Application

- (a) Without limiting the information requirements that an Access Application must satisfy in accordance with this Undertaking, an Access Application must satisfy the information requirements set out in this **Schedule B**.
- (b) This **Schedule B** applies as follows:
  - (i) where the proposed Access Application is solely for a Transfer in respect of Transferred Access Rights ~~and~~, **clause 6** applies (and, except as expressly referred to in **clause 6**, **clauses 2 to 5** and **clause 7** do not apply);
  - (ii) where the proposed Access Application is solely for a Renewal, **clause 7** applies (and, except as expressly referred to in **clause 7**, **clauses 2 to 6** do not apply); and
  - (iii) subject to **clauses 1(b)(i) and (ii)**, for all other proposed Access Applications, **clauses 2 to 5** apply.

### 2 Access Seeker and Customer

Relevant contact details including:

- (a) the Access Seeker's name and contact details;
- (b) if the Access Seeker has a Customer (or prospective Customer), that Customer's (or prospective Customer's) name and contact details; and
- (c) if the Access Seeker or its Customer (or prospective Customer) is an unincorporated joint venture, the names and contact details for all joint venture participants.

### 3 Ability to use Access Rights

Information needed to assess matters referred to in **clause 4.12(c)** of this Undertaking, including the following information about matters to be taken in account under **clause 4.12(c)** of this Undertaking:

- (a) where an Access Seeker is seeking Access Rights that will be used for a person other than the Access Seeker (that is, a person who is the Access Seeker's Customer or prospective Customer), the identity of the Customer or prospective Customer for those Access Rights are sought is to be confirmed along with information evidencing that the Access Seeker has or is reasonably likely to have such a Customer.

and that the Customer or prospective Customer has authorised the Access Seeker to apply for the relevant Access Rights. Aurizon Network will disregard for this purpose the effect that granting the Access Rights to the Access Seeker will have on the Access Seeker's ability to attract a Customer in the future;

- (b) for a Train Operator, the identity of the relevant Access Seeker or Access Holder for whom they are the Train Operator;
- (c) whether the Access Seeker has secured, or is reasonably likely to secure, Supply Chain Rights;
- (d) whether the Access Seeker, or its Customer (if any), has secured or is reasonably likely to secure a rail haulage agreement for the operation of the proposed Train Services within the timeframes and in the manner contemplated by the Access Application, if applicable;
- (e) whether the Access Seeker or its Railway Operator is reasonably likely to have facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Services to fully utilise the Access Rights sought;
- (f) where the Access Rights are sought to transport the output of a mine, whether the anticipated output of the mine is sufficient to support full utilisation of the Access Rights sought and all relevant existing Access Rights relevant to that mine; and
- (g) where the Access Rights sought require a Customer Specific Branch Line for the relevant Train Services, whether the Customer Specific Branch Line has been constructed and commissioned or is reasonably likely to be constructed and commissioned prior to the date on which the relevant Train Services are to commence.

## 4 Coal and freight Train Services

### 4.1 Train Service description

Information describing the Train Services, including:

- (a) the route of operation (including a diagram if necessary) including origin, destination, loading facility, unloading facility and depot;
- (b) the proposed commencement date for Train Services;
- (c) the proposed term of the Access Agreement;
- (d) the method of transporting freight (e.g. containers, louvered wagons, bulk wagons);
- (e) a description of freight/ commodity;
- (f) the Coal System(s) in which the Train Service will operate;
- (g) the net tonnes of product per annum each Year of operation, represented on a Monthly basis, or where Monthly railings are not even, the proposed distribution of the net tonnes;

- (h) the proposed sectional run times;
- (i) the proposed maximum Dwell times, time at loading facility, time at unloading facility and time at depot;
- (j) the proposed non-standard operating modes or methods (if applicable); and
- (k) the proposed Stowage requirements.

## 4.2 Timetable requirements

Information setting out the timetabling requirements, including:

- (a) whether the Access Rights sought are for a new Train Service, or a variation to an existing Train Service, for the Access Seeker;
- (b) whether the Access Rights sought are for a new Train Service or variation to an existing Train Service on the Rail Infrastructure;
- (c) the required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the proposed Access Agreement term;
- (d) the preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys, where relevant; and
- (e) the requirements for shunting or Dwell times en route, separately for forward and return journeys.

## 4.3 Rollingstock details

For all Access Seekers, information describing the Rollingstock and Rollingstock Configurations, including:

- (a) the proposed number of locomotives per Train;
- (b) the proposed number of wagons per Train;
- (c) the type and class of locomotive;
- (d) the mass of each locomotive (includes full sand and fuel load);
- (e) the type and class of wagons;
- (f) the nominal gross mass of wagons;
- (g) the tare mass of each wagon;
- (h) the tare mass per container;
- (i) the average number of containers per wagon;
- (j) the average proposed load (of product) per wagon;
- (k) the maximum proposed gross tonnes per wagon;
- (l) the maximum axle load of locomotives and wagons;
- (m) locomotive traction type;

- (n) where the traction type is electric traction, the regenerative braking capability and relevant details relating to that regenerative braking capability including electricity metering;
- (o) the gross tonnes per Train Service, separately for forward and return journeys;
- (p) the nominal payload per Train Service, separately for forward and return journeys; and
- (q) the Static Length and Comparative Length for the proposed Train.

#### **4.4 Infrastructure requirements**

Details of any Expansions or Customer Specific Branch Lines that may be necessary for operation of service, where known.

## **5 Passenger Train Services**

### **5.1 Train Service description**

Information describing the Train Services, including:

- (a) the route of operation (including a diagram, if necessary);
- (b) the proposed term of the Access Agreement; and
- (c) the type of passenger traffic (e.g. long distance, commuter, tourist).

### **5.2 Timetable requirements**

Information setting out the timetabling requirements, including:

- (a) whether the Access Rights sought are for a new Train Service, or a variation to an existing Train Service, for the Access Seeker;
- (b) whether the Access Rights sought are for a new Train Service, or a variation to an existing Train Service, for the Rail Infrastructure;
- (c) the required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the proposed Access Agreement term;
- (d) the preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys; and
- (e) the requirements for shunting or Dwell times en route, separately for forward and return journeys.

### **5.3 Rollingstock details**

Information describing the Rollingstock, including:

- (a) the total number of locomotives per Train;
- (b) the total number of carriages per Train;
- (c) the total number of passenger multiple units (**PMU**) per Train;
- (d) the type and class of locomotive;



- (e) the mass of each locomotive (including full sand and fuel load);
- (f) the type and class of carriage;
- (g) the nominal gross mass of each carriage;
- (h) the type and class of PMU;
- (i) the average gross mass of PMU;
- (j) the maximum number of vehicles including locomotives, wagons or units within PMU;
- (k) the maximum axle load of locomotives and wagons;
- (l) locomotive traction type;
- (m) the total length of Train (including locomotives);
- (n) the gross tonnes per Train Service, separately for forward and return journeys; and
- (o) the maximum operation speed separately for loaded and empty Trains.

#### 5.4 Infrastructure requirements

Details of any Expansions or Customer Specific Branch Lines that may be necessary for operation of service, where known.

## 6 Transfers

Information relating to the Transfer including:

- (a) relevant contact details including:
  - (i) the Transferee's name and contact details;
  - (ii) if the Transferee has a Customer, that Customer's name and contact details; and
  - (iii) if the Transferee or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;
- (b) where the Transferee is not the current Access Holder (**Transferor**) who intends to undertake the relevant Transfer, relevant contact details for the Transferor including:
  - (i) the Transferor's name and contact details;
  - (ii) if the Transferor has a Customer, that Customer's name and contact details; and
  - (iii) if the Transferor or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;

- (c) details identifying the Transferor's Access Agreement, and the Access Right under it (including by reference to origin and destination), to which the Transfer relates;
- (d) the proposed date and term for the Transfer;
- (e) the information referred to in **clauses 4.1 to 4.3** or **clauses 5.1 to 5.3** (as applicable);
- (f) evidence that the Transferor's Customer and the Transferee's Customer have been notified of, and have agreed to, the Transfer (except where the Transferor's Customer initiated the Transfer by notice to Aurizon Network); and
- (g) [except to the extent that the Access Seeker satisfies the Non-availability Requirements](#), any other information that:
  - (i) it is necessary to provide under this Undertaking; or
  - (ii) is otherwise necessary and has been notified to the Access Seeker by Aurizon Network.

## 7 Renewals

Information relating to the Renewal including:

- (a) relevant contact details including:
  - (i) the Renewing Access Seeker's name and contact details;
  - (ii) if the Renewing Access Seeker has a Customer, that Customer's name and contact details; and
  - (iii) if the Renewing Access Seeker or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;
- (b) where the Renewing Access Seeker is not the current Access Holder, relevant contact details for the current Access Holder including:
  - (i) the current Access Holder's name and contact details;
  - (ii) if the current Access Holder has a Customer, that Customer's name and contact details; and
  - (iii) if the current Access Holder or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;
- (c) a description identifying the current Access Agreement to which the Renewal relates;
- (d) whether the Renewal is for all or part of the relevant existing Access Rights and, where for part only, details of the relevant part;

- (e) details of all changes (if any) in:
- (i) the information referred to in **clauses 4.1 to 4.3** or **clauses 5.1 to 5.3** (as applicable)<sup>4</sup>; and
  - (ii) the Operating Plan,
- from that relating to the relevant existing Access Agreement.

<sup>5</sup>

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<sup>4</sup> A Renewal will do not require any Expansion or Customer Specific Branch Line therefore **clauses Schedule B4.4** and **Schedule B5.4**, as applicable, are not relevant.

<sup>5</sup> ~~It should be noted that a Renewal only arises where a Renewing Access Seeker wishes to hold or to continue to hold (as applicable) Access Rights equivalent to the relevant existing Access Rights. The greater the nature and degree of change the greater the risk that the relevant Access Application will not be a Renewal.~~

# Schedule C

## Operating and other plan requirements

### 1 Operating Plan

(a) The following matters must, amongst others, be included in an Operating Plan.

(b) An Operating Plan will adopt a three tiered presentation of information with information for the following categories:

- (i) whole of network information that applies generally to the Train Services of the Access Seeker or the Access Holder (see **Item-clause 1.1 below**);
- (ii) Coal System specific information that applies to the Train Services of the Access Seeker or the Access Holder operating in that Coal System (see **Item-clause 1.2 below**) but was not provided under **Item-clause 1.3**; and
- (iii) origin/destination pair specific information that applies to the Train Services of the Access Seeker or Access Holder for that origin/destination pair (**Item-clause 1.3 below**) but was not provided under **Items-clauses 1.1 or 1.2**.

#### 1.1 Umbrella Central Queensland Coal Network information

The following information must be provided in an Operating Plan on a whole of network basis.

<b>Area of Operation</b>	<ul style="list-style-type: none"><li>• Depot locations</li></ul>
<b>Operation</b>	<ul style="list-style-type: none"><li>• Type of service (passenger, freight) or commodity</li><li>• Dangerous goods details</li><li>• Overload management system</li><li>• Stowage locations held by the operator</li><li>• Timing of scheduled servicing/provisioning activities</li><li>• The maximum Rollingstock operational speed separately for loaded and empty Trains</li></ul>
<b>Train Information</b>	<ul style="list-style-type: none"><li>• Safety systems</li><li>• Communication systems</li></ul>
<b>Information in compliance with</b>	<ul style="list-style-type: none"><li>• Rollingstock Interface Standard:</li><li>• Rollingstock and Rollingstock configuration details (number</li></ul>

<b>standards and protocols</b>	<ul style="list-style-type: none"> <li>• of wagons, locomotives, carriages/self-propelled units)</li> <li>• Overload management standard:</li> <li>• Load tables (including loads for Train Services and all relevant requirements and information in relation to the specification of those loads)</li> </ul>
<b>Crewing Plan</b>	<ul style="list-style-type: none"> <li>• Train Service crew requirements:</li> <li>• Location of crew depots</li> <li>• Crew change points</li> <li>• Dwell times at change points (minimum and maximum)</li> </ul>
<b>Recovery Methods</b>	<ul style="list-style-type: none"> <li>• Recovery of marked off Rollingstock at loading/unloading locations/en_route</li> <li>• Recovery of derailments</li> <li>• Recovery of failed locomotive</li> </ul>
<b>Environmental impacts</b>	<ul style="list-style-type: none"> <li>• Profiling and veneering</li> </ul>

## 1.2 Coal System specific information

- (a) The requirement for the information under this **Item clause 1.2** is in addition to **Item clause 1.1**.
- (b) The following information must be provided in an Operating Plan on Coal System basis, so that the information is provided separately for each relevant Coal System (as applicable).
- (c) For clarity, it is not necessary to repeat information already provided under **Item clause 1.1**.

<b>Area of operation</b>	<ul style="list-style-type: none"> <li>• Origin and destination</li> <li>• Cycle description (including nominated stops en_route)</li> <li>• Entry and exit points onto or off of Rail Infrastructure</li> <li>• Details regarding repositioning of Rollingstock (prior to, during and after operation of the Train Service)</li> <li>• Authority from Private Infrastructure manager to enter and/or exit the Private Infrastructure to enable use of Access Rights (where applicable)</li> </ul>
<b>Operation</b>	<ul style="list-style-type: none"> <li>• Description of any activities that may negatively impact main line running (e.g. shunting and reversing)</li> <li>• Dwell times at loading facility (minimum and maximum)</li> <li>• Dwell times at unloading facility (minimum and maximum)</li> </ul>

**Train information**

- Dwell times en route and operational requirements (minimum and maximum)
- Indicative timetable requirements or sectional running times
- Type, class and number of locomotives per Train
- Maximum and average gross tonnage of loaded Train (including locomotives)
- Tare of empty Train
- Method of operation
- Traction type
- Train length
- Rollingstock and Rollingstock Configuration details (number of wagons/locomotives/carriages/self-propelled units)

**1.3 Origin/destination pair specific information**

(a) The requirement for the information under this ~~Item~~ **clause 1.3** is in addition to ~~Items~~ **clauses 1.1 and 1.2**.

(b) The following information must be provided in an Operating Plan on an origin/destination pair basis, so that the information is provided separately for each origin/destination pair of the relevant Train Services (as applicable).

(c) For clarity, it is not necessary to repeat information already provided under ~~Items~~ **clauses 1.1 or 1.2**.

**Area of operation**

- Authority from Private Infrastructure manager to enter and/or exit the Private Infrastructure to enable use of Access Rights (where applicable)

**Operation**

- Special operating parameters (e.g. key arrival and departure windows)
- Any critical timings at specified locations
- Description of any activities that may negatively impact main line running (e.g. shunting and reversing)
- Load tables (including the loads for Train Services and all relevant requirements and information in relation to the specification of those loads)
- Additional information applying to the requested Train Service which differs from other Train Services on the same ~~coal~~ **Coal system** ~~System~~

## 2 Interface Risk Management Plan

- (a) As a Railway Manager, Aurizon Network is responsible for ensuring that the Interface Risks associated with the operation of Train Services on the Rail Infrastructure are managed appropriately.
- (b) For the purpose of identifying the Interface Risks posed by the operation of a particular Train Service on the Rail Infrastructure, and agreeing an IRMP for managing those Interface Risks, Aurizon Network, the Access Holder and the Train Operator must participate in a process that commences with an Interface Risk Assessment and culminates in an IRMP (**Interface Risk Management Process**).
- (c) In progressing the Interface Risk Management Process, Aurizon Network, ~~and~~ the Access Holder and the Train Operator must:
- (a)(i) ensure that their representatives involved in the process have the appropriate competence to conduct the process in a diligent manner;
  - (b)(ii) ensure that all relevant information, that is reasonably available, is provided to the other party on a timely basis to facilitate the process; and
  - (c)(iii) ensure that all information provided is accurate.
- (d) The Interface Risk Management Process must be conducted for all new Train Services and for any variation to Train Services (including changes in the Operating Plan or Rollingstock specification). For the avoidance of doubt, a variation to an existing Train Services will not require a new IRMP and varying the existing IRMP for those Train Services will be satisfy the Interface Risk Management Process.
- (e) The IRMP must reflect the outcome of the Interface Risk Assessment. In particular, the IRMP will detail the controls agreed between Aurizon Network, the Access Holder and the Train Operator for the Interface Risks identified and assessed during the Interface Risk Assessment.
- (f) The IRMP must incorporate the audit, inspection and review regime set out below and must specify:
- (a)(i) the Safeworking Procedures and Safety Standards are applicable to the proposed operation;
  - (b)(ii) the additional controls, including Rollingstock Interface Standards, agreed between the parties for the proposed operation; and
  - (c)(iii) the particular party responsible for ensuring that the various elements of the IRMP are implemented and that the IRMP remains effective in addressing the Interface Risks it was developed to address.
- (g) The IRMP must be a schedule to the Train Operator's Train Operations Deed. If a Train Operations Deed has been negotiated

before the finalisation of the IRMP, the implementation of the IRMP may require changes to the terms and conditions of the Train Operations Deed, and the parties must agree those changes.

(h) \_\_\_\_\_ If Aurizon Network and an Access Holder or a Train Operator agree that training of the Access Holder's or Train Operator's personnel (as applicable) is required as a control, or part of a control, to a particular Interface Risk identified in the Interface Risk Assessment, and the Access Holder or Train Operator (as applicable) can only obtain that training from Aurizon Network, Aurizon Network must provide the Access Holder or Train Operator (as applicable) with that training (and Aurizon Network may recover its reasonable costs for providing such training).

### 3 Environmental Management Plan

The Environmental Management Plan must specify (as a minimum):

- (a) the Environmental Risks identified in the IRMP from time to time and the measures in respect of those Environmental Risks specified in the IRMP from time to time of which the Train Operator is responsible for implementing, complying with, ensuring compliance with and/or ensuring the ongoing effectiveness;
- (b) processes for ensuring that the Train Operator at all times complies with all requirements imposed on it under Environmental Laws from time to time;
- (c) processes for ensuring that the Train Operator at all times complies with any requirements of the Environmental Authorities held by Aurizon Network from time to time that are relevant to the Train Operator's Train Services;
- (d) processes for ensuring that the Train Operator, its Rollingstock, Rollingstock Configurations and Train Services at all times comply with the requirements of this Agreement, including the IRMP and the Emergency Response Plan;
- (e) systems (including audit systems) and procedures to address and monitor all relevant Environmental Risks identified in the IRMP and to ensure compliance with all Environmental Laws;
- (f) the relevant roles, responsibilities and training of the operator's staff involved in the implementation of the Environmental Management Plan; and
- (g) the following sections:

#### **Introduction**

- (i) Description of Operational Activities
- (ii) Purpose and Objectives of the Environmental Management Plan



- (iii) Description of Environmental Management Plan
- (iv) Operator's Environmental Policy

#### **Environmental Management**

- (v) Environmental Risks identified in the Interface Risk Assessment
- (vi) Legislation and Other Requirements
- (vii) Target/s

#### **Implementation and Operation**

- (viii) Responsibilities, Accountabilities & Authorities
- (ix) Competence, Training and Awareness
- (x) Internal and External Communication (including liaison with regulatory agencies)
- (xi) Document Control and Information / Record Management
- (xii) Emergency Preparedness and Management
- (xiii) Specific Procedures for identified environmental risks

#### **Operational Activities Review Process**

- (xiv) Monitoring And Measurement
- (xv) Evaluation Of Compliance / Audit
- (xvi) Management Review

#### **Environmental Complaints & Incidents**

- (xvii) Managing Environmental Incidents
- (xviii) Notification Of Environmental Incidents
- (xix) Managing Environmental Complaints

## **4 Inspection and Audit Provisions**

### **4.1 Rights of inspection and audit**

- (a) The IRMP must include a right for either party to conduct, or require the conduct of, an inspection or audit in accordance with this ~~item~~ [clause 4](#) to assess the other party's compliance with the IRMP, the applicable Safeworking Procedures and applicable Safety Standards periodically as specified in the IRMP.
- (b) If a party reasonably believes that the other party has not complied, or is not complying, with any aspect of the IRMP, then that party may conduct, or require the conduct of, an inspection or audit in accordance with this ~~item~~ [clause 4](#) and the process in the ~~IRPM~~ [IRMP](#) to assess the other party's compliance with the IRMP.

- (c) The party conducting, or requiring the conduct of, an inspection or audit must give the other party at least five (5) Business Days prior notice of such inspection or audit except in the case of emergencies and that notice must include:
- (i) details of the inspection or audit to be carried out;
  - (ii) the name of the person conducting the inspection or audit;
  - (iii) the timing and expected duration of the inspection or audit;
  - (iv) the location of the inspection or audit;
  - (v) the grounds upon which the party requires the inspection or audit; and
  - (vi) the ~~Party's~~ party's requirements of the other party in relation to the inspection or audit.

#### 4.2 Conduct of inspection or audit

- (a) Any inspection or audit may be conducted by the relevant party, its appointed representative or by a suitably qualified person reasonably acceptable to both parties, but if the inspection or audit requires access to commercially sensitive information, then:
- (i) person conducting the inspecting or audit must be independent of both parties; and
  - (ii) that person must, prior to carrying out the relevant inspection or audit of the commercially sensitive information, execute a confidentiality deed on terms similar to the document in **Schedule I** in favour of the party the subject of the inspection or audit.
- (b) Aurizon [Network, the Access Holder](#) and/or the Train Operator ([as applicable](#)) must use reasonable endeavours to ensure that the other party, its appointed representative or the person appointed to conduct an inspection or audit are entitled to enter and be upon its land and premises (whether or not owned or leased) for the purposes of carrying out any inspection or audit.
- (c) In exercising any inspection or audit, Aurizon Network, [the Access Holder](#) and/or the Train Operator ([as applicable](#)):
- (i) must not interfere unreasonably with the Rail Infrastructure and the other Party's Trains and Rollingstock or Train Movements on the Nominated Network; and
  - (ii) must use its reasonable endeavours to avoid damage or injury and to minimise any disruption to the other party's business activities.
- (d) A party conducting, [or requiring the conduct of](#), an inspection or audit (**Inspecting Party**) is not liable for any delays or cancellation of Train Services or Claims suffered or incurred by or made or brought by or

against the other party as a result of conducting the inspection or audit provided the Inspecting Party complies with this ~~item~~ clause 4.2.

- (e) Aurizon Network, the Access Holder and/or the Train Operator (as applicable) must provide all reasonable assistance to the other party in conducting any inspection or audit including allowing a party, its appointed representative or person appointed to conduct an inspection or audit to discuss any relevant matter with its staff.
- (f) The parties must provide each other with a copy of any report of any inspection or audit in respect of its compliance with the IRMP.

### 4.3 Costs of inspection or audit

- (a) The ~~party that conducts, or requires the conduct of, an inspection or audit (Requesting Party)~~ Inspecting Party bears the reasonable costs of conducting the inspection or audit unless the inspection or audit confirms the stated grounds for the conduct of an inspection or audit of a party's operations have been demonstrated to exist, in which case the party whose operations are inspected or audited (**Audited Party**) must:
  - (i) bear the reasonable costs of conducting such inspection or audit; and
  - (ii) to the extent that the ~~Requesting~~ Inspecting Party has paid any costs of conducting such inspection or audit, reimburse the ~~Requesting~~ Inspecting Party such reasonable amounts paid by the ~~Requesting~~ Inspecting Party in conducting the inspection or audit.
- (b) If the inspection or audit confirms that no reasonable person in the position of the ~~Requesting~~ Inspecting Party could have formed the view that the stated grounds for such inspection or audit existed, it must bear any reasonable loss or damage suffered by the Audited Party and the ~~Requesting~~ Inspecting Party bears the burden of establishing that a reasonable person in its position could have formed that view.

# Schedule D

## Ultimate Holding Company Deed

Aurizon Holdings Limited

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# Ultimate Holding Company Support Deed

Date:

2013

## Party

**Aurizon Holdings Limited** ACN 146 335 622 of Level 15, 175 Eagle Street, Brisbane in the State of Queensland (**Aurizon Holdings**)

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## Background

- A Aurizon Network is the railway manager of certain rail transport infrastructure, access to which is provided in accordance with the ~~–~~Undertaking.
- B In order to comply with certain obligations imposed on Aurizon Network in accordance with the Access Undertaking, Aurizon Network ~~will require~~ seeks the cooperation of members of the Aurizon Corporate Group.
- C As required by **clause 2.6** of the Undertaking and the QCA's decision to approve the Undertaking, Aurizon Network has requested that Aurizon Holdings, as Aurizon Network's ultimate holding company, enter into this Deed in favour of the QCA. Aurizon Holdings has agreed to do so.
- 

## Agreed terms

### 1 Definitions

In this Deed the following terms will have the meanings set out below. All other terms ~~shall~~ have the meaning ascribed to them in the Access Undertaking.

<b><u>Access Undertaking</u></b>	The current access undertaking submitted by Aurizon Network to the Queensland Competition Authority and approved by the Queensland Competition Authority under the <i>Queensland Competition Authority Act 1997</i> (Qld) as at the date of this Deed and as amended or replaced from time to time.
<b>Aurizon Corporate Group</b>	Aurizon Holdings and each of its related bodies corporate (as that term is defined in the <i>Corporations Act 2001</i> (Cth)).
<b>Aurizon Network</b>	Aurizon Network Pty Ltd (ACN 132 181 116).
<b>QCA</b>	Queensland Competition Authority.

## 2 Term

Aurizon Holdings' obligations under this Deed will terminate upon the earlier of:

- (a) any new ultimate holding company of Aurizon Network ~~providing a deed poll in substantially similar form to this Deed; or~~
- (b) expiry of the Access Undertaking.

## 3 Procuring Compliance by Aurizon Corporate Group

### 3.1 Procuring compliance with Access Undertaking

- (a) Aurizon Holdings must, and must use reasonable endeavours to procure that each other member of the Aurizon Corporate Group:
  - (i) complies with the arrangements prescribed in **Part 3** of the Undertaking;
  - (ii) take all necessary steps to ~~ensure~~enable Aurizon Network to comply ~~complies~~ with the arrangements prescribed in **Part 3** of the Undertaking;
  - (iii) not direct or request Aurizon Network to act in contravention of **Part 3** of the Undertaking;
  - (iv) does not otherwise engage in any conduct which may prevent or hinder Aurizon Network from complying with **Part 3** of the Undertaking;
  - (v) in relation to Confidential Information:
    - (A) ensure that each Related Party complies with the provisions of the Undertaking that relate to Confidential Information it receives as if it were bound by the same obligations as Aurizon Network in respect of that Confidential Information;
    - (B) not disclose Confidential Information received from Aurizon Network to any Third Party other than as permitted by the Undertaking or with the consent of the Access Seeker or Access Holder to which the Confidential Information belongs or relates; and
    - (C) secure, protect and take all steps that may be necessary to prevent any use or disclosure of Confidential Information other than as permitted by the Undertaking;
  - (vi) has the authority to provide or authorise access to land that an Access Seeker or Access Holder requires access to in accordance with the provision of Access under the Undertaking, where that land is owned by a member of the Aurizon Corporate Group, or where a member of the Aurizon

- Corporate Group has a lease, licence or other arrangement with the owners of the land or in accordance with the TIA;
- (vii) takes steps required to allow Aurizon Network to procure a sale or supply of electric energy; and
  - (viii) any other action that Aurizon Holdings or a member of the Aurizon Corporate Group is required to do in order to comply with the provisions of the Undertaking (which may be amended from time to time), or to enable or assist Aurizon Network to comply with its obligations in respect of the Undertaking.
- (b) No Aurizon Corporate Group member, including Aurizon Holdings, will take any action that would cause Aurizon Network to be in breach of its obligations in the Undertaking.

### **3.1.2 Ownership of Rail Infrastructure**

Aurizon Holdings must, and must procure that each other member of the Aurizon Group:

- (a) ensure that Rail Infrastructure is, and remains, owned by Aurizon Network for the term of this Deed; and
- (b) take all necessary steps to ensure Aurizon Network owns all Rail Infrastructure developed by Aurizon Network in accordance with **Part 8** of the Undertaking (except where otherwise required by a User Funding Agreement).

### ~~3.1.3 Benefit of third party~~

~~To the extent that Aurizon Holdings' obligations under the terms of this Deed relate to:~~

- ~~(a) provisions of the Undertaking which are related to, or may impact, a Third Party; or~~
- ~~(b) Confidential Information belonging to a third party;~~

~~the QCA holds the rights under this Deed as agent of and trustee for that Third Party, and that Third Party must be treated to this extent as a party to this Deed.~~

### ~~3.1.4.1.3 Benefit of Deed~~

~~This Deed is provided in favour of the QCA.~~

### ~~3.1.5.1.4 Non-compliance~~

~~The consequences of non-compliance with the obligations in clause 3.1 of this Deed will be limited to those described in clause 2.6(c) of the Access Undertaking.~~

- ~~(a) Nothing in this Deed prevents Access Holders, Access Seekers, Train Operators or Customers from lodging a complaint with the QCA~~



~~against Aurizon Network for breach of this Deed in accordance with Part 3 of the Undertaking.~~

~~(b) Aurizon Holdings will be liable for any consequential loss suffered by any party if a member of the Aurizon Corporate Group, including Aurizon Holdings and Aurizon Network, has failed to comply with the obligations outlined in clause 3.1 of this Deed.~~

### **3.2 New Ultimate Holding Company**

If that Aurizon Holdings ceases to be the ultimate holding company of Aurizon Network, it is a condition precedent to the sale or transfer of Aurizon Network or the action that results in Aurizon Holdings ceasing to be the ultimate holding company of Aurizon Network that the new ultimate holding company of Aurizon Network enters a deed poll in substantially similar form to this Deed.

## Execution

**Executed** as a deed.

**Executed by Aurizon Holdings  
Limited**

.....  
Director Signature

.....  
Company Secretary Signature

.....  
Name of Director (print)

.....  
Name of Company Secretary (print)

# Schedule E

## Regulatory Asset Base

### 1 Maintenance of Regulatory Asset Base

#### 1.1 Roll-forward principles

On an annual basis, Aurizon Network will roll forward the asset values in its Regulatory Asset Base to the extent approved by the QCA, applying the following principles:

- (a) the opening asset value, being:
  - (i) for the first Year of the Term, the value in the Regulatory Asset Base at the expiry of the 2010 Undertaking<sup>6</sup>; and
  - (ii) for each other Year in the Term, the value in the Regulatory Asset Base at the end of the immediately prior Year,  
will be indexed for the Year using the change in the CPI between the June Quarter of the previous Year and the June Quarter for that Year;
- (b) depreciation of the assets will be calculated for the Year using asset lives and a depreciation profile as endorsed by the QCA;
- (c) if an asset is disposed of during the Year, the value of that asset recorded in the Regulatory Asset Base will be removed from the Regulatory Asset Base unless Aurizon Network can demonstrate to the QCA's satisfaction that less than that amount should be removed from the Regulatory Asset Base (in which case the amount approved by the QCA will be removed from the Regulatory Asset Base);
- (d) prudent and efficient capital expenditure for an asset will be added to the Regulatory Asset Base, where that expenditure is approved by the QCA in accordance with **clause 2** and the value of that asset has not otherwise been recovered by Aurizon Network; and
- (e) the value of the assets in the Regulatory Asset Base will be adjusted in accordance with **clauses 1.2** and **1.4**, but only where that adjustment is approved by the QCA in accordance with those clauses.

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<sup>6</sup> The roll forward of the asset values in the Regulatory Asset Base from the 2010 Undertaking will be submitted to the QCA under the 2010 Undertaking but the QCA consideration of that roll forward will not be finalised until after the Approval Date. As the actual value of assets in the Regulatory Asset Base for the first Year of the Term will not be determined until after the Approval Date, an assumed value of assets in the Regulatory Asset Basis was used for the purposes of this Undertaking including, amongst other matters, for setting Reference Tariffs and Allowable Revenues. Once the actual opening value of assets in the Regulatory Asset Base for the Term is accepted by the QCA, the Reference Tariffs and Allowable Revenues will be adjusted based on those actual values.

## 1.2 Adjusting the value of assets in the Regulatory Asset Base

- (a) The value of assets contained in the Regulatory Asset Base may be increased by Aurizon Network by including:
- (i) the value of assets previously removed from the Regulatory Asset Base as a result of the operation of **clause 1.2(b)(ii)** if Aurizon Network can show to the QCA's satisfaction that demand for the declared service utilising those assets has increased sufficiently to justify including the value of the assets in the Regulatory Asset Base;
  - (ii) after the end of the Term, an amount for equity raising costs calculated under **clause 1.4**,

provided that the asset value increase has been approved by the QCA on request by Aurizon Network. In making its determination, the QCA may:

- (iii) consult with, or seek submissions from, persons in relation to any consideration by the QCA of increasing the value of assets contained in the Regulatory Asset Base;
  - (iv) consider any relevant submissions made to the QCA; and
  - (v) request additional information from Aurizon Network that is reasonably required to make its determination in accordance with **clause 2.3(b)2.6(b)**.
- (b) The QCA may require the value of assets contained in the Regulatory Asset Base to be reduced if:
- (i) the QCA made its decision to approve the relevant capital expenditure into the Regulatory Asset Base on the basis of information provided by Aurizon Network:
    - (A) that was inaccurate, inadequate or misleading at the time it provided the information; and
    - (B) which resulted in a different outcome from that which would have occurred if the QCA had been provided with information that was not inaccurate, inadequate or misleading;
  - (ii) circumstances arise in the future where demand for the declared service utilising an asset has deteriorated:
    - (A) to such an extent that regulated prices on an unoptimised asset would result in a further decline in demand for the declared service utilising that asset; and
    - (B) the QCA determines the deterioration is long term and sustained;

- (iii) a Condition Based Assessment determines that:
  - (A) the Rail Infrastructure has deteriorated by more than would have been the case had good operating practice and prudent and effective maintenance and asset replacement policies and practices been pursued; and
  - (B) the QCA determines the deterioration is long term and sustained.
- (c) Where the QCA requires the value of the assets in the Regulatory Asset Base to be reduced:
  - (i) it must identify those specific assets including the class and location of those assets;
  - (ii) in reaching its decision it:
    - (A) must consult with, or seek submissions from, persons in relation to any consideration by the QCA;
    - (B) may disclose any relevant information in respect of the specific assets to persons while seeking submissions;
    - (C) must consider any relevant submissions made to it;
    - (D) may request any additional information from Aurizon Network that is reasonably required to make its determination;
  - (iii) it must give Aurizon Network a draft of the QCA's decision (including a statement of reasons for reaching its decision) in which case:
    - (A) Aurizon Network may provide additional information supporting its view that the value of the assets should not be reduced; and
    - (B) the QCA must consider that additional information when deciding whether to require the value of the assets in the Regulatory Asset Base to be reduced; and
  - (iv) it must have regard to section 138(2) of the Act in making its decision.
- (d) The QCA must use reasonable endeavours to notify Aurizon Network that either it approves or does not approve of any asset value increase under **clause 1.2(a)**.
- (e) If the QCA does not approve Aurizon Network's request, then the QCA may notify Aurizon Network of the reasons why that request was not approved.

### 1.3 Reports on capital expenditure and Regulatory Asset Base roll-forward

- (a) Unless otherwise agreed between Aurizon Network and the QCA, Aurizon Network will, as soon as reasonably practicable and no later than four Months after the end of each Year in the Term, provide to the QCA the details for capital expenditure that Aurizon Network considers should be included in the Regulatory Asset Base with sufficient supporting evidence that the QCA may require to determine the prudence and efficiency of the capital expenditure under **clause 2**, including:
- (i) any business case or Feasibility Study supporting the capital expenditure;
  - (ii) evidence of actual expenditure of the capital expenditure and commissioning of the associated asset; and
  - (iii) capacity modelling undertaken as part of the business case or Feasibility Study and on commissioning of the asset.
- (b) Unless otherwise agreed between Aurizon Network and the QCA, to the extent that the QCA, under **clause 2.2**, has accepted the capital expenditure in the report under **clause 1.3(a)** into the Regulatory Asset Base, Aurizon Network ([as soon as reasonably practicable and no later than one \(1\) Month after the QCA has accepted the capital expenditure report under clause 1.3\(a\)](#)) will provide to the QCA [for approval](#) Aurizon Network's roll-forward of the Regulatory Asset Base under **clause 1.1**, subject to **clause 1.2**, including details of:
- (i) the opening value of the Regulatory Asset Base for the relevant Year;
  - (ii) indexation of the Regulatory Asset Base;
  - (iii) depreciation of the Regulatory Asset Base;
  - (iv) capital expenditure that is included in the Regulatory Asset Base;
  - (v) disposals and transfers from the Regulatory Asset Base; and
  - (vi) the closing value of the Regulatory Asset Base for the relevant Year (which will be the opening value of the Regulatory Asset Base for the following Year),
- separately reported for each Coal System (including for each Reference Tariff and each User Funded Expansion).
- (c) If the information set out in a report provided to the QCA under this **clause 1.3** is insufficient, the QCA may request additional relevant information in accordance with **clause 2.3(b) 2.6(b)**.
- (d) Information provided to the QCA under this **clause 1.3** (including in response to a request under **clause 2.3(b) 2.6(b)**):

- (i) will be accompanied by a statement signed by Aurizon Network's Executive Officer confirming that information is, in all material respects, correct; and
- (ii) in respect of the report referred to in **clause 1.3(b)**, must be based on the roll forward principles in **clause 1.1**.

## 1.4 Equity raising costs

- (a) After the end of the Term, the value of assets contained in the Regulatory Asset Base may be increased by Aurizon Network by including an amount for equity raising costs calculated under this **clause 1.4** and approved by the QCA.
- (b) If Aurizon Network can demonstrate to the QCA that:
  - (i) the equity raising costs have been incurred as up-front costs, with little or no on-going cost over the life of the asset;
  - (ii) the equity raising costs Aurizon Network is seeking to include in the Regulatory Asset Base is prudent and efficient to enable investment in the Rail Infrastructure,
 the QCA may approve the inclusion of this amount in the Regulatory Asset Base in accordance with **clause 1.2**.
- (c) The amount approved by the QCA in **clause 1.4(b)** will be allocated amongst the Coal Systems (including allocations amongst Reference Tariffs), on a pro-rated basis by reference to Aurizon Network's Approved Capital Expenditure over the Term that will, subject to the QCA's approval, be applied in determining Reference Tariffs for the next regulatory period.
- (d) If the Expansion is a User Funded Expansion, references to Aurizon Network in this **clause 1.4** will be deemed to be references to Expansion Funders.

## 2 Approval of capital expenditure by the QCA

### 2.1 Overview

- (a) This **clause 2** refers to various determinations that the QCA may be requested to make in order for capital expenditure to be included in the Regulatory Asset Base.
- (b) These determinations may be made:
  - (i) in response to a report provided to it under **clause 1.3**; or
  - (ii)            in advance of the capital expenditure being incurred.

- (c) [Aurizon Network must obtain the QCA's approval under this \*\*clause 2\*\* of any capital expenditure prior to including that capital expenditure in the Regulatory Asset Base.](#)
- (d) Failure by Aurizon Network to obtain the QCA's approval of any matters under this **clause 2** in relation to a capital expenditure project or part of the capital expenditure for a project, does not affect its right to seek approval under this **clause 2** at a later time in respect of part or all of that capital expenditure.
- (e) Subject to **clause 2.1(f)**, Aurizon Network must promptly seek acceptance of a capital expenditure project under this **clause 2** following receipt of a request to do so by:
  - (i) an Access Seeker (or its Customer) requiring the capital expenditure project to be able to secure Access Rights;
  - (ii) an Expansion Funder for the Expansion; or
  - (iii) an Interested Participant,
 who requires Aurizon Network to obtain the QCA's approval of a capital expenditure project or part of the capital expenditure for a project prior to incurring expenditure on the construction of that project.
- (f) Aurizon Network must promptly seek acceptance of a capital expenditure project under this **clause 2** following acceptance of a Voting Proposal in respect of that capital expenditure project under **clause 4**.
- (g) For the purpose of **clause 2.2(a)** and related provisions in this **Schedule E**, a reference to capital expenditure includes expenditure for a Concept Study, Pre-feasibility Study, Feasibility Study or other study in connection with a capital expenditure project.

## 2.2 Prudency and efficiency

- (a) The QCA may approve including capital expenditure into the Regulatory Asset Base if that capital expenditure is for the prudent and efficient value of the assets that are used by Aurizon Network to provide the Train Services.
- (b) In determining the prudency and efficiency of capital expenditure, the QCA may have regard to the following:
  - (i) the scope of works for a capital expenditure project (including whether the requirement for the works is prudent and efficient);
  - (ii) the standard of works for a capital expenditure project (including whether the standard could be expected to deliver the requirements for that capital expenditure project without it being overdesigned or likely to deliver a capital works project which is beyond the requirements of its scope); and



- (iii) whether the costs of the capital expenditure project are prudent and efficient, having regard to the scope and standard of work undertaken or to be undertaken for the capital expenditure project.
- (c) If the QCA is requested to determine the prudence and efficiency of capital expenditure before the capital expenditure is incurred, the QCA may include as conditions of its approval for any capital expenditure project:
  - (i) the assumptions relevant to its approval including:
    - (A) cost to construct;
    - (B) time for completion of, and
    - (C) estimated capacity to be delivered by, the capital expenditure project;
  - (ii) other matters considered by the QCA to be material to its approval; and
  - (iii) the period of time in which the approval has effect (and if the project is not completed within the nominated time, the QCA may decide the approval ceases to have effect).
- (d) If the QCA is requested to determine the prudence and efficiency of capital expenditure after the capital expenditure is incurred:
  - (i) Aurizon Network may request the QCA to take into account only information and analysis that Aurizon Network could reasonably be expected to have considered or undertaken at the time that it undertook the relevant capital expenditure; and
  - (ii) the QCA will consider this request as part of its determination.
- (e) If Interested Participants vote in respect of whether or not to accept capital expenditure under **clause 4**:
  - (i) Aurizon Network must provide the QCA with the outcome of that vote promptly after the completion of the vote;
  - (ii) the QCA may take that vote into account when approving whether the capital expenditure is prudent and efficient; and
  - (iii) the vote by the Interested ~~Parties~~ Participants under **clause 4** does not limit the QCA's review of the prudence and efficiency of the capital expenditure.<sup>5</sup>
- (f) If Interested Participants accept a Voting Proposal under **clause 4** in respect of capital expenditure:

- (i) the QCA may audit Aurizon Network's compliance with **clause 4** in accordance with **clause 10.6.3**~~Error! Reference source not found.~~ of the Undertaking;
- (ii) if that audit identifies any non-compliance with **clause 4** then:
  - (A) the QCA may require Aurizon Network to remedy the non-compliance; or
  - (B) if the non-compliance cannot be remedied, the QCA must deem the Interested Participants' vote to be invalid;
- (iii) the QCA must take that vote into account when approving whether the capital expenditure is prudent and efficient; and
- (iv) if the Interested Participant's vote is found or deemed to be invalid, Aurizon Network may elect to:
  - (A) withdraw its request to the QCA to approve the capital expenditure project under this **clause 2** and commence a new Voting Proposal in respect of that capital expenditure project under **clause 4**; or
  - (B) not commence a new Voting Proposal but to seek the approval of the QCA under this **clause 2** in respect of the capital expenditure project.

### 2.3 Approval by the QCA

- (a) In order to make its determination under **clause 2.2**, the QCA may:
  - (i) consult with, or seek submissions from, persons in relation to any consideration by the QCA of the prudence and efficiency of capital expenditure;
  - (ii) disclose any Feasibility Study in respect of a capital expenditure project or the Asset Management Plan provided to it under **clause 3** to persons while seeking submissions; or
  - (iii) consider any relevant submissions made to the QCA.
- (b) The QCA may request additional information from Aurizon Network that is reasonably required to make any determination under this **clause 2**.
- (c) The QCA must notify Aurizon Network if it approves capital expenditure for inclusion into the Regulatory Asset Base.
- (d) If the QCA is considering refusing to approve all or part of any capital expenditure into the Regulatory Asset Base:
  - (i) the QCA may give Aurizon Network (and the User Funding Trustee and User Funders, if the capital expenditure is a

- User Funded Expansion) a draft of the QCA's decision (including a statement of reasons for reaching its decision);
- (ii) Aurizon Network may, within twenty (20) Business Days after being given that draft decision (or such longer period as agreed by the QCA), revise the capital expenditure and/or provide additional information supporting its view that the capital expenditure or the revised amount should be included in the Regulatory Asset Base; and
  - (iii) the QCA must consider that revision and/or additional information when deciding whether to approve or refuse to approve the inclusion of the capital expenditure into the Regulatory Asset Base.
- (e) If the QCA refuses to approve all or part of any capital expenditure for inclusion in the Regulatory Asset Base, the QCA may give Aurizon Network (and the User Funding Trustee and User Funders, if the capital expenditure is a User Funded Expansion) a notice of the QCA's decision (including a statement of reasons and the clear identification of the capital expenditure project and the capital expenditure to which its decision relates).
- (f) For the avoidance of doubt, the Capital Indicator does not imply any acceptance by the QCA of that level of capital expenditure into the Regulatory Asset Base.

### 3 Asset Management Plan

- (a) Aurizon Network may prepare a proposed Asset Management Plan describing the standards that Aurizon Network will apply in determining whether to incur capital expenditure by replacing assets within the Regulatory Asset Base rather than maintaining those assets and submit that proposed Asset Management Plan to the QCA for approval.
- (b) To the extent that a capital expenditure project includes Asset Replacement and Renewal Expenditure and there is an Asset Management Plan, Aurizon Network may request the QCA's acceptance of the capital expenditure for that Asset Replacement and Renewal Expenditure as prudent and efficient.
- (c) If a request is made under **clause 3(b)**, the QCA may take into account whether the Asset Replacement and Renewal Expenditure is consistent with the Asset Management Plan.
- (d) **Clause 2** applies to any decision by the QCA in respect of the Asset Management Plan which, for clarity, includes refusing to approve the Asset Management Plan if it does not adequately assess the prudence and efficiency of the scope and standard of any Asset Replacement or Renewal Expenditure.

## 4 Acceptance of capital expenditure projects by Interested Participants

### 4.1 Application

- (a) This **clause 4** sets out a voting process for Access Holders, Customers and Access Seekers to accept:
- (i) the prudence and efficiency of the scope, standard of works and costs of a capital expenditure project of any kind; or
  - (ii) a material change to the scope, standard of works or costs of a capital expenditure project previously accepted by Interested Participants.
- ~~(b)~~ (b) Aurizon Network may not seek a vote under this **clause 4** in relation to a capital expenditure project or part of the capital expenditure for a project unless:
- (i) it has completed the Feasibility Study for that project and provides the results of the Feasibility Study to the QCA and the Interested Participants; and
  - (ii) the Voting Proposal includes (either by reference to the results of the Feasibility Study or as part of the proposal):
    - (A) the timeframe (including milestones (if any) and anticipated completion date) for constructing the capital expenditure project; and
    - ~~(A)~~(B) the cost tolerance for the capital expenditure project that is to be accepted as part of the Voting Proposal.
- ~~(b)~~(c) An unsuccessful vote does not prevent Aurizon Network from seeking the QCA's acceptance on the same matter or a future vote.
- ~~(e)~~(d) Aurizon Network must promptly notify the QCA:
- (i) that it is seeking a vote; and
  - (ii) of the outcome of a vote,
- under this **clause 4**.
- ~~(e)~~(e) Aurizon Network is not obliged to seek acceptance of a capital expenditure project under this **clause 4**, unless:
- (i) an Access Seeker (or its Customer) requiring the capital expenditure project to be able to secure Access Rights;
  - (ii) an Expansion Funder for the Expansion; or
  - (iii) an Interested Participant,
- requires Aurizon Network to obtain a vote from Interested Participants, in which case Aurizon Network must promptly (and in

any event within 20 Business Days of completion of the Feasibility Study for the relevant project) seek acceptance under this **clause 4**,

~~(e)~~(f) Promptly (and in any event within twenty (20) Business Days) after Interested Participants accept a Voting Proposal in respect of a capital expenditure project, Aurizon Network must seek the approval of the QCA to include that capital expenditure into the Regulatory Asset Base.

~~(f)~~(g) In this **clause 4**:

- (i) **Affected Train Path** means a Train Path:
  - (A) 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; or
  - (B) that will be impacted by the proposed capital expenditure project;
- (ii) **Interested Participants** means persons who satisfy the criteria set out in **clause 4.2(a)**;
- (iii) **Voting Period** means:
  - (A) the period specified in the notice under **clause 4.4(a)(i)**, being at least six weeks after the notice is given; or
  - (B) where the Interested Participants for at least 60% of the aggregated Affected Train Paths for all Interested Participants notify Aurizon Network request a specified extension to the period specified in the notice under **clause 4.4(a)(i)**, that extended period; and
- (iv) **Voting Proposal** means a proposal by Aurizon Network that Interested Participants accept by a vote relating to either:
  - (A) the prudence of scope, standard of works and costs of a capital expenditure project of any kind; ~~or~~
  - (B) a material change to:
    - (1) the scope, standard or works or costs of;
    - or
    - (2) the timeframe or cost tolerances for, a capital expenditure project previously accepted by Interested Participants; or
  - ~~(B)~~(C) a capital expenditure project commencing greater than two (2) years after the date that capital

[expenditure project was previously accepted by the Interested Participants.](#)

## 4.2 Identification of Interested Participants

- (a) The Interested Participants for a Voting Proposal are Customers, and Access Holders and Access Seekers without Customers, where:
  - (i) the Access Charges (or likely Access Charges) relevant to the person:
    - (A) are (or will be) determined by reference to a Reference Tariff; and
    - (B) would be affected by including the amount of capital expenditure for a capital expenditure project into the Regulatory Asset Base; or
  - (ii) the proposed capital expenditure project will impact on the person's contracted Capacity or Train Paths after construction of the proposed Expansion is completed.
- (b) A Customer who is an Interested Participant may (by notice to Aurizon Network) nominate its Access Seeker or Access Holder, as applicable, (**Nominee**) to vote on its behalf in which case:
  - (i) the Nominee is taken to be the Customer's agent for the purposes of the vote; and
  - (ii) if requested by the Customer, Aurizon Network must provide the Customer with a copy of notices given to the Nominee under this **clause 4** contemporaneously with the giving of that notice to the Nominee.
- (c) Despite **clause 4.2(a)**:
  - (i) Aurizon Network may not include a person as an Interested Participant if that would result in any 'double counting' of votes (for example, if 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 which would double its Affected Train Paths and consequential voting power); and
  - (ii) if a person has not been invited to participate as an Interested Participant but that person believes that it is entitled to participate, then:
    - (A) that person may notify Aurizon Network and the QCA together with its reasons for believing it is entitled to participate; and
    - (B) that person will be an Interested Participant if the person satisfies the criteria set out in **clause 4.2(a)**,

and Aurizon Network must promptly notify the person and the QCA of its determination as to whether or not the person is an Interested Participant.

### 4.3 Voting rights

(a) Each Interested Participant's vote will be that Interested Participant's Affected Train Paths determined by Aurizon Network (acting reasonably) as the Interested Participant's Access Rights (whether under an Access Agreement or the subject of an Access Application) as follows:

(i) where the Access Agreement:

- (A) will be in force five years after the first day of the Voting Period; 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 Voting Period;

(ii) where:

- (A) the Access Agreement is due to expire within five years after the first day of the Voting Period; 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 twelve (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 to the Access Seeker's proportion of the Requested Capacity; or

- (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 Voting Period; and

- (iv) if more than one of **clauses 4.3(a)(i)**~~5.3(b)(i)~~ to **(iii)**~~5.3(b)(iii)~~ apply in respect of an Interested Participant, then the Affected Train Paths calculated under those clauses will be aggregated for that Interested Participant except that an Affected Train Path may not be counted more than once.

#### 4.4 Acceptance process

- (a) If Aurizon Network intends to put forward a Voting Proposal, then Aurizon Network must:
- (i) identify the Interested Participants and notify each identified Interested Participant of the Voting Proposal; and
  - (ii) make available information the information set out in [this clause 4.4](#) to those Interested Participants.
- (b) During the Voting Period:
- (i) Aurizon Network must use best endeavours to provide information, forums and engage in discussions with Interested Participants in relation to the relevant Voting Proposal if 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'.
- (c) If an Interested Participant votes:
- (i) "no", [the Interested Participant](#) ~~it~~ must provide its reasons for that vote ~~in sufficient detail so~~ that the QCA may understand [the Interested Participant's](#) ~~its~~ reasons; and
  - (ii) "yes", [the Interested Participant](#) ~~it~~ may but is not required to provide any reasons for its decision.
- (d) 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'.
- (e) The Interested Participants are 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 have voted 'yes'.

- (f) Aurizon Network must notify each of those Interested Participants of the results of the vote within five (5) Business Days after Aurizon Network has determined those results.

#### **4.5 Information and materials relating to acceptance votes**

- (a) Aurizon Network must make available information, when it considers it relevant or necessary to do so, to Interested Participants relating to proposed capital expenditure projects relevant to Coal Systems.
- (b) Aurizon Network must make available to Interested Participants and the QCA information on the relevant capital expenditure project, including the report prepared as a result of the Feasibility Study for the relevant capital expenditure project.
- (c) Aurizon Network may require an Interested Participant to sign a confidentiality agreement substantially in the form set out in **Schedule I** prior to providing it information under this **clause 4.5**.

#### **4.6 Compliance**

- (a) Any person who is an Interested Participant in respect of a Voting Proposal who has any concerns about Aurizon Network's compliance with this **clause 4** in respect of the proposed vote may notify Aurizon Network and the QCA 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 must take whatever action is reasonably required to address any concerns notified to it under **clause 4.6(a)** to achieve compliance with this **clause 4**.
- (c) An audit of Aurizon Network's compliance with this **clause 4** in relation to a vote must be procured by Aurizon Network:
  - (i) prior to Aurizon Network relying on that vote for the purposes of the QCA's acceptance of prudence and efficiency of a capital expenditure project; and
  - (ii) subject to **clauses 4.6(d) to 4.6(f)**, in accordance with **clause 10.6.4** ~~Error! Reference source not found.~~ of the Undertaking).
- (d) Where an audit is commenced under **clause 4.6(c)**:
  - (i) Aurizon Network must provide to the auditor copies of all concerns notified to it under **clause 4.6(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 4** 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 Affected Train Paths, then:
  - (i) Aurizon Network must recalculate the Affected 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 practicable of the recounted vote.
- (f) If in preparing an audit certificate, the auditor identifies a [material discrepancy](#) ~~flaw~~ in a vote of Interested Participants under this **clause 4**, then Aurizon Network must redo the voting process.

## 5 Capital Expenditure Carryover Account

- (a) Aurizon Network will maintain a register in which it annually records all Approved Capital Expenditure including identifying the relevant capital expenditure:
  - (i) by project;
  - (ii) by whether it relates to electrification assets; and
  - (iii) by Coal System.
- (b) If, at the end of each Year, the Approved Capital Expenditure differs from the Capital Indicator, the difference will be entered in the Capital Expenditure Carryover Account for assets funded under User Funding Agreements and assets funded by Aurizon Network. If the Approved Capital Expenditure exceeds the Capital Indicator, it will be deemed an under recovery of revenue. If the Approved Capital Expenditure is less than the Capital Indicator, it will be deemed an over-recovery of revenue.
- (c) The balance recorded in the Capital Expenditure Carryover Account will include:
  - (i) a return on capital component, calculated as the difference between the return on capital assumed for the Capital Indicator and the return on capital that should have applied

for the Approved Capital Expenditure, accrued at the Discount Rate;

- (ii) a depreciation component, calculated as the difference between the depreciation assumed for the Capital Indicator and the depreciation that should have applied for the Approved Capital Expenditure; and
- (iii) a tax depreciation component, calculated as the difference between the tax depreciation assumed for the Capital Indicator and the tax depreciation that should have applied for the Approved Capital Expenditure,

and will be calculated using the modelling parameters and assumptions used to determine the Reference Tariffs.

- (d) The balance in the Capital Expenditure Carryover Account at the end of each Year will be rolled forward at the Discount Rate.
- (e) The balance in the Capital Expenditure Carryover Account at the end of the Term will be taken into account when determining Reference Tariffs to apply in the next undertaking with the intention of clearing the Capital Expenditure Carryover Account over the term of that next undertaking. In the event there is no next undertaking within one year after the withdrawal or expiry of this Undertaking, the balance in the Capital Expenditure Carryover Account will be recovered from, or returned to, Access Holders (as the case may be) in the form of a single payment following the Terminating Date.

# Schedule F

## Reference Tariff and Access Charges

### 1 General provisions

#### 1.1 Purpose

This **Schedule F** will be used for the following purposes:

- (a) Aurizon Network's formulation of Access Charges for a Train Service to which a Reference Tariff applies; ~~and~~
- (b) where Access Charges, and related provisions, in an Access Agreement that were originally determined based on this **Schedule F** or **Schedule F** of an Applicable Undertaking, to allow for the adjustment of those Access Charges, and related provisions, in accordance with that Access Agreement for consistency with this **Schedule F** (as amended or replaced from time to time); and
- (c) the calculation of the Access Charge to be recovered under an Access Agreement:
  - (i) entered on or after the Approval Date; or
  - (ii) which relies on the Undertaking for the calculation of Access Charges.

#### 1.2 Application of Reference Tariffs

The Reference Tariffs in this **Schedule F**:

- (a) apply to coal carrying Train Services from the Commencing Date to the Terminating Date; and
- (b) are based on a Reference Train Service.

#### 1.3 General characteristics of Reference Train Services

The Reference Train Service in respect of the Reference Tariffs:

- (a) **(Commodity)** carries only bulk coal;<sup>7</sup>
- (b) **(Operational characteristics)** meets the following criteria:
  - (i) the additional Reference Train Service criteria listed in relation to the applicable Reference Tariff (for example, in **clauses 7.1, 8.1, 9.1, 10.1, ~~1.1~~ and 11.1**);

<sup>7</sup> In defining bulk coal, no differentiation is to be made between coal qualities or types, or between the end use markets of the coal.

- (ii) complies with the maximum speeds permitted on the Nominated Infrastructure as specified in the relevant Preliminary Information;
  - (iii) complies with Aurizon Network's Rollingstock Interface Standards applicable to the Nominated Infrastructure;
  - (iv) is otherwise compatible with the Nominated Infrastructure described in the relevant Preliminary Information and requires no additional expenditure by Aurizon Network to implement varied Below Rail controls identified in the IRMP;
  - (v) operates in accordance with nominated sectional running times specified in the relevant Preliminary Information;
  - (vi) uses bottom dump wagons with the "KWIK DROP" door operating mechanism; and
  - (vii) uses measures to minimise coal spillage and leakage and coal dust emissions en route that are consistent with the Coal Loss Mitigation Provisions in **Schedule J**;
- (c) **(Below Rail Services)** only requires services from Aurizon Network that are Below Rail Services and that Below Rail Services comprised in Access are provided in accordance with this Undertaking;
- (d) **(Conditions of Access)** operates in accordance with an Access Agreement on substantially the same terms as a Standard Access Agreement applicable to coal carrying Train Services, where the differences from the Standard Access Agreement do not give rise to a material increase in cost or risk; and
- (e) **(Train Service Entitlement)** has a Train Service Entitlement:
- (i) based on Trains being available for operation 24 hours per day and 360 days per year; and
  - (ii) specified in terms of Cyclic Traffic which will:
    - (A) operate in accordance with the distribution set out in the MTP;
    - (B) have regard to Planned Possessions and any other matters agreed between Aurizon Network and other service providers in the ~~eea~~-relevant Supply Chain; and
    - (C) comply with the applicable scheduling procedures as set out in the Network Management Principles.

## 1.4 Interpretation

For the purposes of clause 3 of this Schedule F only, if an Access Agreement does not end on 30 June of any Year, the final Year of that Access Agreement will be the twelve (12) Month period commencing on the 1 July occurring before the date of the expiration or termination of that Access Agreement and

[ending on the 30 June occurring after the date of the expiration or termination of that Access Agreement.](#)

## 2 Reference Tariff [and Access Charges](#)

### 2.1 Composition of Reference Tariff

The Reference Tariff is a charge in relation to Train Services that have operated, calculated in accordance with **clause 2.2** and, if applicable, **clause 2.3** (including Adjustment Charges) with specified Reference Tariff inputs and, if applicable, any System Premiums or System Discounts.

### 2.2 Calculations for Reference Train Services

- (a) Subject to **clause 2.3**, a charge for Reference Train Services is calculated as:

$$\left( AT_1 \times \frac{gtk}{1000} \right) + (AT_2 \times rtp) + \left( AT_3 \times \frac{ntk}{1000} \right) + (AT_4 \times nt) + \left( AT_5 \times \frac{egtk}{1000} \right) + \left( EC \times \frac{egtk}{1000} \right) + (QCALevy \times nt)$$

where:

AT<sub>1</sub> is the incremental maintenance tariff specified as the AT<sub>1</sub> input for the nominated Reference Train Service as specified for the relevant Reference Tariff (for example, as specified in **clauses 7.2, 8.2, 9.2, 10.2** [and](#), ~~1.1 and~~ **11.2**, as applicable);

AT<sub>2</sub> is the incremental capacity tariff specified as the AT<sub>2</sub> input for the nominated Reference Train Service as specified for the relevant Reference Tariff (for example, as specified in **clauses 7.2, 8.2, 9.2, 10.2**, ~~1.1 and~~ [and](#) **11.2**, as applicable);

AT<sub>3</sub> is an allocative tariff specified as the AT<sub>3</sub> input for the nominated Reference Train Service as specified for the relevant Reference Tariff (for example, as specified in **clauses 7.2, 8.2, 9.2, 10.2**, ~~and~~ [and](#) ~~1.1 and~~ **11.2**, as applicable);

AT<sub>4</sub> is an allocative tariff specified as the AT<sub>4</sub> input for the nominated Reference Train Service as specified for the relevant Reference Tariff (for example, as specified in **clauses 7.2, 8.2, 9.2, 10.2** ~~and~~, ~~1.1 and~~ [and](#) **11.2**, as applicable);

AT<sub>5</sub> is the electric access tariff specified as the AT<sub>5</sub> input for the nominated Reference Train Service as specified for the relevant Reference Tariff (for example, as specified in **clauses 7.2** and **8.2**, as applicable); and

EC is the electric energy charge which is initially (from the Commencing Date) as specified as the EC input for the nominated Reference Train Service as specified for the relevant

Reference Tariff (for example, as specified in **clauses 7.2 and 8.2**, as applicable), and after the Commencing Date as otherwise published by Aurizon Network on the Website on or about each 31 May during the Term after Aurizon Network seeks and obtains the QCA's approval for a new electric energy charge,

provided that the above calculation is subject to the addition of:

- (i) any applicable Adjustment Charge from time to time (including, if necessary, on a pro rata basis with other Train Services that have the same origin and destination and Access Holder and are run during same ~~billing~~ Billing period Period, as the nominated Reference Train Service); and
- (ii) any applicable Environment Compliance Charge from time to time.

For clarity, the rtp for a Reference Train Service equals one.

- (b) The amounts of the AT<sub>1</sub>, AT<sub>2</sub>, AT<sub>3</sub>, AT<sub>4</sub>, AT<sub>5</sub>, EC and the QCA Levy inputs (including the System Discounts and System Premiums, if applicable) specified for the relevant Reference Tariff and any Adjustment Charge are GST exclusive.<sup>8</sup>
- (c) For the purposes of this **Schedule F**, a Train Service is a one way Train Service, that is, the journey from the Nominated Loading Facility to the Nominated Unloading Facility is one Train Service, and the return journey from the Nominated Unloading Facility to the Nominated Loading Facility is a second Train Service.
- (d) To the extent that the calculation of gtk and nt for a Train Service require a weight for the relevant Train or any Rollingstock comprised in that Train, weights may be nominal or actual weights, or a combination of nominal and actual weights provided that, unless otherwise agreed by Aurizon Network:
  - (i) any nominal weights will be as set out or calculated in the relevant Access Agreement or, otherwise, as agreed or approved by Aurizon Network, in relation to the calculation of gtk or nt, as applicable; and
  - (ii) actual weight will only be used where:
    - (A) the gross weight (in tonnes) of loaded or partly loaded wagons needs to be determined;
    - (B) there is a functioning weighbridge or weightometer (verified under the *National Measurement Act 1960* (Cth)) located en route between the origin and destination for the Train Service;

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<sup>8</sup> An amount for GST will be added to the total calculated Access Charge, in accordance with the provisions of the applicable Access Agreement, at invoicing.

- (C) Aurizon Network has agreed that the weighbridge or weightometer can be used to weigh wagons for the purpose of calculating Access Charges; and
- (D) the relevant wagons can actually be weighed by that weighbridge or weightometer.

~~(e) For the purposes of this **Schedule F** (including for the calculation of Take or Pay), if:~~

~~(i) a person (**Operator**) who is either an Access Holder or a Train Operator is entitled to operate, or have operated, more than one Train Service:~~

~~(A) with the same origin and the same destination; and~~

~~(B) with Access Charges set based on different Reference Tariffs; and~~

~~(ii) any of the following applies:~~

~~(A) where the Operator is the Access Holder for the relevant Train Services, the Operator either has the same Customer for those Train Services or has no Customer;~~

~~(B) where the Operator is the Train Operator for the relevant Train Services, the Operator's End User is the same for all of the relevant Train Services; or~~

~~(C) where the Operator is an Access Holder for some of the relevant Train Services and a Train Operator for others, the Operator's Customer (in the Operator's capacity as an Access Holder) is the same as the Operator's End User (in the Operator's capacity as a Train Operator);~~

~~then to the extent that the Train Services have operated they will be taken to have been operated firstly on the basis of Access Charges set based on the highest applicable Reference Tariff on a \$/nt Basis up to the applicable Train Service Entitlement relating to those Access Charges and then on the basis of Access Charges set based on the next highest Reference Tariff on a \$/NT Basis up to the applicable Train Service Entitlement relating to those Access Charges and so on.~~

~~(f)~~(e) When Aurizon Network publishes the EC, it must separately identify the level of the Environment Compliance Charge within the EC.

## 2.3 Calculations for a Cross System Train Service

- (a) For a Cross System Train Service, the Reference Train Service description for each applicable Reference Tariff for each relevant Coal System will be applied to the extent that the Train Service is using



that Coal System and the calculation under **clause 2.2** will be adjusted by applying the following:

- (i) AT<sub>1</sub> will be the AT<sub>1</sub> component of the Reference Tariff for:
    - (A) the Origin Tariff, for the gtk attributable to the Origin System; and
    - (B) the Destination Tariff, for the gtk attributable to the Destination System;
  - (ii) AT<sub>2</sub> will be determined as follows:
    - (A) the AT<sub>2</sub> component of the Reference Tariff in the Origin System ~~shall will~~ be applicable to the Train Paths used in the Origin System, but only if the Train Service operates on capacity constrained corridors of the Origin System as identified in **clause 2.3(b)**; and
    - (B) the AT<sub>2</sub> component of the Reference Tariff in the Destination System ~~shall will~~ be applicable in accordance with **clause 2.2**;
  - ~~(iii)~~ (iii) AT<sub>3</sub> will be ~~determined as the higher of~~ the AT<sub>3</sub> ~~component of input for~~ the relevant Reference Tariffs for: ~~either~~
    - (A) the Origin ~~System or Tariff, for the ntk attributable to the Origin System; and~~
    - ~~(C)~~ (B) the Destination ~~System, applied to the aggregate of ntk Tariff, for the Train Service ntk attributable to the Destination System; and;~~
  - ~~(iii)~~ (iv) AT<sub>4</sub> will be ~~determined as the higher of~~ the AT<sub>4</sub> ~~component of input for~~ the ~~Reference Tariff for either the Origin System or the Destination System, applied to the nt for the Train Service~~ Origin Tariff;
  - ~~(iv)~~ (v) AT<sub>5</sub> and EC will be determined as the AT<sub>5</sub> and EC components of the Reference Tariff for:
    - ~~(v)~~ (A) the Origin System, for the egk attributable to the Origin System; ~~-and~~
    - ~~(vi)~~ (B) the Destination System, for the egk attributable to the Destination System; and
  - ~~(vii)~~ (vi) the QCA Levy component of the Reference Tariff in the Destination System ~~shall will~~ be applicable in accordance with clause 2.2, applied to the nt for the Train Service.
- (b) For the purposes of **clause 2.3(a)(ii)**, unless otherwise approved by the QCA, the Rail Infrastructure comprising railways between:
- (i) Coppabella and the Hay Point Junction;

- (ii) Newlands and Abbot Point; and
- (iii) Burngrove and the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone),

is regarded as capacity constrained Rail Infrastructure.

- (c) For the purpose of **clause 2.3(a)**, if a Cross System Train Service loads in the Blackwater System and unloads in the Newlands System, then the Goonyella to Abbot Point System is deemed to be the Destination System for that Cross System Train Service.

## **2.4 Calculations for Access Charge**

- (a) The Access Charge under an Access Agreement:

- (i) entered on or after the Approval Date; or
- (ii) which refers to this Undertaking for the calculation of Access Charges.

is the sum of:

- (iii) the Access Charge for each Train Service Type operated during the relevant period; and
- (iv) the Adjustment Charge.

- (b) The Access Charge for a Train Service Type is determined on the same basis as the charge for a Reference Train Service (as set out in **clause 2.2** and as adjusted by **clause 2.3** and **clause 4.5**) except that:

- (i) if the Train Service Type differs from the relevant Reference Train Service, each of AT<sub>1</sub>, AT<sub>2</sub>, AT<sub>3</sub>, AT<sub>4</sub>, AT<sub>5</sub> and EC will be determined by reference to the Access Charge Rate:

- (A) specified in the Access Agreement for that Train Service Type as varied from time to time in accordance with **clause 4.5**; and

- (B) which must be determined by Aurizon Network by applying this **Schedule F**; and

- (ii) each of *egtk*, *gtk*, *nt*, and *rtp* will be determined as the sum for all Train Services for the relevant Train Service Type operated during the relevant period.

- (c) Adjustment Charge (if any) for a period will be calculated and approved in accordance with this Undertaking.

## **3 Calculations for Take or Pay**

### **3.1 Overview**

- (a) The Take or Pay payable to Aurizon Network will be calculated in a manner consistent with this **clause 3**.

- (b) The TOP Charge under an Access Agreement:
- (i) entered on or after the Approval Date; or
- (ii) which refers to this Undertaking for the calculation of Access Charges,
- payable to Aurizon Network:
- (iii) for a Year is the amount which is the sum of the “TOP Charge” for each Train Service Type for the Year (as defined in paragraph (iv)); and
- (iv) for a Train Service Type for a Year means the amount calculated in accordance with **clause 3.3** for the Train Service Type and Year.

### 3.2 Application of historical Take or Pay arrangements

- (a) A different manner of calculation may apply to a Take or Pay depending on the Access Undertaking in force at the time that the relevant Access Agreement was entered into.
- (b) This **clause 3.2** describes the application of the Take or Pay obligations contained in Access Agreements that were originally entered into ~~pursuant to~~ in accordance with the 2001 Undertaking, 2005 Undertaking and/or 2008 Undertaking, given that the Take or Pay obligations reference the undertaking in force at the time of their application.
- (c) Where the Access Holder has a Take or Pay with Aurizon Network under an Access Agreement named in Column 1 (**2001/05/08 Access Agreement**), the Take or Pay will be calculated in accordance with Column 2, subject to the adjustments made in Column 3 of the corresponding row in the following table:

Column 1	Column 2	Column 3
An Access Agreement that was executed or renewed on or after 20 December 2001 but prior to 30 June 2006.  A New Access Agreement where the relevant Old Access Agreement was	Clause 3.2, Part A, Schedule F of the 2001 Undertaking	Where the calculation refers to:  (a) the System GtK; or  (b) gtk in circumstances where that gtk relates to Train Services other than solely those under the relevant Access Agreement,  then exclude any gtk attributable to any Train Services where the Access Charges for those Train Services are set based on an Expansion Tariff. <sup>9</sup>

<sup>9</sup> Access Agreements for coal carrying Train Services executed or renewed on or after 20 December 2001 but prior to 30 June 2006 (**UT1 Access Agreements**) will have Access Charges for Train Services in a Coal System set based on the relevant System Reference Tariff for that Coal System. Train Services under a UT1 Access Agreements will not have Access Charges set based on any Expansion Tariff for that Coal System. The relevant System GtK or gtk should be limited to those Train Services whose Access Charges are set based on the same System Reference Tariff as the relevant Train Services for which a Take or Pay is being calculated.

Column 1	Column 2	Column 3
executed or renewed on or after 20 December 2001 but prior to 30 June 2006.		The references to System Gtk, System Forecast, and gtk in this row have the meanings given to those terms under the 2001 Undertaking.  Where the calculation refers to the System Forecast, then that System Forecast is a reference to the Monthly System Forecast for the relevant Coal System set out in <b>clause 12 of Schedule F</b> .
An Access Agreement that was executed or renewed on or after 30 June 2006 but prior to 23 October 2008.  <a href="#">A New Access Agreement where the relevant Old Access Agreement was executed on or after 30 June 2006 but prior to 23 October 2008.</a>	Clause 2.2, Part B, Schedule F of the 2005 Undertaking	<ol style="list-style-type: none"> <li>1. A reference in that calculation to the “System Gtk”, or to gtk in circumstances where that gtk relates to Train Services other than solely those under the relevant Access Agreement, excludes any gtk attributable to any Train Services where the Access Charges for those Train Services are set based on an Expansion Tariff<sup>10</sup>.</li> <li>2. A reference in that calculation to the “System Forecast” is a reference to the Gtk Forecast for the relevant System Reference Tariff.</li> <li>3. A reference to “<b>Paragraph 7.4.4(f)</b> of the Undertaking” is a reference to <b>clause 12.4(f)</b> of this Undertaking.</li> <li>4. A reference to “Total Actual Revenue” is a reference to Total Actual Revenue as defined under this Undertaking.</li> </ol>
An Access Agreement that was executed or renewed on or after 23 October 2008 but prior to 1 October 2010.  <a href="#">A New Access Agreement where the relevant Old Access Agreement was executed on or 23 October 2008 but prior to 1 October 2010.</a>	Clause 2.2, Part B, Schedule F of the 2008 Undertaking	<ol style="list-style-type: none"> <li>5. A reference to “Individual Coal System Infrastructure” is a reference to the System Reference Tariff that is used to set the Access Charges for the relevant Train Services, subject to <b>item 7</b> below.</li> <li>6. A reference to “System Allowable Revenue” is a reference to Allowable Revenue as defined under this Undertaking.</li> <li>7. A reference to “Access Agreements in relation to that Individual Coal System Infrastructure” is a reference to Tariff Based Access Agreements in relation to the relevant System Reference Tariff.</li> <li>8. A reference to “the Total Revenue for that Individual Coal System Infrastructure” is a</li> </ol>

In the same way, the Monthly System Forecasts for each Coal System only relate to Train Services whose Access Charges are set by based on the relevant System Reference Tariff.

<sup>10</sup> Access Agreements for coal carrying Train Services executed or renewed under the 2005 Undertaking or 2008 Undertaking (except for a Customer initiated transfers of UT1 Access Agreements) (**UT2 Access Agreements**) will have Access Charges for Train Services in a Coal System set based on the relevant System Reference Tariff for that Coal System. Train Services under UT2 Access Agreements will not have Access Charges set based on any Expansion Tariff for that Coal System. The relevant System Gtk or gtk should be limited to those Train Services whose Access Charges are set based on the same System Reference Tariff as the relevant Train Services for which a Take or Pay is being calculated.

Column 1	Column 2	Column 3
		reference to “the Total Revenue” in relation to the relevant System Reference Tariff.

### 3.3 Application of new Take or Pay arrangements

- (a) This **clause 3.3** describes the application of the Take or Pay obligations contained in Access Agreements that were originally entered into ~~pursuant in accordance with~~ the 2010 Undertaking and ~~the 2014~~this Undertaking. Nothing in this **clause 3.3** applies to a 2001/05/08 Access Agreement. (Note: Take or Pay in the context of new Expansions is addressed in **clause 3.3(n)** below.)
- (b) Subject to **clause 3.3(n)** which applies to Take or Pay in the context of ~~new~~ Expansions, where the Access Holder has a Take or Pay with Aurizon Network under an Access Agreement that is not a 2001/05/08 Access Agreement, the Take or Pay will be calculated as follows:
- (i) first, the maximum potential Take or Pay will be calculated based on **clauses 3.3(d) to (f)**; and
  - (ii) second, **clause 3.3(h)** will be applied to determine whether any Take or Pay liability exists; and
  - (iii) third, if Take or Pay liability exists, for the purpose of calculating Tariff Take or Pay in relation to a System Reference Tariff and to that extent only, the maximum potential Take or Pay will be adjusted by applying each of:
    - (A) **clause 3.3(j) (Mine capping)**; ~~and~~
    - (B) **clause 3.3(k) to (m) (Tariff capping)**,
 as applicable and in that order to determine the actual Take or Pay payable to Aurizon Network.
- (c) In relation to Take or Pay charges in the context of ~~an End User a~~ Pre-Approval Date Coal Access Agreement where the Access Holder

is not a Train Operator, Take or Pay charges will be payable under that ~~End User~~ Access Agreement (including in relation to the non-operation of Train Services under any relevant ~~T~~Train ~~O~~Operations ~~a~~Agreement). Take or Pay charges will not be payable to Aurizon Network by a Train Operator under a ~~T~~Train ~~O~~Operations ~~A~~Agreement relevant to that ~~End User~~ Access Holder.

- (d) Subject to **clauses 3.3(h) to (m)**, Take or Pay charges applicable to an Access Holder will be:
- (i) determined for each Year;
  - (ii) invoiced for each Year following completion of that Year; and
  - (iii) calculated as the amount which is 100% of the amount calculated as:

$$(AT_2 \times rtp \times NTS) + \left( AT_3 \times \frac{ntk}{1000} \right) + (AT_4 \times nt)$$

where:

- (A) each of AT<sub>2</sub>, AT<sub>3</sub> and AT<sub>4</sub> inputs for that Access Holder's Access Charges at the rate applicable in that Year;
- (B) the nt and ntk (as applicable) are calculated by:
  - (1) the aggregate nt and ntk (as applicable) that would have been achieved for the relevant Year had the full contracted entitlement been railed for the relevant Train Services; less
  - (2) the aggregate nt and ntk (as applicable) not railed for the relevant Year due to the non-operation of Train Services for a Aurizon Network Cause; less
  - (3) the aggregate nt and ntk (as applicable) railed for the relevant Year; and
- (C) NTS is calculated as:
  - (1) the number of Train Services that the Access Holder would have operated for the relevant Year had the full contracted entitlement been railed for the relevant Train Services; less
  - (2) the number of those Train Services that either:
    - were not able to be operated solely as a result of Aurizon Network Cause; or

- were operated (whether loaded or empty) during that Year,

provided always that the amount of Take or Pay for a relevant Year ~~shall~~must not be less than zero.

- (e) To calculate nt and ntk for the purpose of **clause 3.3(d)(iii)(B)**, Aurizon Network will:
- identify from the Access Agreement the number of Train Services that would have operated had the full contracted entitlement been used; and
  - determine the number of Train Services that did not operate under that contracted entitlement due to a Aurizon Network Cause, provided that where an Access Holder has more than one Access Agreement for the same origin to destination pair, Aurizon Network will allocate (between different Access Agreements) Train Services that did not operate for Aurizon Network Cause on the same proportional basis as those that did operate.

and calculate the nt and ntk by using the Nominal Train Payload applicable for the relevant Reference Tariff.

- (f) For the purpose of calculating Take or Pay charges, the calculation will be based on the origin and destination specified in the relevant Train Service Entitlement (provided that the Nominated Loading Facilities of RG Tanna Terminal and Barney Point will be treated as the same destination for the purposes of such a calculation).
- (g) For the purpose of calculating Take or Pay charges, an Access Holder's entitlement to operate Train Services is, without limitation, determined by reference to the Train Services that could have been operated in accordance with the Access Holder's Train Service Entitlement including even if:
- where the Access Holder is not a Train Operator~~an End User~~:
    - the ~~End User~~Access Holder has not nominated a Train Operator to utilise Access Rights relevant to all or any of the Train Services;
    - the ~~End User~~Access Holder must ensure a Train Operator does not operate, or Aurizon Network suspends the right of the ~~End User~~Access Holder to have a Train Operator operate, all or any of the Train Services; or
    - under the relevant ~~t~~Train o~~Operations~~ a~~Agreement~~, the relevant Train Operator must not operate, or Aurizon Network suspends the right of the relevant

Train Operator to operate, all or any of the Train Services; or

- (ii) where the Access Holder is a Train Operator, ~~not an End User~~, the Access Holder must not operate, or Aurizon Network suspends the right of the Access Holder to operate, all or any of the Train Services,

except to the extent of any express exceptions specified in the Access Holder's Access Agreement for the purpose of calculating Take or Pay charges where the Access Holder is taken to not have an entitlement to operate Train Services.

### **Take or Pay trigger**

- (h) For the purpose of calculating Tariff Take or Pay in relation to a System Reference Tariff and to that extent only, the Tariff Take or Pay for a Year ~~shall is~~ not ~~be~~ payable for that Year where the aggregate of the gtk for all coal carrying Train Services, to the extent that the Access Charges for those Train Services are set by reference to the relevant Reference Tariff, operated for that Year exceeds the amount calculated as:
  - (i) 100% of the Gtk Forecast identified for that Year for that Reference Tariff; less
  - (ii) the gtk not achieved due to the non-operation of Train Services for Aurizon Network Cause.
- (i) Where Tariff Take or Pay for a System Reference Tariff is being determined, **clauses 3.3(j)** and ~~(m)~~ **(m)** only apply where Tariff Take or Pay is payable after **clause 3.3(h)** has been applied.

### **Mine capping**

- (j) If:
  - (i) Train Services operated in relation to an origin to destination in respect of a person (**End User**) who is either the Customer for those Train Services or the Access Holder for those Train Services (but who has no Customer) under an Access Agreement, exceed the Train Service Entitlement in that Access Agreement (**Exceeded Agreement**); and
  - (ii) there is another Access Agreement (excluding Access Agreements executed or renewed prior to 1 October 2010, and New Access Agreements where the relevant Old Access Agreement was executed or renewed within the same period) (**Other Agreement**) with Train Service Entitlements for that same origin to destination and that End User that have not been exceeded,

then the Take or Pay liability under the Other Agreement will be reduced by the amount of the additional revenue from Access Charges for AT<sub>2.4</sub> from those excess Train Services under the



Exceeded Agreement but only to the extent that both that Take or Pay liability and those Access Charges are set by reference to the same Reference Tariff. For clarity:

- (iii) where the additional revenue is greater than the Take or Pay liability under one or more Other Agreements, that additional revenue may be used to reduce the Take or Pay liability under those Other Agreements (where there is more than one Other Agreement, the reduction will be pro-rated, on the basis of the total revenue from AT<sub>2-4</sub> that Aurizon Network is entitled to earn over the relevant Year under each of those Other Agreements, assuming Train Services were operated with a Nominal Train Payload); and
- (iv) the additional revenue from an Exceeded Agreement can only be used for a reduction of Take or Pay liability under this **clause 3.3(j)** in respect of the Year in which that additional revenue arose and cannot be accrued, rolled over or otherwise used to reduce a Take or Pay liability for any other Year.

#### **Tariff capping**

- (k) **Clause 3.3(l)** must only be applied after **clause 3.3(j)** (if applicable) has been applied.
- (l) Subject to **clause 3.3(m)**, and to **clause 3.3(j)** (if applicable) having first been applied, where the Total Actual Revenue for AT<sub>2-4</sub> in relation to Access Charges set by reference to the relevant Reference Tariff less the aggregate amount of Tariff Take or Pay that Aurizon Network is entitled to earn from all Access Agreements executed or renewed on or after 30 June 2006 (other than any new or varied Access Agreement to the extent entered or varied as part of transferring Access Rights from existing Access Agreements in place on the day immediately prior to 30 June 2006 under a provision **equivalent to clause 14 (of the Access Agreement which permits the transfer of Access Rights by Customer) of the Standard Access Agreement (Operator)**) **(Total Revenue)** is:
  - (i) greater than or equal to the Allowable Revenue for AT<sub>2-4</sub> in relation to the relevant Reference Tariff, Tariff Take or Pay **shall is** not **be** payable for that Year under those Access Agreements (**Full Take or Pay Agreements**); or
  - (ii) less than the Allowable Revenue for AT<sub>2-4</sub> in relation to that Reference Tariff:
    - (A) Aurizon Network will calculate the aggregate amount of Tariff Take or Pay that Aurizon Network is entitled to earn from all Full Take or Pay Agreements (**Total Actual Take or Pay**); and

- (B) if the Total Actual Take or Pay exceeds the amount by which the Allowable Revenue for AT<sub>2-4</sub> in relation to the relevant Reference Tariff exceeds the Total Revenue from Access Charges set by reference to the relevant Reference Tariff (**Maximum Take or Pay Amount**), then:
- (1) Aurizon Network will calculate for each relevant Access Holder, the proportion that the Access Holder's Tariff Take or Pay amount bears to the Total Actual Take or Pay (**Proportion**); and
  - (2) each relevant Access Holder's Tariff Take or Pay amount will be reduced to equal that Access Holder's Proportion of the Maximum Take or Pay Amount.
- (m) In determining what Aurizon Network would be entitled to earn for the purposes of **clause 3.3(I)**, Aurizon Network is deemed to have contracted on the terms of the relevant Standard Access Agreement (as defined under the Applicable Undertaking) that applied on the date of execution or renewal of an Access Agreement, except for:
- (i) those Access Agreements which have been altered by agreement from that form in a manner consistent with the terms of any Approved Undertaking or approval of the QCA, in which case Aurizon Network's entitlement will be calculated in accordance with the terms of such Access Agreements; and
  - (ii) a New Access Agreement to the extent entered into as part of transferring Access Rights from an Old Access Agreement executed under the 2001 Undertaking, under a provision ~~equivalent to clause 14 (Transfer of Access Rights by Customer)~~ of the ~~Standard Access Agreement (Operator)~~, which ~~has not been renewed after 30 June 2006~~ [permits the transfer of Access Rights](#), in which case Aurizon Network's entitlement to Tariff Take or Pay amounts will be calculated on the basis that Aurizon Network has contracted on the terms of the relevant Standard Access Agreement (as defined under the 2001 Undertaking) that applied on the date of execution of that Old Access Agreement.

**Take or Pay for Expansions**

- (n) In relation to Take or Pay in the context of an Expansion [Tariff](#):
- (i) The Take or Pay amount for an Access Holder that is required to pay an Expansion Tariff will be calculated in accordance with:
    - (A) the formulae in **clause 3.3(d)(iii)**; plus

- (B)  $AT5 \times egtk / 1000$ ;
- ~~w~~here the egtk is calculated by:
  - (C) the aggregate egtk that would have been achieved for the relevant Year had the full contracted entitlement been railed for the relevant Train Services; less
  - (D) the aggregate egtk not railed for the relevant Year due to the non-operation of Train Services for an Aurizon Network Cause; less
  - (E) the aggregate egtk railed for the relevant Year; provided always that the amount of Take or Pay for the Year ~~shall~~must not be less than zero.
- (ii) In order to calculate egtk for the purposes of this clause, Aurizon Network will:
  - (A) identify from the Access Agreement the number of Train Services that would have operated had the full contracted entitlement been used;
  - (B) determine the number of Train Services that did not operate under that contracted entitlement due to an Aurizon Network Cause; and
  - (C) convert this to egtk by using the Nominal Train Payload for the relevant Reference Tariff as reasonably determined by Aurizon Network.
- (iii) For the avoidance of doubt:
  - (A) there is no Take or Pay trigger test – ie, **clause 3.3(h)** does not apply; and
  - (B) there are no capping mechanisms – ie, **clauses 3.3(i)(~~h~~) – 3.3(m)** do not apply.

## 4 Annual review of Reference Tariffs and Access Charges

### 4.1 Requirement for annual review of Reference Tariffs

- (a) Prior to the beginning of each Year during the Term (except for the first Year) each Reference Tariff will be adjusted by Aurizon Network to reflect the variations to the applicable Allowable Revenue:
  - (i) for the relevant Year due to an adjustment to Second Year Allowable Revenue under **clause 4.4**; and
  - (ii) for the relevant Year and each subsequent Year during the Term in accordance with **clause 4.1(b)**.

- (b) Aurizon Network will submit to the QCA by 28 February of each Year during the Term:
  - (i) a revised Gtk Forecast for each Reference Tariff for the next Year;
  - (ii) details of the methodology, data and assumptions used to estimate the revised Gtk Forecast; and
  - (iii) the proposed adjustments, for each Reference Tariff, arising from any difference between the relevant revised Gtk Forecast and the Gtk Forecast used for the purpose of determining the Allowable Revenue for that Reference Tariff, to:
    - (A) the Allowable Revenue for the Reference Tariff for each subsequent Year during the Term; and
    - (B) the Reference Tariff for the next Year.
- (c) If, after receiving a submission under **clause 4.1(b)**, the QCA considers that an error has been made in the proposed revised Gtk Forecast or adjustments to Allowable Revenue or Reference Tariffs, then:
  - (i) the QCA will endeavour to notify Aurizon Network within 40 Business Days, providing details of the error and how the proposal needs to be amended in order for the QCA to approve it; and
  - (ii) after receiving that notice, Aurizon Network must within 10 Business Days either:
    - (A) show why it does not consider that the error has been made; or
    - (B) resubmit a corrected version of the submission.
- (d) The QCA may approve the revised Gtk Forecast, Allowable Revenues and Reference Tariffs if it considers that the revised Gtk Forecast is reasonable and the consequential adjustments to Allowable Revenues and Reference Tariffs are calculated properly.
- (e) If Aurizon Network does not make a submission under **clause 4.1(b)** in respect of a Year by 28 February, then no adjustments to the Gtk Forecast, Allowable Revenues or Reference Tariffs for that Year will be made under this **clause 4.1**.

## 4.2 Allowable Revenue

- (a) Subject to **clause 4.2(b)**, the Allowable Revenue:
  - (i) for  $AT_{2-4}$  in relation to a Reference Tariff for a Year, is the total revenue from  $AT_{2-4}$  arising from all Tariff Based Access Agreements in relation to that Reference Tariff that Aurizon Network is entitled to earn over the relevant Year as

specified in the Reference Tariff (for example, as specified in **clauses 7.3, 8.3, 9.3, 10.3, ~~1.1~~** and **11.3** of **Schedule F**, as applicable), as amended from time to time, and as adjusted or varied in accordance with this **Schedule F** (but, for clarity, excluding any Adjusted Allowable Revenue); and

- (ii) for the AT<sub>5</sub> component of Access Charges in relation to a Reference Tariff for a Year, is the total revenue from the AT<sub>5</sub> component of Access Charges arising from all Tariff Based Access Agreements in relation to that Reference Tariff that Aurizon Network is entitled to earn over the relevant Year as specified in the Reference Tariff (for example, as specified in **clauses 7.3** and **8.3** of **Schedule F**, as applicable) as amended from time to time, and as adjusted or varied in accordance with this **Schedule F**.
- (b) Unless otherwise agreed with the QCA, when calculating Allowable Revenue in relation to the Origin Tariff and the Destination Tariff for a Cross System Train Service, regardless of when the Cross System Train Service commenced:
- (i) for the Allowable Revenue for AT<sub>2-4</sub>:
    - (A) the sum of the following components of Access Charges that Aurizon Network would be expected to earn in respect of a forecast Cross System Train Service:
      - (1) the AT<sub>2</sub> components calculated based on the relevant Destination Tariff and on **clause 2.3(a)(ii) of Schedule F**; and
      - (2) 50% of the AT<sub>3</sub> components calculated based on the relevant Destination Tariff, will be allocated to Allowable Revenue for the Destination Tariff; and
    - (B) all other Access Charges attributable to AT<sub>2-4</sub> which Aurizon Network would be expected to earn in respect of a forecast Cross System Train Service calculated based on the Origin Tariff applicable to that Cross System Train Service, will be allocated to the Allowable Revenue of the Origin Tariff; and
  - (ii) for the Allowable Revenue for AT<sub>5</sub>, the AT<sub>5</sub> component of Access Charges that Aurizon Network would be expected to earn in respect of a forecast Cross System Train Service, calculated based on:
    - (A) the Origin Tariff and the egtk in the Origin System, will be allocated to the Allowable Revenue for the Origin Tariff; and

- (B) the Destination Tariff and the egtk in the Destination System, will be allocated to the Allowable Revenue for the Destination Tariff.

### 4.3 Calculation of Revenue Adjustment Amounts

#### Obligation to calculate Revenue Adjustment Amounts

After the end of each Year, Aurizon Network will calculate for that Year for each Reference Tariff:

- (a) an  $AT_{2-4}$  Revenue Adjustment Amount for that Reference Tariff by subtracting:
  - (i) the Adjusted Allowable Revenue for  $AT_{2-4}$  (calculated under **clause 4.3(c)**) for that Reference Tariff; from
  - (ii) the Total Actual Revenue for  $AT_{2-4}$  (calculated under **clause 4.3(d)**) in relation to that Reference Tariff,for that Year; and
- (b) an  $AT_5$  Revenue Adjustment Amount for that Reference Tariff by subtracting:
  - (i) the Adjusted Allowable Revenue for  $AT_5$  (calculated under **clause 4.3(c)**) for that Reference Tariff; from
  - (ii) the Total Actual Revenue for  $AT_5$  (calculated under **clause 4.3(g)**) in relation to that Reference Tariff,for that Year.

#### Calculation of Adjusted Allowable Revenue

- (c) The Adjusted Allowable Revenue for  $AT_{2-4}$  or the  $AT_5$  component of Access Charges in relation to a Reference Tariff is the sum of the following components of the applicable Allowable Revenue (as relevant to the applicable Allowable Revenue):
  - (i) the component relating to the recovery of Aurizon Network's maintenance costs, adjusted to reflect the difference between:
    - (A) the actual MCI value for the relevant Year; and
    - (B) the forecast MCI value that was used for the purpose of determining the relevant Reference Tariff for the relevant Year;
  - (ii) the component relating to the recovery of Aurizon Network's operating costs, excluding those costs referred to in **clause 4.3(c)(i)**, adjusted to reflect the difference between:
    - (A) the actual CPI value for the relevant Year; and

- (B) the forecast CPI value that was used for the purpose of determining the relevant Reference Tariff for the relevant Year;
- (iii) the components relating to the recovery of Aurizon Network's costs associated with the connection of Aurizon Network's electrical traction system to an electricity transmission or distribution network, adjusted to reflect the difference between:
  - (A) the actual costs for the relevant Year;
  - (B) the forecast costs used for the purpose of determining the relevant Reference Tariff for the relevant Year;
- (iv) the components relating to the recovery of Aurizon Network's costs for the cost of audits required under this Undertaking by the QCA for the relevant Year, but only to the extent that the QCA has approved in writing the relevant audit costs as efficiently incurred and such costs are not already recoverable by Aurizon Network elsewhere in this Undertaking;
- (v) [the component relating to the recovery of Aurizon Network's costs for ground penetrating radar measurement, but only to the extent that these costs have been prudently and efficiently incurred and are not already recoverable by Aurizon Network elsewhere in this Undertaking;](#) and
- (vi) all components excluding those costs referred to in any of **clauses 4.3(c)(i) to (vi)**.

#### **Calculation of Total Actual Revenue for AT<sub>2-4</sub>**

- (d) The Total Actual Revenue for AT<sub>2-4</sub> in relation to the relevant Reference Tariff is the sum of:
  - (i) total revenue from AT<sub>2-4</sub>, including all revenue from Overload Charges and any Ancillary Revenues relating to maintaining connections to ~~p~~Private ~~i~~nfrastructure, for coal carrying Train Services, in relation to the relevant Reference Tariff that operated in the Year, that Aurizon Network would have earned (regardless of what it actually earned or collected), if that revenue were calculated consistent with the following:
    - (A) for a Train Service that is:
      - (1) consistent with the relevant Reference Train Service; and
      - (2) is not a Cross System Train Service,

- the AT<sub>2</sub>, AT<sub>3</sub> and AT<sub>4</sub> components of the relevant Reference Tariff;
- (B) for a Cross System Train Service that is consistent with the relevant Reference Train Service (to the extent that the relevant Reference Tariff applies), that part of the AT<sub>2</sub>, AT<sub>3</sub> and AT<sub>4</sub> components of the relevant Reference Tariff allocated consistently with the method used in the calculation of the relevant Allowable Revenue under **clause 4.2(b)**;
- (C) for a Train Service that varies from the relevant Reference Train Service due to it not complying with:
- (1) **clause 1.3(b)(v)**, the AT<sub>2</sub> component of the Access Charge (where the Access Charge varies from the Reference Tariff under [clause 6.2.3\(c\)](#) of this Undertaking) and the AT<sub>3</sub> and AT<sub>4</sub> components of the relevant Reference Tariff; or
- (2) any other part of **clause 1.3(b), (d) or (e)** (other than **clause 1.3(b)(v)** – with which it complies), the AT<sub>2</sub>, AT<sub>3</sub> and AT<sub>4</sub> components of the relevant Reference Tariff; or
- (D) for a Train Service where the QCA has otherwise approved an Access Charge that differs from the relevant Reference Tariff, the amount of the AT<sub>2</sub>, AT<sub>3</sub> and AT<sub>4</sub> components of the relevant Access Charge;
- (ii) the amount of all Take or Pay amounts and, subject to **clause 4.3(c)**, Relinquishment Fees and Transfer Fees which Aurizon Network would be entitled to be paid in the relevant Year under Tariff Based Access Agreements, for coal carrying Train Services, in relation to the relevant Reference Tariff (or, for a Cross System Train Service, to the extent the relevant Reference Tariff applies to the setting of Access Charges for that Cross System Train Service) calculated on the basis that Aurizon Network is deemed to have contracted on the terms of the relevant Standard Access Agreement (as defined under the Applicable Undertaking) that applied on the date of execution or renewal of an Access Agreement, except for:
- (A) those Access Agreements which have been altered from the relevant Standard Access Agreement in accordance with any Approved Undertaking or as approved by the QCA, for which Aurizon Network's



entitlement to Take or Pay amounts, Relinquishment Fees or Transfer Fees will be calculated in accordance with the terms of those Access Agreements; and

- (B) a New Access Agreement (~~other than an End User Access Agreement~~) to the extent entered into as part of transferring Access Rights from an Old Access Agreement executed under the 2001 Undertaking, under provisions ~~consistent with those in clause 14 (Transfer of Access Rights by Customer)~~ of the ~~Standard~~ Access Agreement (~~Operator~~), which permits the transfer of Access Rights, which has not been renewed after 30 June 2006, for which Aurizon Network's entitlement to Take or Pay amounts, Relinquishment Fees and Transfer Fees will be calculated on the basis that Aurizon Network has contracted on the terms of the relevant Standard Access Agreement (as defined under the 2001 Undertaking) that applied on the date of execution of that Old Access Agreement; and
- (iii) all revenue from AT<sub>2-4</sub> that Aurizon Network would have been entitled to earn under a Tariff Based Access Agreement in relation to the relevant Reference Tariff during the relevant Year but for Aurizon Network's breach of that Access Agreement or negligence in the provision of Below Rail Services to the extent that such events of breach or negligence resulted in the non-provision of ~~105%~~ 105% or more of the total number of Train Services for any single origin-destination pair during the relevant Year (provided that, where Access Rights are held by a party that is not a Train Operator, an End User, the ~~105%~~ 105% threshold is measured across the number of Train Services for each single origin to destination pair under that ~~End User~~ Access Agreement, not any relevant ~~Train Operations~~ Agreement),

less any interest comprised in those amounts representing interest paid or payable to Aurizon Network in relation to Access Charges (including any Adjustment Charges).

- (e) Subject to the QCA's approval, Aurizon Network may reduce the amount of any Relinquishment Fee or Transfer Fee used to calculate Total Actual Revenue for a Year if its inclusion will have a material effect on the AT<sub>2-4</sub> Revenue Adjustment Amount.
- (f) If Aurizon Network reduces the amount of any Relinquishment Fee or Transfer Fee under **clause 4.3(e) of Schedule F**, then the amount of the reduction must be carried forward to a following Year, including a

return on capital amount, calculated by reference to the Discount Rate over the period starting on the first day of the Year in which the Relinquishment Fee or Transfer Fee is received and ending on the first day of the Year in which the Relinquishment Fee or Transfer Fee is included in the calculation of Total Actual Revenue.

### Calculation of Total Actual Revenue for the AT<sub>5</sub> component of Access Charges

- (g) The Total Actual Revenue for the AT<sub>5</sub> component of Access Charges in relation to the relevant Reference Tariff is the sum of:
- (i) total revenue from the AT<sub>5</sub> component of Access Charges arising from all Tariff Based Access Agreements, for coal carrying Train Services, in relation to the relevant Reference Tariff that Aurizon Network has actually earned over the relevant Year (whether or not actually collected by Aurizon Network), calculated using:
    - (A) for a Train Service for which [clause 6.9.1\(b\)](#) of this Undertaking applies, the amount of the AT<sub>5</sub> component of the relevant Access Charges; or
    - (B) if **paragraph (A)** does not apply:
      - (1) for a Cross System Train Service that is consistent with the relevant Reference Train Service, the AT<sub>5</sub> component of the relevant Reference Tariff allocated consistently with the method used in the calculation of the relevant Allowable Revenue under **clause 4.2(b)**; or
      - (2) where **paragraph (1)** does not apply, the AT<sub>5</sub> component of the relevant Reference Tariff; and
  - (ii) all revenue from the AT<sub>5</sub> component of Access Charges that Aurizon Network would have been entitled to earn under a Tariff Based Access Agreement in relation to the relevant Reference Tariff during the relevant Year but for Aurizon Network's breach of that Access Agreement or negligence in the provision of Below Rail Services to the extent that such events of breach or negligence resulted in the non-provision of ~~105%~~ [105%](#) or more of the total number of Train Services for any single origin-destination pair during the relevant Year (provided that, where Access Rights are held by ~~an End User, a party that is not a Train Operator,~~ [an End User, a party that is not a Train Operator,](#) the ~~105%~~ [105%](#) threshold is measured across the number of Train Services for each single origin to destination pair under that ~~End User Access Agreement,~~ [End User Access Agreement,](#) not any relevant ~~Train Operations Agreement,~~ [Train Operations Agreement](#)),

less any interest comprised in those amounts representing interest paid or payable to Aurizon Network in relation to Access Charges (including any Adjustment Charges).

#### **Approval of Revenue Adjustment Amounts**

- (h) Aurizon Network will submit to the QCA by 30 September after the end of each Year of the Term details of the methodology, data and assumptions used to calculate the Revenue Adjustment Amounts for that Year under this **clause 4.3** and **clause 4.4** provided that if, in that September, Adjustment Charges have not yet been approved relating to the relevant Year, then Aurizon Network is only required to submit the relevant information within 30 days after those Adjustment Charges have been approved.
- (i) The QCA may give Aurizon Network a written notice requiring Aurizon Network to submit the Revenue Adjustment Amounts, if Aurizon Network fails to do so under **clause 4.3(h)(g)**.
- (j) The QCA may grant Aurizon Network an extension of the time for submitting, or resubmitting, the Revenue Adjustment Amounts if:
- (i) Aurizon Network provides a written request to the QCA for an extension of time; and
  - (ii) the extension of time is reasonable or necessary.
- If an extension of time is granted, Aurizon Network will submit the Revenue Adjustment Amounts within the time specified by the QCA.
- (k) The QCA may calculate Revenue Adjustment Amounts that are consistent with the requirements specified in this **clause 4.3**:
- (i) if Aurizon Network does not comply with a notice from the QCA under **clause 4.3(h)** or **4.3(n)(ii)**; or
  - (ii) if the QCA, under **clause 4.3(n)(ii)**, refuses to approve the Revenue Adjustment Amounts resubmitted by Aurizon Network.
- (l) Where Aurizon Network submits the Revenue Adjustment Amounts under **clause 3-3(g)4.3(h)**, the QCA may, to the extent it considers it appropriate to do so:
- (i) publish details of the Revenue Adjustment Amounts; and
  - (ii) invite consider comments from stakeholders regarding the Revenue Adjustment Amounts.
- To the extent that such comments are provided, the QCA must give Aurizon Network a reasonable period to respond to those comments.
- (m) The QCA will approve any Revenue Adjustment Amounts if the QCA is reasonably satisfied that they have been calculated in accordance with this **clause 4.3**.

- (n) If the QCA:
  - (i) approves the Revenue Adjustment Amounts, the QCA will give Aurizon Network a notice in writing stating the reasons for the QCA's decision; or
  - (ii) refuses to approve the Revenue Adjustment Amounts, the QCA will give Aurizon Network a notice in writing:
    - (A) stating the reasons for its refusal and the way in which it considers that the Revenue Adjustment Amounts should be amended; and
    - (B) requiring Aurizon Network to amend the Revenue Adjustment Amounts in that way and to resubmit the Revenue Adjustment Amounts to the QCA within 30 days after Aurizon Network receives that notice.
- (o) Aurizon Network must comply with a notice under **clause 4.3(n)(ii)**.
- (p) The QCA may approve Revenue Adjustment Amounts resubmitted by Aurizon Network or developed by the QCA under **clause 4.3(j)**, if it is satisfied that they:
  - (i) are consistent with the matters specified under **clause 4.3(l)**; and
  - (ii) if a notice has been issued under **clause 4.3(n)(ii)**, have been amended or developed in accordance with that notice.
- (q) Despite any other provision of this Undertaking, to the extent that:
  - (i) Adjustment Charges have been approved for a Year;
  - (ii) Aurizon Network is entitled or obliged to recover or reimburse those Adjustment Charges from or to Access Holders;
  - (iii) Aurizon Network is obliged under this Undertaking to calculate Revenue Adjustment Amounts in respect of that Year; and
  - (iv) in recovering or reimbursing the Adjustment Charges, the Adjustment Charges are included in an invoice relating to a **B**illing **P**eriod in the Year in which the relevant Revenue Adjustment Amounts are required to be calculated,

then, the Total Actual Revenue for AT<sub>2-4</sub> or AT<sub>5</sub> for each relevant Coal System for that Year and the Year in which the relevant Revenue Adjustment Amounts are required to be calculated must be adjusted to take account of the Adjustment Charges (but excluding the interest component of those Adjustment Charges).

#### 4.4 Revenue adjustment

- (a) Where a Revenue Adjustment Amount has been approved by the QCA under **clause 4.3**:
- (i) the equivalent Allowable Revenue to that used in the calculation of that Revenue Adjustment Amount for the relevant Reference Tariff for the Year after the Year in which that Revenue Adjustment Amount was calculated (that is, the **Second Year Allowable Revenue**) will be adjusted in accordance with this **clause 4.4**; and
  - (ii) the Allowable Revenue for all subsequent Years will also be adjusted to reflect the actual change in the MCI and CPI as used in the calculation of the approved Revenue Adjustment Amount.
- (b) A Second Year Allowable Revenue will be adjusted as follows:
- (i) for an  $AT_{2-4}$  Revenue Adjustment Amount, by subtracting from the relevant Second Year Allowable Revenue:
    - (A) that  $AT_{2-4}$  Revenue Adjustment Amount; and
    - (B) a return on capital amount, calculated by reference to the Discount Rate as applied to the  $AT_{2-4}$  Revenue Adjustment Amount over the period starting on the first day of the Year in which the Revenue Adjustment Amount is calculated and ending on the last day of the Year following that Year; and
  - (ii) for an  $AT_5$  Revenue Adjustment Amount, by subtracting from the relevant Second Year Allowable Revenue:
    - (A) that  $AT_5$  Revenue Adjustment Amount; and
    - (B) a return on capital amount, calculated by reference to the Discount Rate as applied to the  $AT_5$  Revenue Adjustment Amount over the period starting on the first day of the Year in which the Revenue Adjustment Amount is calculated and ending on the last day of the Year following that Year.
- (c) Where a Second Year Allowable Revenue is adjusted under this **clause 4.4**, Aurizon Network will vary the relevant Reference Tariff as part of the adjustment of the relevant Reference Tariff under **clause 4.1(a)**.

#### 4.5 Review of Access Charge Rates

- (a) If the Access Charge under an Access Agreement:
- (i) entered on or after the Approval Date; or

(ii) which refers to the Undertaking for the calculation of Access Charges,

is determined by reference to an Access Charge Rate and the Reference Tariff on which that Access Charge Rate is determined is adjusted as a result of the operation of this **clause 4**, then:

(iii) the Access Charge Rate will be adjusted by Aurizon Network to reflect the adjustment to the applicable Reference Tariff; and

(iv) Aurizon Network must notify the Access Holder of the adjustment to the Access Charge Rate within twenty (20) Business Days from the date on which the QCA's decision making or approving the adjustment to the relevant Reference Tariff is first published by the QCA.

(b) In considering any variations to Access Charge Rates under **clause 4.5(a)** as a result of a change in a Reference Tariff, Aurizon Network must have regard to, amongst any other relevant matters:

(i) any pre-existing differences between the Access Charge Rates and the Reference Tariffs;

(ii) any change to Reference Tariffs (including new Reference Tariffs);

(iii) any change to the characteristics of the Reference Train Service; and

~~(iii)~~ (iv) any differences between the Train Description for a Train Service Type and the characteristics of the Reference Train Service.

## 5 Reference Tariff variations

### 5.1 Obligation to submit Reference Tariff variations

(a) Aurizon Network:

(i) may submit a Reference Tariff variation to the QCA, where Aurizon Network considers that the variation will promote efficient investment by either Aurizon Network or another person in the Supply Chain; or

(ii) will submit a Reference Tariff variation to the QCA, subject to **clause 5.6**:

(A) within sixty (60) days after:

(1) Aurizon Network becomes aware that an Endorsed Variation Event has occurred or a Review Event has occurred or will occur; or

- (2) a written notice being given to Aurizon Network by the QCA under **clause 5.1(b)**; or
- (B) by 28 February prior to each Year of the Term, in accordance with **clause 4.1(a)** (if applicable).
- (b) The QCA may give Aurizon Network a written notice requiring Aurizon Network to submit a Reference Tariff variation if Aurizon Network fails to submit a Reference Tariff variation within 60 days, subject to **clause 5.6**, after the QCA determines, and notifies Aurizon Network, that an Endorsed Variation Event or a Review Event has occurred.
- (c) The QCA may develop a Reference Tariff variation that is consistent with the requirements specified in this **clause 5**:
  - (i) if Aurizon Network does not comply with a written notice given by the QCA under **clause 5.1(b)** or **clause 5.5(e)(ii)** for it to submit, or resubmit, a Reference Tariff variation; or
  - (ii) if the QCA refuses to approve a Reference Tariff variation resubmitted by Aurizon Network in accordance with a notice given by the QCA under **clause 5.5(e)(ii)**.
- (d) A Reference Tariff variation under this **clause 5** will include a revised Gik Forecasts and Allowable Revenues to the extent applicable to that Reference Tariff variation.

## 5.2 Endorsed Variation Events

The occurrence of any of the following events is an Endorsed Variation Event:

- (a) a Change in Law or a Change in Relevant Taxes occurs, that either alone or in combination with all other Changes in Law or Changes in Relevant Taxes that have occurred since the Commencing Date, would cause a change in the costs reflected in the AT<sub>3</sub>, AT<sub>4</sub>, and/or AT<sub>5</sub> input of the relevant Reference Tariff of greater than 2.5% excluding the impact of any Change in Law or Change in Relevant Taxes that have previously resulted in a variation of the Reference Tariff;
- (b) a change in the pricing of one or more Distribution Entities and/or Transmission Entities that, either alone or in combination with all other changes in the pricing of relevant Distribution Entities and/or Transmission Entities that have occurred since the Commencing Date and that have not previously resulted in a variation of the Reference Tariff, would cause a change in the costs reflected in the AT<sub>5</sub> input of the relevant Reference Tariff of greater than 2.5%; or
- (c) the QCA Levy input of a relevant Reference Tariff is reviewed (taking into account any over or under recovery of fees via the QCA Levy component of Access Charges in the previous Year) following the QCA's announcement of its fees for the provision of regulatory services for the rail industry.

### 5.3 Review Event

The occurrence of a Force Majeure Event – of the type set out in either **paragraph (e), (l) or (m)** of the definition of that term – affecting Aurizon Network, to the extent that Aurizon Network has incurred or will incur additional Incremental Costs of greater than \$1 million that have not previously resulted in a variation of the relevant Reference Tariff, is a Review Event in respect of which Aurizon Network has given written notice to the QCA of Aurizon Network's intention to propose a variation to that Reference Tariff under this **clause 5**.

### 5.4 Requirements for submissions

Where Aurizon Network submits a Reference Tariff variation, the variation must:

- (a) nominate the Reference Tariff to be varied;
- (b) include details of the methodology, data and assumptions used to vary the Reference Tariff;
- (c) for a variation under **clause 5.1(a)(i)**, include information on:
  - (i) the matters set out in **clause 6.6** (Pricing limits) of this Undertaking; and
  - (ii) why Aurizon Network considers that the variation of the Reference Tariff will promote efficient investment by either Aurizon Network or another person in the ~~coal-transport~~ [Supply Chain](#); and
- (d) for a variation in respect of an Endorsed Variation Event or a Review Event, evidence that the Endorsed Variation Event or Review Event has occurred or will occur.

### 5.5 Approval process

- (a) The QCA may publish details of Aurizon Network's proposed Reference Tariff variation and invite and consider comments from stakeholders regarding the proposed variation.
- (b) The QCA must give Aurizon Network a reasonable opportunity to respond to any comments from stakeholders that the QCA considers regarding the proposed variation. The QCA must consider all such responses from Aurizon Network.
- (c) The QCA may approve Aurizon Network's proposed Reference Tariff variation if the QCA is satisfied that:
  - (i) for a variation in respect of an Endorsed Variation Event:
    - (A) the Endorsed Variation Event has occurred; and
    - (B) the variation of the Reference Tariff is consistent with the change in the forecast cost resulting from the Endorsed Variation Event (including



- incremental maintenance and incremental capital costs), calculated as if all other assumptions originally used for the determination of Reference Tariffs are held constant;
- (ii) for a variation in respect of a Review Event:
    - (A) the Review Event has occurred or will occur; and
    - (B) the variation of the relevant Reference Tariff:
      - (1) is consistent with the change in the cost resulting from or that will result from the Review Event; and
      - (2) reflects the impact of the relevant Review Event on the financial position of Aurizon Network (including the impact of incremental maintenance and incremental capital costs); and
  - (iii) for a variation in respect of either an Endorsed Variation Event or a Review Event, whether the proposed variation has been calculated as if all other Reference Tariffs were also being recalculated due to the Endorsed Variation Event or Review Event (as applicable).
  - (d) If the QCA approves a Reference Tariff variation:
    - (i) the QCA will give Aurizon Network a notice in writing stating the reasons for the QCA's decision;
    - (ii) the Reference Tariff variation will apply, where the variation arose as a result of:
      - (A) an Endorsed Variation Event:
        - (1) from the first day of the Month immediately following the date of the occurrence of the Endorsed Variation Event; or
        - (2) where the date of the occurrence of the Endorsed Variation Event is the first day of a Month, from that date;
      - (B) an adjustment of Reference Tariffs under **clause 3-14.1**, from 1 July of the Year following the Year in which the variation was submitted; - or
      - (C) a Review Event, from the date approved by the QCA (being a date that may be before, on or after the date on which the QCA approved that Reference Tariff variation); -and

- (iii) Aurizon Network must:
  - (A) publish details of the Reference Tariff variation on the Website; and
  - (B) advise Access Holders and Access Seekers, in respect of the relevant Reference Train Service, of the Reference Tariff variation.
- (e) If the QCA refuses to approve a Reference Tariff variation, the QCA will give Aurizon Network a notice in writing:
  - (i) stating the reasons for its refusal and the way in which the QCA considers that the variation should be amended; and
  - (ii) if that variation was required to be submitted by Aurizon Network under this **clause 5** in respect of an Endorsed Variation Event or a Review Event, requiring Aurizon Network to vary the Reference Tariff in the way the QCA considers it appropriate and to resubmit the variation to the QCA within twenty (20) Business Days after Aurizon Network receiving the notice, subject to **clause 5.6**.
- (f) Aurizon Network must comply with a notice given under **clause 5.5(e)(ii)**.
- (g) When considering whether to approve a resubmitted Reference Tariff variation or a Reference Tariff variation developed by the QCA under **clause 5.1(c)**, the QCA must take into account:
  - (i) the matters specified under **clause 5.5(c)** (as applicable); and
  - (ii) if applicable, whether the variation has been amended or developed in with the QCA's prior decision (if any) to refuse to approve the relevant Reference Tariff variation.
- (h) For the purposes of **clause 5.1**:
  - (i) a Reference Tariff variation submitted by Aurizon Network or developed by the QCA under **clause 5.1** must include a review of Allowable Revenue and Gtk Forecast to the extent applicable to that variation; and
  - (ii) the QCA in approving a variation of a Reference Tariff must also approve the corresponding variation of the applicable Allowable Revenue and Gtk Forecast.

## 5.6 Extensions of time

- (a) The QCA may grant Aurizon Network an extension of the time for submitting, or resubmitting, a Reference Tariff variation if:
  - (i) Aurizon Network provides a written request to the QCA for an extension of time which includes the reasons why Aurizon Network requires the extension of time; and

- (ii) the extension of time is reasonable or necessary.
- (b) If the QCA grants Aurizon Network an extension of time under **clause 5.6(a)**, Aurizon Network must submit or resubmit the Reference Tariff variation within the time specified by the QCA.

## 6 Adjustment Charges

### 6.1 Calculation of Adjustment Charges

- (a) Subject to **clause 6.3**, if:
  - (i) this Undertaking specifies that a Reference Tariff is applicable or effective from a date prior to the date on which that Reference Tariff was approved by the QCA; or
  - (ii) a variation of a Reference Tariff (including a variation approved under **clause 5**) is applicable or effective from a date prior to the date on which the variation was approved by the QCA,

Aurizon Network is entitled to recover from or will reimburse to, as applicable, each relevant Access Holder (or, ~~if applicable, where an Access Holder is an End User and the End User and its~~ Train Operator(s) ~~each pay if it pays~~ a component of the Access Charges; ~~the End User and each relevant Train Operator~~) the amount (**Adjustment Amount**) which is the sum of:

- (iii) the aggregate of the differences, for each relevant Access Holder (or, if applicable, Train Operator) for each calendar Month (or part thereof) since the date on which the Reference Tariff or the variation of the Reference Tariff was to apply or take effect (**Effective Date**) until the date on which that Reference Tariff was approved by the QCA or the variation of the Reference Tariff was made, as applicable, between:
  - (A) the Access Charges paid or payable by that Access Holder (or, if applicable, Train Operator) in respect of the Train Services operated by or for that Access Holder (or, if applicable, Train Operator) during that calendar Month (or part thereof); and
  - (B) the Access Charges that would have been paid or payable by that Access Holder (or, if applicable, Train Operator) in respect of those Train Services if the Access Charges were calculated in accordance with the Reference Tariff or the variation of the Reference Tariff referred to in **clause 6.1(a)(i)** or **(ii)** on and from the Effective Date; and
- (iv) the aggregate of the interest calculated in accordance with **clause 6.1(b)** in respect of the amount of each difference

comprising the amount calculated in accordance with **clause 6.1(a)(iii)**,

by making adjustments to the Access Charges (**Adjustment Charge**) payable by Access Holders (or, ~~if applicable, where an Access Holder is an End User and the End User and its~~ Train Operator(s) each ~~if it~~ pays a component of the Access Charges, ~~the End User and each relevant Train Operator~~) so as to recover or reimburse, as applicable, the Adjustment Amount (subject to the provisions of this Undertaking). To the extent that the Access Holder (or, if applicable, Train Operator) has not paid the original Access Charge to which an Adjustment Charge relates, then the Adjustment Charge may be set off against the amount payable by the Access Holder (or, if applicable, Train Operator).

- (b) The interest referred to in **clause 6.1(a)(iv)** must be calculated:
- (i) in respect of the amount of each difference comprising the amount calculated under **clause 6.1(a)(iii)**;
  - (ii) on the basis that the interest:
    - (A) accrues and is charged from day to day; and
    - (B) is capitalised at the end of each Month and will thereafter itself bear interest;
  - (iii) at the rate equal to, for interest accruing in a Month:
    - (A) the mid-point of the one Month Bank Bill Swap Rate as published by the Australian Financial Markets Association (or its successor) for the Business Day immediately prior to the 21<sup>st</sup> day of the previous Month; or
    - (B) if that rate is no longer published, the rate will be an appropriate equivalent rate determined by Aurizon Network, acting reasonably; and
  - (iv) for the period commencing on the date when the Access Charges used to calculate the applicable difference in accordance with **clause 6.1(a)(iii)(A)** were due and payable and ending on the date when the Adjustment Charge is to be due and payable,

provided that if Aurizon Network is required to reimburse an Adjustment Charge, then no interest will be calculated to the extent that the Access Holder (or, if applicable, Train Operator) has not paid the original Access Charge to which the Adjustment Charge relates.

## 6.2 Approval of Adjustment Charges

- (a) Aurizon Network:
- (i) may, if it submits a Reference Tariff variation under **clause 5.1** and that variation is proposed to apply or take

effect on a date prior to the date on which the QCA will approve the variation; or

- (ii) must, if:
  - (A) the QCA approves a Reference Tariff variation under **clause 5.1** and that variation applies or takes effect on a date prior to the date on which the QCA approves the variation (and subject to **clause 6.2(a)(i)**); or
  - (B) this Undertaking specifies that a Reference Tariff is applicable or effective from a date prior to the date on which that Reference Tariff was approved by the QCA,

submit to the QCA proposed Adjustment Charges.

- (b) Where Aurizon Network submits proposed Adjustment Charges to the QCA under **clause 6.2(a)**:

- (i) Aurizon Network's submission must, without limitation:
  - (A) identify, subject to **clause 6.3(a)**, the Access Holders (or, if applicable, Train Operator) in respect of whom the proposed Adjustment Charges are to be applied;
  - (B) set out the proposed Adjustment Charges for each Access Holder (or, if applicable, Train Operator) including details of how those proposed Adjustment Charges were calculated;
  - (C) indicate the **B**illing **P**eriod(s) in respect of which the proposed Adjustment Charges are to be applied; and
  - (D) if applicable, how the proposed Adjustment Charges are to be allocated for the purposes of calculations under **clause 4.3**;

- (ii) if the QCA considers it appropriate, the QCA may publish details of Aurizon Network's submission of proposed Adjustment Charges and invite and consider comments from stakeholders regarding the proposed Adjustment Charges; and

- (iii) the QCA must approve:
  - (A) the Access Holders (and, if applicable, Train Operators) in respect of whom the Adjustment Charges are to apply;
  - (B) the Adjustment Charges that are to apply to each Access Holder (and, if applicable, Train Operator);

|

- (C) the Billing Period(s) in respect of which the Adjustment Charges will be applied; and
- (D) if applicable, how the Adjustment Charges must be allocated for the purposes of calculations under **clause 4.3**,

if the proposed Adjustment Charges submitted by Aurizon Network (excluding any interest component) constitute no more of a recovery or no less of a reimbursement of any under or over recovery of Access Charges by Aurizon Network that relate to each Access Holder (or, if applicable, Train Operator), and any interest component was calculated under **clause 6.1(b)(iii)(B)**.

- (c) Aurizon Network must comply with an approval of the QCA given under **clause 6.2(b)(iii)** or **6.2(f)** including in applying the Adjustment Charge approved for each Access Holder to the calculation of Access Charges payable by that Access Holder (or, if applicable, Train Operator).
- (d) If the QCA refuses to approve Aurizon Network's submission for an Adjustment Charge, the QCA must give Aurizon Network a notice in writing:
  - (i) stating the reasons for its refusal and the way in which the QCA considers the proposed Adjustment Charge should be amended so as to constitute (excluding any interest component) no more of a recovery or no less of a reimbursement of any under or over recovery of Access Charges by Aurizon Network that relate to each Access Holder (or, if applicable, Train Operator); and
  - (ii) requiring Aurizon Network to vary the proposed Adjustment Charge in the way the QCA considers it appropriate and resubmit the amended proposal to the QCA within 30 days of Aurizon Network receiving the notice.
- (e) Aurizon Network must comply with a notice given under **clause 6.2(d)**.
- (f) The QCA must approve a resubmitted proposal for Adjustment Charges, if the resubmitted proposal has been amended or developed in accordance with the QCA's notice given under **clause 6.2(d)** and the QCA is satisfied that the proposed Adjustment Charges resubmitted by Aurizon Network (excluding any interest component) constitute no more of a recovery or no less of a reimbursement of any under or over recovery of Access Charges by Aurizon Network that relate to each Access Holder (or, if applicable, Train Operator).

### 6.3 Application to Access Holders and Train Operators

- (a) An Adjustment Charge may only apply to:
- (i) an Access Holder (**New Access Holder**) that did not run, or cause a Train Operator to run; or
  - (ii) a Train Operator (**New Train Operator**) that did not operate, the Train Services to which that Adjustment Charge relates (**Past Train Services**) if:
    - (iii) the Access Holder who ran (or caused a Train Operator to run) or the Train Operator who operated (as applicable), the Past Train Services no longer has (or, at the time when the Adjustment Charges are to be applied, will have ceased to have) a rail haulage agreement with the Customer ~~or End User (as applicable)~~ relating to the Past Train Services or in respect of Train Services with the same origin and destination as the Past Train Services;
    - (iv) either:
      - (A) the New Access Holder or New Train Operator (as applicable) has a rail haulage agreement with the person who was the Customer ~~or End User~~ referred to in **clause 6.3(a)(iii)** (including that Customer's ~~or End User's~~ successors and assigns) in respect of Train Services with the same origin and destination as the Past Train Services; or
      - (B) the New Access Holder was that Customer ~~or End User~~ (or is that Customer's ~~or End User's~~ successor or assign); and
    - (v) either:
      - (A) for a New Access Holder, the New Access Holder has been granted Access Rights with the same origin and destination as the Past Train Services; or
      - (B) for a New Train Operator, the New Train Operator's Train Operations ~~Agreement~~ Deed includes right to operate Train Services with the same origin and destination as the Past Train Services.
- (b) No Adjustment Charge will apply to an Access Holder who ran the Past Train Services if that Access Holder has, at the time when the Adjustment Charges are to be applied, ceased to have a rail haulage agreement with the Customer for the Past Train Services (including that person's successors and assigns) in respect of Train Services with the same origin and destination as the Past Train Services provided that with the cessation of that rail haulage agreement, the applicable Access Rights were either relinquished or expired.

- (c) For clarity:
- (i) where:
    - (A) an ~~End-User~~ Access Holder does not have a Train Operator; and
    - (B) if that ~~End-User~~ Access Holder had a Train Operator, Adjustment Charges would be applied to that Train Operator in accordance with **clause 6.2(a)**,  
any such Adjustment Charge will apply to the Access Holder~~End-User~~; or
  - (ii) where:
    - (A) a Past Train Service was or was entitled to be operated under an ~~End-User~~ Access Agreement by a relevant Train Operator (**Past Train Operator**);
    - (B) there is no New Access Holder; and
    - (C) either the Access Holder, ~~End-User~~, at the time when the Adjustment Charges are to be applied:
      - (1) does not have a Train Operator under that ~~End-User~~ Access Agreement; or
      - (2) has a Train Operator but that person is not the Past Train Operator,
 any such Adjustment Charge will:
      - (D) if there is no Train Operator, apply to the Access Holder~~End-User~~; or
      - (E) otherwise, apply to the relevant Train Operator.
- (d) The calculation of Access Charges under an Access Agreement (~~or, if applicable, Train Operations Agreement~~) must be reviewed and varied to provide for the payment of Adjustment Charges in respect of the relevant Access Holder (or, if applicable, Train Operator) including:
- (i) that the Access Charges payable by the Access Holder (or, if applicable, Train Operator) must include any applicable Adjustment Charge from time to time in relation to or in connection with any variation of a Reference Tariff that applies or takes effect on a past date or any Reference Tariff that this Undertaking states is applicable or effective from a past date; and
  - (ii) that an Adjustment Charge must be applied to the calculation of the amount of the invoice for charges payable by the Access Holder (or, if applicable, Train Operator)



under the Access Agreement ~~(or, if applicable, Train Operations Agreement)~~ for the relevant ~~b~~ Billing ~~p~~ Period.

## 7 Blackwater System – System Reference Tariff

### 7.1 Additional Reference Train Service criteria

In addition to **clause 1.3**, the Reference Train Service to which this **clause 7** applies must also satisfy the following criteria:

- (a) **(Coal System)** operates in the Blackwater System;
- (b) **(Operational characteristics)** meets the following criteria:
  - (i) a maximum length of 1709 metres, unless operating from Minerva where it will be 1240 metres;
  - (ii) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220<sup>11</sup> loading, or otherwise generates a loading equivalent to M220, except that Train Services operating from Minerva will have a maximum axle load of 20 tonne – with loading in excess of this maximum axle load dealt with in accordance with the relevant Load Variation Table; [and](#)
  - (iii) uses diesel or electric traction, except operating from Minerva where it will only use diesel traction; ~~and~~
  - ~~(iv) has a Nominated Separation Time over the Constrained Section of no greater than 20 minutes;~~
- (c) **(Conditions of Access)** where its Access Agreement has an “Average Below Rail Transit Time Threshold” (as defined under the relevant Standard Access Agreement) or another equivalent threshold or performance level relating to Aurizon Network (**Threshold**) and that Threshold is no less than 127%;
- (d) **(Loading Facilities)** uses the following Nominated Loading Facilities and does not exceed the following Loading Times:

Nominated Loading Facilities <sup>12</sup>	Loading Time (hours) per return trip
Yarrabee (Boonal)	3.8
Jellinbah (Boonal)	4.6
Boorgoon	3.8
Curragh	3.3

<sup>11</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.

<sup>12</sup> Diagrams showing the location of the Nominated Loading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

<b>Nominated Loading Facilities<sup>12</sup></b>	<b>Loading Time (hours) per return trip</b>
Ensham	3.2
German Creek	3.0
Gregory	3.0
Kestrel (Gordonstone)	3.3
Kinrola	3.15
Koorilgah	5.0
Minerva	2.3
Oaky Creek	2.6
Rolleston	4.3
Yongala	3.2
Lake Vermont	3.0

- (e) **(Unloading Facilities)** uses the following Nominated Unloading Facilities and does not exceed the following Unloading Times:

<b>Nominated Unloading Facilities<sup>13</sup></b>	<b>Unloading Time (hours) per return trip</b>
Barney Point	5.0
Cement Australia	6.0
Comalco Refinery	6.0
Gladstone Power Station	4.3
Golding/RG Tanna Terminal	2.6
Queensland Alumina Ltd (QAL) <sup>14</sup>	8.9
Stanwell Power Station	2.3
Wiggins Island Coal Export Terminal	1.5 <sup>15</sup>

<sup>13</sup> Diagrams showing the location of the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

<sup>14</sup> The Unloading Time for the QAL refinery represents the time the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

<sup>15</sup> For services from the North Coast Line 0.7 hours.

- (f) **(Dwell Period)** has Dwell periods not exceeding the following:

	Dwell period (hours) per return trip
Inclusive of Train examination	9.2
Excluding Train examination	3.2

## 7.2 Reference Tariff inputs

- (a) Subject to **clause 7.2(c)**, the Reference Tariff inputs inclusive of revenue cap adjustments for 2011/12, [2012/13](#) and [2013/14](#) are:

Reference Tariff input	2013/14 (\$)	2014/15 <sup>^</sup> (\$)	2015/16 <sup>^</sup> (\$)	2016/17 <sup>^</sup> (\$)
AT <sub>1</sub>	<del>0.94</del> <u>0.92</u>	<del>0.97</del> <u>0.95</u>	<del>0.99</del> <u>0.97</u>	<del>1.02</del> <u>1.00</u>
AT <sub>2</sub>	<del>2,044.45</del> <u>2,026.44</u>	<del>2,095.56</del> <u>2,057.08</u>	<del>2,147.95</del> <u>2,108.51</u>	<del>2,201.65</del> <u>2,161.22</u>
AT <sub>3</sub>	<del>4.35</del> <del>*4.79*</del>	<del>4.80</del> <del>*6.14*</del>	<del>4.58</del> <del>*6.37*</del>	<del>4.60</del> <del>*6.67*</del>
AT <sub>4</sub>	<del>1.49</del> <u>1.64</u>	<del>1.66</del> <u>2.14</u>	<del>1.58</del> <u>2.22</u>	<del>1.60</del> <u>2.36</u>
AT <sub>5</sub>	<del>3.48</del> <u>3.49</u>	<del>4.37</del> <u>3.86</u>	<del>3.87</del> <u>3.37</u>	<del>3.19</del> <u>2.66</u>
EC	0.68	0.68	0.68	0.69
QCA Levy	0.02992	<del>0.03</del> <del>0.67</del> <u>0.03416</u>	0.03143	0.03222

\* This amount must be adjusted by subtracting the System Discount under **clause 7.2(b)** where the System Discount, applies to the relevant Train Service.

<sup>^</sup> [The difference between 2013–14 approved allowable and transitional revenues has been smoothed over 2014–15, 2015–16 and 2016–17.](#)

- (b) The System Discounts for Train Services to or from Nominated Loading Facilities or Nominated Unloading Facilities are:

Nominated Unloading Facilities	System Discount (\$/ntk)			
	2013/14	2014/15	2015/16	2016/17
Stanwell Power Station	<del>1.41</del> <u>1.57</u>	<del>1.68</del> <u>1.80</u>	<del>1.60</del> <u>2.07</u>	<del>1.61</del> <u>2.25</u>

- (c) The Reference Tariff inputs referred to below in relation to a Nominated Loading Facility replace the equivalent Reference Tariff

inputs in **clause 7.2(a)** for any Train Service using that Nominated Loading Facility:

Nominated Loading Facility	Reference Tariff input	2013/14 (\$)	2014/15 (\$)	2015/16 (\$)	2016/17 (\$)
Rolleston	AT <sub>3</sub>	4.94 <u>4.79</u>	4.98 <u>6.20</u>	6.05 <u>7.14</u>	6.27 <u>6.67</u>
	AT <sub>5</sub>	<u>-3.49</u>	6.22 <u>4.80</u>	3.87 <u>3.43</u>	3.19 <u>2.90</u>

- (d) For clarity, where a Train Service operating in the Blackwater System is a Cross System Train Service, the Reference Tariff inputs set out above relating to that Train Service are subject to **clause 2.3**.
- (e) The Nominal Train Payload for:
- (i) a Train Service (other than a Cross System Train Service or a Train Service referred to in **clause 7.2(e)(iii)**) to which the Reference Tariff in this **clause 7** applies, is a nominal nt of 8,211 tonnes;
  - (ii) a Cross System Train Service where the Destination System is the Blackwater System, is a nominal nt of 8,211 tonnes;  
or
  - (iii) a Train Service (other than a Cross System Train Service) that has Minerva as a Nominated Loading Facility, is a nominal nt of 5,831 tonnes.

### 7.3 Gtk Forecast and Allowable Revenues

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT <sub>2-4</sub> (\$)	Allowable Revenue – AT <sub>5</sub> (\$)
<u>2013/14</u> <sup>1</sup>	<u>35,878,156</u>	<u>243,141,886</u>	<u>74,275,007</u>
<u>2014/15</u> <sup>2,4</sup>	<u>35,754,268</u>	<u>301,190,974</u>	<u>112,899,188</u>
<u>2015/16</u> <sup>3,4</sup>	<u>37,227,798</u>	<u>328,474,852</u>	<u>99,822,127</u>
<u>2016/17</u> <sup>4</sup>	<u>38,663,112</u>	<u>352,110,693</u>	<u>84,535,327</u>
2013/14 <sup>Δ</sup>	35,453,096	226,757,201	75,637,031
2014/15	32,652,571	225,117,186	100,357,549

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT <sub>2-4</sub> (\$)	Allowable Revenue – AT <sub>5</sub> (\$)
2015/16	32,261,706	312,214,518	107,687,634
2016/17	33,054,176	323,618,727	92,193,879

(1) <sup>^</sup>Includes the impact of the 2011/12 revenue cap adjustment.

(2) Includes the impact of the 2012/13 revenue cap adjustment.

(3) Includes the impact of the 2013/14 revenue cap adjustment.

(4) The difference between 2013–14 approved allowable and transitional revenues has been smoothed over 2014–15, 2015–16 and 2016–17.

## 8 Goonyella System – System Reference Tariff

### 8.1 Additional Reference Train Service criteria

In addition to **clause 1.3**, the Reference Train Service to which this **clause 8** applies must also satisfy the following criteria:

- (a) **(Coal System)** operates in the Goonyella System;
- (b) **(Operational characteristics)** meets the following criteria:
  - (i) a maximum length of 2082 metres;
  - (ii) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220<sup>16</sup> loading, or otherwise generates a loading equivalent to M220 – with loading in excess of this maximum axle load dealt with in accordance with the relevant Load Variation Table; and
  - (iii) uses diesel or electric traction; ~~and~~
  - ~~(iv) has a Nominated Separation Time over the Constrained Section of no greater than 20 minutes;~~
- (c) **(Conditions of Access)** where its Access Agreement has an “Average Below Rail Transit Time Threshold” (as defined under the relevant Standard Access Agreement) or another equivalent threshold or performance level relating to Aurizon Network (**Threshold**) and that Threshold is no less than 123%;
- (d) **(Loading Facilities)** uses the following Loading Facilities and does not exceed the following Loading Times:

<sup>16</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.

<b>Nominated Loading Facilities<sup>17</sup></b>	<b>Loading Time (hours) per return trip</b>
Blair Athol (Clermont)	3.1
Burton	3.8
Carborough Downs	3.5
Caval Ridge*	2.5
German Creek	2.9
Goonyella	3.9
Gregory	3.6
Hail Creek	2.6
Isaac Plains	3.9
Lake Vermont	3.0
Macarthur (Coppabella)	3.9
Millennium	3.0
Middlemount*	3.5
Moorvale	3.6
Moranbah North	3.6
North Goonyella	4.3
Norwich Park	3.9
Oaky Creek	3.2
Peak Downs	4.2
Riverside	4.6
Saraji	4.4
South Walker Creek	3.8

\* Balloon loops for these loading facilities are Private Infrastructure

<sup>17</sup> Diagrams showing the location of the Nominated Loading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

- (e) **(Unloading Facilities)** uses the following Nominated Unloading Facilities and does not exceed the following Unloading Times:

Nominated Unloading Facilities <sup>18</sup>	Unloading Time (hours) per return trip
Dalrymple Bay	Pit 1 – 2.5 Pit 2 – 2.5 Pit 3 – 2.0
Hay Point	2.8

- (f) **(Dwell Period)** has Dwell periods not exceeding the following:

	Dwell period (hours) per return trip
Inclusive of Train examination	8.8
Excluding Train examination	1.8

## 8.2 Reference Tariff inputs

- (a) Subject to **clause 8.2(b)**, the Reference Tariff inputs inclusive of revenue cap adjustments for 2011/12, [2012/13](#) and [2013/14](#) are:

Reference Tariff input	2013/14 (\$)	2014/15 <sup>^</sup> (\$)	2015/16 <sup>^</sup> (\$)	2016/17 <sup>^</sup> (\$)
AT <sub>1</sub>	<del>0.65</del> <u>0.64</u>	<del>0.67</del> <u>0.66</u>	<del>0.68</del> <u>0.67</u>	<del>0.71</del> <u>0.70</u>
AT <sub>2</sub>	<del>1,295.28</del> <u>1,283.87</u>	<del>1,327.66</del> <u>1,303.28</u>	<del>1,360.85</del> <u>1,335.86</u>	<del>1,394.87</del> <u>1,369.26</u>
AT <sub>3</sub>	<del>4.55</del> <u>4.23</u>	<del>4.97</del> <u>5.24</u>	<del>5.44</del> <u>5.31</u>	<del>5.21</del> <u>5.17</u>
AT <sub>4</sub>	<del>0.97</del> <u>0.90</u>	<del>1.04</del> <u>1.09</u>	<del>1.12</del> <u>1.11</u>	<del>1.08</del> <u>1.07</u>
AT <sub>5</sub>	<del>2.35</del> <u>2.27</u>	<del>2.32</del> <u>1.85</u>	<del>2.66</del> <u>2.01</u>	<del>2.58</del> <u>2.16</u>
EC	0.68	0.68	0.68	0.69
QCA Levy	0.02992	<del>0.03067</del> <u>0.03416</u>	0.03143	0.03222

<sup>^</sup> [The difference between 2013–14 approved allowable and transitional revenues has been smoothed over 2014–15, 2015–16 and 2016–17.](#)

- (b) The Reference Tariff inputs referred to below in relation to a Nominated Loading Facility replace the equivalent Reference Tariff

<sup>18</sup> Diagrams showing the location of the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

inputs in **clause 8.2(a)** for any Train Service using that Nominated Loading Facility:

Nominated Loading Facility	Reference Tariff input	2013/14 (\$)	2014/15 (\$)	2015/16 (\$)	2016/17 (\$)
Middlemount	AT <sub>3</sub>	<del>1.01</del> <u>0.93</u>	<del>1.44</del> <u>1.19</u>	<del>1.56</del> <u>1.37</u>	<del>1.51</del> <u>1.20</u>
	AT <sub>4</sub>	<del>0.27</del> <u>0.25</u>	<del>0.39</del> <u>0.32</u>	<del>0.42</del> <u>0.36</u>	<del>0.40</del> <u>0.32</u>
	AT <sub>5</sub>	<del>0.49</del> <u>0.68</u>	<del>0.00</del> <u>0.26</u>	<del>0.00</del> <u>0.15</u>	<del>0.00</del> <u>0.29</u>
<u>Caval Ridge</u>	<u>AT<sub>3</sub></u>	<u>4.23</u>	<u>2.86</u>	<u>3.72</u>	<u>3.54</u>
	<u>AT<sub>4</sub></u>	<u>0.90</u>	<u>0.60</u>	<u>0.77</u>	<u>0.73</u>
	<u>AT<sub>5</sub></u>	<u>2.27</u>	<u>1.37</u>	<u>1.68</u>	<u>1.83</u>

- (c) For clarity, where a Train Service operating in the Goonyella System is a Cross System Train Service, the Reference Tariff inputs set out above relating to that Train Service are subject to **clause 2.3**.
- (d) The Nominal Train Payload for:
- (i) a Train Service (other than a Cross System Train Service) to which the Reference Tariff in this **clause 8** applies; or
  - (ii) a Cross System Train Service where the Destination System is the Goonyella System,
- is a nominal nt of 10,055 tonnes.

### 8.3 Gtk Forecast and Allowable Revenues

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT <sub>2-4</sub> (\$)	Allowable Revenue – AT <sub>5</sub> (\$)
<u>2013/14<sup>1</sup></u>	<u>37,595,372</u>	<u>230,651,889</u>	<u>84,370,348</u>
<u>2014/15<sup>2,4</sup></u>	<u>39,215,498</u>	<u>288,145,162</u>	<u>71,219,344</u>
<u>2015/16<sup>3,4</sup></u>	<u>36,709,930</u>	<u>274,766,144</u>	<u>72,529,524</u>
<u>2016/17<sup>4</sup></u>	<u>37,598,934</u>	<u>276,209,008</u>	<u>79,934,105</u>
<del>2013/14<sup>Δ</sup></del>	<del>36,494,209</del>	<del>241,585,525</del>	<del>86,019,493</del>
<del>2014/15</del>	<del>34,453,379</del>	<del>248,559,319</del>	<del>79,830,513</del>
<del>2015/16</del>	<del>33,175,753</del>	<del>260,787,982</del>	<del>88,251,829</del>



Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT <sub>2-4</sub> (\$)	Allowable Revenue – AT <sub>5</sub> (\$)
2016/17	35,256,934	267,025,822	90,817,420

[\(1\)<sup>A</sup>](#) Includes the impact of the 2011/12 revenue cap adjustment.

[\(2\)](#) Includes the impact of the 2012/13 revenue cap adjustment.

[\(3\)](#) Includes the impact of the 2013/14 revenue cap adjustment.

[\(4\)](#) The difference between 2013–14 approved allowable and transitional revenues has been smoothed over 2014–15, 2015–16 and 2016–17.

## 9 Moura System – System Reference Tariff

### 9.1 Additional Reference Train Service criteria

In addition to **clause 1.3**, the Reference Train Service to which this **clause 9** applies must also satisfy the following criteria:

- (a) **(Coal System)** operates in the Moura System;
- (b) **(Operational characteristics)** meets the following criteria:
  - (i) a maximum length of 1000 metres;
  - (ii) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220<sup>19</sup> loading, or otherwise generates a loading equivalent to M220 – with loading in excess of this maximum axle load dealt with in accordance with the relevant Load Variation Table; and
  - (iii) uses diesel traction;
- (c) **(Conditions of Access)** where its Access Agreement has an “Average Below Rail Transit Time Threshold” (as defined under the relevant Standard Access Agreement) or another equivalent threshold or performance level relating to Aurizon Network (**Threshold**) and that Threshold is no less than 130%;
- (d) **(Loading Facilities)** uses the following Nominated Loading Facilities and does not exceed the following Loading Times:

Nominated Loading Facilities <sup>20</sup>	Loading Time (hours) per return trip
Baralaba	4.9
Boundary Hill	3.4

<sup>19</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.

<sup>20</sup> Diagrams showing the location of the Nominated Loading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

Nominated Loading Facilities <sup>20</sup>	Loading Time (hours) per return trip
Dunn Creek (Callide)	4.2
Moura	3.6

(e) **(Unloading Facilities)** uses the following Nominated Unloading Facilities and does not exceed the following Unloading Times:

Nominated Unloading Facilities <sup>21</sup>	Unloading Time (hours) per return trip
Barney Point	5.0
Cement Australia	4.3
Comalco Refinery	6.0
Gladstone Power Station	4.3
Golding/RG Tanna Terminal	2.6
Queensland Alumina Ltd (QAL) <sup>22</sup>	8.9
<a href="#">Wiggins Island Coal Export Terminal</a>	<a href="#">1.5</a> <sup>23</sup>

(f) **(Dwell Period)** has Dwell periods not exceeding the following:

	Dwell period (hours)per return trip
Inclusive of Train examination	6.2
Excluding Train examination	3.2

<sup>21</sup> Diagrams showing the location of the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

<sup>22</sup> The Unloading Time for the QAL refinery represents the time the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

<sup>23</sup> [For services from the North Coast Line 0.7 hours.](#)

## 9.2 Reference Tariff inputs

(a) The Reference Tariff inputs inclusive of revenue cap adjustments for 2011/12, 2012/13 and 2013/14 are:

Reference Tariff input	2013/14 (\$)	2014/15 <sup>^</sup> (\$)	2015/16 <sup>^</sup> (\$)	2016/17 <sup>^</sup> (\$)
AT <sub>1</sub>	<u>1.72</u> <del>1.75</del>	<u>1.76</u> <del>1.80</del>	<u>1.80</u> <del>1.84</del>	<u>1.86</u> <del>1.90</del>
AT <sub>2</sub>	<u>606.99</u> <del>612.39</del>	<u>616.17</u> <del>627.70</del>	<u>631.58</u> <del>643.39</del>	<u>647.37</u> <del>659.47</del>
AT <sub>3</sub>	<u>5.87</u> <del>6.58</del>	<u>9.37</u> <del>8.01</del>	<u>8.10</u> <del>7.24</del>	<u>7.61</u> <del>7.40</del>
AT <sub>4</sub>	<u>0.96</u> <del>1.09</del>	<u>1.51</u> <del>1.32</del>	<u>1.32</u> <del>1.19</del>	<u>1.28</u> <del>1.20</del>
QCA Levy	<u>0.0299</u> <del>0.0299</del>	<u>0.0341</u> <del>0.0306</del>	<u>0.0314</u> <del>0.0314</del>	<u>0.0322</u> <del>0.0322</del>

<sup>^</sup> The difference between 2013–14 approved allowable and transitional revenues has been smoothed over 2014–15, 2015–16 and 2016–17.

(b) The Reference Tariff inputs referred to below in relation to a Nominated Loading Facility replace the equivalent Reference Tariff inputs in **clause 9.2(a)** for any Train Service using that Nominated Loading Facility:

<u>Nominated Loading Facility</u>	<u>Reference Tariff input</u>	<u>2013/14 (\$)</u>	<u>2014/15 (\$)</u>	<u>2015/16 (\$)</u>	<u>2016/17 (\$)</u>
<u>Baralaba<sup>1</sup></u>	<u>AT<sub>3</sub></u>	<u>=</u>	<u>=</u>	<u>12.19</u>	<u>10.52</u>

(1) Only those train services from this loading facility that terminate at Wiggins Island Coal Export Terminal are subject to this reference tariff input.

~~(b)~~(c) For clarity, where a Train Service operating in the Moura System is a Cross System Train Service, the Reference Tariff inputs set out above relating to that Train Service are subject to **clause 2.3**.

~~(e)~~(d) The Nominal Train Payload for:

- (i) a Train Service to which the Reference Tariff in this **clause 9** applies; or
- (ii) a Cross System Train Service where the Destination System is the Moura System,  
is a nominal nt of 6,269 tonnes.

### 9.3 Gtk Forecast and Allowable Revenues

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT <sub>2-4</sub> (\$)
<a href="#">2013/14<sup>1</sup></a>	<a href="#">3,325,526</a>	<a href="#">26,129,869</a>
<a href="#">2014/15<sup>2,4</sup></a>	<a href="#">3,260,974</a>	<a href="#">39,668,595</a>
<a href="#">2015/16<sup>3,4</sup></a>	<a href="#">3,617,524</a>	<a href="#">39,446,630</a>
<a href="#">2016/17<sup>4</sup></a>	<a href="#">3,913,515</a>	<a href="#">41,078,527</a>
2013/14 <sup>Δ</sup>	3,389,711	29,153,844
2014/15	3,385,880	35,146,517
2015/16	3,445,139	42,756,733
2016/17	3,521,664	44,608,581

[\(1\)](#)<sup>Δ</sup> Includes the impact of the 2011/12 revenue cap adjustment.

[\(2\)](#) Includes the impact of the 2012/13 revenue cap adjustment.

[\(3\)](#) Includes the impact of the 2013/14 revenue cap adjustment.

[\(4\)](#) The difference between 2013–14 approved allowable and transitional revenues has been smoothed over 2014–15, 2015–16 and 2016–17.

## 10 Newlands System – System Reference Tariff

### 10.1 Additional Reference Train Service criteria

In addition to **clause 1.3**, the Reference Train Service to which this **clause 10** applies must also satisfy the following criteria:

- (a) **(Coal System)** operates in the Newlands System;
- (b) **(Operational characteristics)** meets the following criteria:
  - (i) a maximum length of 1402 metres;
  - (ii) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220<sup>24</sup> loading, or otherwise generates a loading equivalent to M220 – with loading in excess of this maximum axle load dealt with in accordance with the relevant Load Variation Table; and
  - (iii) uses diesel traction;
- (c) **(Conditions of Access)** where its Access Agreement has an “Average Below Rail Transit Time Threshold” (as defined under the

<sup>24</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.

relevant Standard Access Agreement) or another equivalent threshold or performance level relating to Aurizon Network (**Threshold**) and that Threshold is no less than 160%;

- (d) **(Loading Facilities)** uses the following Nominated Loading Facilities and does not exceed the following Loading Times:

Nominated Loading Facilities <sup>25</sup>	Loading Time (hours) per return trip
McNaughton	1.85
Newlands	2.05
Sonoma	2.4

- (e) **(Unloading Facilities)** uses the following Nominated Unloading Facilities and does not exceed the following Unloading Times:

Nominated Unloading Facilities <sup>26</sup>	Unloading Time (hours) per return trip
Abbot Point	2.05

- (f) **(Dwell Period)** has Dwell periods not exceeding the following:

	Dwell period (hours)per return trip
Inclusive of Train examination	6.4
Excluding Train examination	2.4

## 10.2 Reference Tariff inputs

- (a) The Reference Tariff inputs inclusive of revenue cap adjustments for 2011/12, [2012/13](#) and [2013/14](#) are:

*[FIGURES OMITTED FROM PUBLIC VERSION DUE TO COMMERCIAL CONFIDENTIALITY]*

Reference Tariff input	2013/14 (\$)	2014/15 <sup>^</sup> (\$)	2015/16 <sup>^</sup> (\$)	2016/17 <sup>^</sup> (\$)
AT <sub>1</sub>	<a href="#">1.71</a>	<a href="#">1.76</a>	<a href="#">1.80</a>	<a href="#">1.86</a>
AT <sub>2</sub>	<a href="#">271.39</a>	<a href="#">275.50</a>	<a href="#">282.39</a>	<a href="#">289.45</a>

<sup>25</sup> Diagrams showing the location of the Nominated Loading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

<sup>26</sup> Diagrams showing the location of the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

Reference Tariff input	2013/14 (\$)	2014/15 <sup>^</sup> (\$)	2015/16 <sup>^</sup> (\$)	2016/17 <sup>^</sup> (\$)
AT <sub>3</sub>	<u>9.20</u>	<u>6.84</u>	<u>7.63</u>	<u>8.59</u>
AT <sub>4</sub>	<u>1.29</u>	<u>0.92</u>	<u>1.00</u>	<u>1.10</u>
QCA Levy	<u>0.02992</u>	<u>0.03416</u>	<u>0.03143</u>	<u>0.03222</u>

<sup>^</sup> The difference between 2013–14 approved allowable and transitional revenues has been smoothed over 2014–15, 2015–16 and 2016–17.

- (b) For clarity, where a Train Service operating in the Newlands System is a Cross System Train Service, the Reference Tariff inputs set out above relating to that Train Service are subject to **clause 2.3**.
- (c) The Nominal Train Payload for:
- (i) a Train Service (other than a Cross System Train Service) to which the Reference Tariff in this **clause 10** applies; or
  - (ii) a Cross System Train Service where the Destination System is the Newlands System,
- is a nominal nt of 6,871 tonnes.

### 10.3 **Gtk Forecast and Allowable Revenues**

<u>Year</u>	<u>Gtk Forecast (,000 gik)</u>	<u>Allowable Revenue – AT<sub>2,4</sub> (\$)</u>
<u>2013/14<sup>1</sup></u>	<u>2,605,762</u>	<u>30,836,593</u>
<u>2014/15<sup>2,4</sup></u>	<u>3,062,661</u>	<u>27,298,910</u>
<u>2015/16<sup>3,4</sup></u>	<u>2,525,668</u>	<u>25,022,811</u>
<u>2016/17<sup>4</sup></u>	<u>2,373,559</u>	<u>26,391,956</u>

(1) Includes the impact of the 2011/12 revenue cap adjustment.

(2) Includes the impact of the 2012/13 revenue cap adjustment.

(3) Includes the impact of the 2013/14 revenue cap adjustment.

(4) The difference between 2013–14 approved allowable and transitional revenues has been smoothed over 2014–15, 2015–16 and 2016–17.

~~[FIGURES OMITTED FROM PUBLIC VERSION DUE TO COMMERCIAL CONFIDENTIALITY]~~

<del>Year</del>	<del>Gtk Forecast (,000 gtk)</del>	<del>Allowable Revenue—AT<sub>2-4</sub> (\$)</del>
<del>2013/14<sup>△</sup></del>		
<del>2014/15</del>		
<del>2015/16</del>		
<del>2016/17</del>		

~~△ Includes the impact of the 2011/12 revenue cap adjustment.~~

## ~~11 Newlands to Abbot Point System — System Reference Tariff~~

### ~~11.1 Additional Reference Train Service criteria~~

~~In addition to **clause 1.3**, the Reference Train Service to which this **clause 11** applies must also satisfy the following criteria:~~

- ~~(a) **(Coal System)** operates in the Newlands to Abbot Point System;~~
- ~~(b) **(Operational characteristics)** meets the following criteria:
  - ~~(i) a maximum length of 1402 metres;~~
  - ~~(ii) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220<sup>27</sup> loading, or otherwise generates a loading equivalent to M220 with loading in excess of this maximum axle load dealt with in accordance with the relevant Load Variation Table; and~~  
~~uses diesel traction;~~~~
- ~~(c) **(Conditions of Access)** where its Access Agreement has an “Average Below Rail Transit Time Threshold” (as defined under the relevant Standard Access Agreement) or another equivalent threshold or performance level relating to Aurizon Network **(Threshold)** and that Threshold is no less than 160%;~~
- ~~(d) **(Loading Facilities)** uses the following Nominated Loading Facilities and does not exceed the following Loading Times:~~

<sup>27</sup>—As specified in the ANZRC Railway Bridge Design Manual 1974.

~~[AURIZON NETWORK TO COMPLETE THIS TABLE FOR LOADING FACILITIES]~~

<del>Nominated Loading Facilities<sup>28</sup></del>	<del>Loading Time (hours) per return trip</del>

~~(e) (Unloading Facilities) uses the following Nominated Unloading Facilities and does not exceed the following Unloading Times:~~

<del>Nominated Unloading Facilities<sup>29</sup></del>	<del>Unloading Time (hours) per return trip</del>
<del>Abbot Point</del>	<del>2.05</del>

~~(f) (Dwell Period) has Dwell periods not exceeding the following:~~

	<del>Dwell period (hours) per return trip</del>
<del>Inclusive of Train examination</del>	<del>6.4</del>
<del>Excluding Train examination</del>	<del>2.4</del>

## ~~11.2 Reference Tariff inputs~~

~~(a) The Reference Tariff inputs are:~~

~~[FIGURES OMITTED FROM PUBLIC VERSION DUE TO COMMERCIAL CONFIDENTIALITY]~~

<del>Reference Tariff input</del>	<del>2013/14 (\$)</del>	<del>2014/15 (\$)</del>	<del>2015/16 (\$)</del>	<del>2016/17 (\$)</del>
<del>AT<sub>1</sub></del>				
<del>AT<sub>2</sub></del>				
<del>AT<sub>3</sub></del>				
<del>AT<sub>4</sub></del>				
<del>QCA Levy</del>				

~~(b) For clarity, where a Train Service operating in the Newlands to Abbot Point System is a Cross System Train Service, the Reference Tariff~~

<sup>28</sup>—Diagrams showing the location of the Nominated Loading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

<sup>29</sup>—Diagrams showing the location of the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.



~~inputs set out above relating to that Train Service are subject to clause 2.3.~~

- ~~(c) The Nominal Train Payload for:~~
- ~~(i) a Train Service (other than a Cross System Train Service) to which the Reference Tariff in this clause 11 applies; or~~
  - ~~(ii) a Cross System Train Service where the Destination System is the Newlands to Abbot Point System;~~
- ~~is a nominal nt of 6,871 tonnes.~~

### ~~11.3~~ **Gtk Forecast and Allowable Revenues**

~~[FIGURES OMITTED FROM PUBLIC VERSION DUE TO COMMERCIAL CONFIDENTIALITY]~~

<b>Year</b>	<b>Gtk Forecast (,000 gtk)</b>	<b>Allowable Revenue—AT<sub>2,4</sub> (\$)</b>
2014/14		
2014/15		
2015/16		
2016/17		

## ~~12.11~~ **Goonyella to Abbot Point System – System Reference Tariff**

### ~~12.111.1~~ **Additional Reference Train Service criteria**

In addition to **clause 1.3**, the Reference Train Service to which this **clause 11** applies must also satisfy the following criteria:

- (a) **(Coal System)** operates in the Goonyella to Abbot Point System;
- (b) **(Operational characteristics)** meets the following criteria:
  - (i) a maximum length of 1402 metres;
  - (ii) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220<sup>30</sup> loading, or otherwise generates a loading equivalent to M220 – with loading in excess of this maximum axle load dealt with in accordance with the relevant Load Variation Table; and
  - (iii) uses diesel traction.
- (c) **(Conditions of Access)** where its Access Agreement has an “Average Below Rail Transit Time Threshold” (as defined under the

<sup>30</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.

relevant Standard Access Agreement) or another equivalent threshold or performance level relating to Aurizon Network (**Threshold**) and that Threshold is no less than 160%;

- (d) **(Loading Facilities)** uses the following Nominated Loading Facilities and does not exceed the following Loading Times:

<b>Nominated Loading Facilities<sup>31</sup></b>	<b>Loading Time (hours) per return trip</b>
Riverside	3.0
Peak Downs	3.0
Lake Vermont	2.05 (estimate) <sup>32</sup>
Blair Athol (Clermont)	2.04 (estimate) <sup>33</sup>
Middlemount*	2.75
Caval Ridge*	1.85

\* Balloon loops for these loading facilities are Private Infrastructure.

- (e) **(Unloading Facilities)** uses the following Nominated Unloading Facilities and does not exceed the following Unloading Times:

<b>Nominated Unloading Facilities<sup>34</sup></b>	<b>Unloading Time (hours) per return trip</b>
Abbot Point	2.05

- (f) **(Dwell Period)** has Dwell periods not exceeding the following:

	<b>Dwell period (hours)per return trip</b>
Inclusive of Train examination	7.35 per consist every 20 days
Excluding Train examination	1.35

<sup>31</sup> Diagrams showing the location of the Nominated Loading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

<sup>33</sup> This is an estimate of loading time for this Loading Facility. Aurizon will review this loading time in accordance with the relevant Access Agreement. A variation from the loading time will not result in the Train Service being considered not to be a Reference Train Service until after the loading time is reviewed in accordance to the relevant Access Agreement.

<sup>34</sup> Diagrams showing the location of the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Preliminary Information for the relevant Coal System.

### **12.211.2 Reference Tariff inputs**

(a) The Reference Tariff inputs inclusive of revenue cap adjustments for 2011/12, 2012/13 and 2013/14 are:

Reference Tariff input	2013/14 (\$)	2014/15 <sup>^</sup> (\$)	2015/16 <sup>^</sup> (\$)	2016/17 <sup>^</sup> (\$)
AT <sub>1</sub>	<u>1.45</u> <del>1.47</del>	<u>1.48</u> <del>1.51</del>	<u>1.52</u> <del>1.54</del>	<u>1.57</u> <del>1.59</del>
AT <sub>2</sub>	<u>12,598.77</u> <del>12,710.75</del>	<u>12,789.30</u> <del>13,028.52</del>	<u>13,109.03</u> <del>13,354.23</del>	<u>13,436.76</u> <del>13,688.09</del>
AT <sub>3</sub>	<u>1.60</u> <del>5.42</del>	<u>1.60</u> <del>4.51</del>	<u>0.64</u> <del>3.12</del>	<u>0.50</u> <del>2.95</del>
AT <sub>4</sub>	<u>3.78</u> <del>2.00</del>	<u>3.82</u> <del>1.73</del>	<u>2.80</u> <del>1.09</del>	<u>2.95</u> <del>1.03</del>
QCA Levy	0.02992	<del>0.03067</del> <u>0.03416</u>	0.03143	0.03222

<sup>^</sup> The difference between 2013–14 approved allowable and transitional revenues has been smoothed over 2014–15, 2015–16 and 2016–17.

(b) The Nominal Train Payload for:

- (i) a Train Service to which the Reference Tariff in this **clause 11** applies; or
  - (ii) a Cross System Train Service where the Destination System is the Goonyella to Abbot Point System,
- is a nominal nt of 6,871 tonnes.

### **12.311.3 Gtk Forecast and Allowable Revenues**

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT <sub>2-4</sub> (\$)
<u>2013/14<sup>1</sup></u>	<u>7,285,163</u>	<u>100,687,051</u>
<u>2014/15<sup>2,4</sup></u>	<u>8,707,733</u>	<u>124,308,497</u>
<u>2015/16<sup>3,4</sup></u>	<u>9,146,005</u>	<u>105,071,317</u>
<u>2016/17<sup>4</sup></u>	<u>9,915,127</u>	<u>119,732,023</u>
<del>2013/14</del>	<del>7,274,568</del>	<del>95,131,913</del>
<del>2014/15</del>	<del>8,149,326</del>	<del>96,610,380</del>
<del>2015/16</del>	<del>10,023,617</del>	<del>108,929,375</del>
<del>2016/17</del>	<del>10,163,776</del>	<del>110,218,785</del>

[\(1\) Includes the impact of the 2011/12 revenue cap adjustment.](#)

[\(2\) Includes the impact of the 2012/13 revenue cap adjustment.](#)

[\(3\) Includes the impact of the 2013/14 revenue cap adjustment.](#)

[\(4\) The difference between 2013–14 approved allowable and transitional revenues has been smoothed over 2014–15, 2015–16 and 2016–17.](#)

## **1312** Transitional provisions – Monthly System Forecasts for 2001 Undertaking Access Agreements

(a) This **clause 12** sets out Monthly System Forecasts for the Blackwater System, Goonyella System and Newlands System<sup>35</sup> that are to be used as the ‘System Forecasts’ of gtk for the purposes of:

- (i) Access Agreements; and
- (ii) New Access Agreements where the relevant Old Access Agreement was,

executed or renewed during the term of the 2001 Undertaking including in relation to the calculation of “VTP” and “IATP” for Take or Pay charges.

(b) For clarity:

- (i) the Monthly System Forecasts for a Coal System are based on the Gtk Forecast for the System Reference Tariff for that Coal System. Changes to the Gtk Forecast for a System Reference Tariff will affect the Monthly System Forecast for that Coal System; and
- (ii) any process, obligation or right to vary a Gtk Forecast for a System Reference Tariff for a Coal System under this Undertaking must also include any consequential variation to the Monthly System Forecast for that Coal System under this **clause 12**.

### **Blackwater System\***

<b>Month</b>	<b>System-Gtk (,000-gtk)</b>	<b>System Gtk (,000-gtk)</b>	<b>Month</b>	<b>System-Gtk (,000-gtk)</b>	<b>System Gtk (,000-gtk)</b>
Jul-13	3,112,962	3,150,284	Jul-15	2,832,742	2,867,222
Aug-13	3,146,802	3,184,530	Aug-15	2,863,535	3,015,372

<sup>35</sup> **Clause 11** does not apply in relation to the Moura System as there are no longer any Access Agreements, or New Access Agreements where the relevant Old Access Agreement was, executed or renewed during the term of the 2001 Undertaking.

<b>Month</b>	<b>System Gtk (,000 gtk)</b>	<b><u>System Gik (,000 gtk)</u></b>	<b>Month</b>	<b>System Gtk (,000 gtk)</b>	<b><u>System Gik (,000 gtk)</u></b>
Sep-13	2,930,064	<u>2,965,193</u>	Sep-15	2,666,308	<u>2,823,979</u>
Oct-13	3,085,338	<u>3,122,329</u>	Oct-15	2,807,604	<u>2,961,095</u>
Nov-13	2,861,571	<u>2,895,879</u>	Nov-15	2,603,980	<u>2,996,551</u>
Dec-13	2,771,957	<u>2,805,191</u>	Dec-15	2,522,433	<u>2,917,416</u>
Jan-14	2,772,845	<u>2,806,090</u>	Jan-16	2,523,241	<u>2,918,200</u>
Feb-14	2,502,148	<u>2,532,147</u>	Feb-16	2,276,911	<u>2,915,691</u>
Mar-14	2,894,172	<u>2,928,871</u>	Mar-16	2,633,647	<u>3,261,875</u>
Apr-14	2,968,857	<u>3,004,452</u>	Apr-16	2,701,608	<u>3,327,826</u>
May-14	3,134,609	<u>3,172,191</u>	May-16	2,852,440	<u>3,550,723</u>
Jun-14	3,271,773	<u>3,310,999</u>	Jun-16	2,977,257	<u>3,671,848</u>
Jul-14	2,867,062	<u>3,139,407</u>	Jul-16	2,902,325	<u>3,357,624</u>
Aug-14	2,898,228	<u>3,173,533</u>	Aug-16	2,933,874	<u>3,386,588</u>
Sep-14	2,698,611	<u>2,954,954</u>	Sep-16	2,731,803	<u>3,201,075</u>
Oct-14	2,841,620	<u>3,111,548</u>	Oct-16	2,876,570	<u>3,333,979</u>
Nov-14	2,635,528	<u>2,885,879</u>	Nov-16	2,667,944	<u>3,142,449</u>
Dec-14	2,552,994	<u>2,795,505</u>	Dec-16	2,584,394	<u>3,065,746</u>
Jan-15	2,553,811	<u>2,796,400</u>	Jan-17	2,585,221	<u>3,066,505</u>
Feb-15	2,304,497	<u>2,523,403</u>	Feb-17	2,332,841	<u>2,834,806</u>
Mar-15	2,665,554	<u>2,918,757</u>	Mar-17	2,698,339	<u>3,170,353</u>
Apr-15	2,734,339	<u>2,994,076</u>	Apr-17	2,767,970	<u>3,234,279</u>
May-15	2,886,999	<u>3,161,238</u>	May-17	2,922,507	<u>3,376,152</u>
Jun-15	3,013,328	<u>3,299,567</u>	Jun-17	3,050,390	<u>3,493,556</u>

\* The monthly 'System Forecasts' for the Blackwater System do not include volume forecasts for Train Services unloading at the Wiggins Island Coal Export Terminal.

**Goonyella System**

<b>Month</b>	<b>System Gtk (,000 gtk)</b>	<b><u>System Gtk (,000 gtk)</u></b>	<b>Month</b>	<b>System Gtk (,000 gtk)</b>	<b><u>System Gtk (,000 gtk)</u></b>
Jul-13	<del>3,217,718</del>	<u>3,314,808</u>	Jul- <del>14</del> <u>15</u>	<del>2,925,128</del>	<u>3,236,738</u>
Aug-13	<del>3,239,928</del>	<u>3,337,688</u>	Aug- <del>14</del> <u>15</u>	<del>2,945,318</del>	<u>3,259,079</u>
Sep-13	<del>3,252,214</del>	<u>3,350,345</u>	Sep- <del>14</del> <u>15</u>	<del>2,956,487</del>	<u>3,271,438</u>
Oct-13	<del>3,271,195</del>	<u>3,369,899</u>	Oct- <del>14</del> <u>15</u>	<del>2,973,742</del>	<u>3,290,531</u>
Nov-13	<del>3,099,465</del>	<u>3,192,987</u>	Nov- <del>14</del> <u>15</u>	<del>2,817,627</del>	<u>3,117,786</u>
Dec-13	<del>2,926,505</del>	<u>3,014,808</u>	Dec- <del>14</del> <u>15</u>	<del>2,660,395</del>	<u>2,943,804</u>
Jan-14	<del>2,913,005</del>	<u>3,000,901</u>	Jan- <del>15</del> <u>16</u>	<del>2,648,123</del>	<u>2,930,224</u>
Feb-14	<del>2,400,387</del>	<u>2,472,815</u>	Feb- <del>15</del> <u>16</u>	<del>2,182,117</del>	<u>2,414,575</u>
Mar-14	<del>2,639,552</del>	<u>2,719,197</u>	Mar- <del>15</del> <u>16</u>	<del>2,399,535</del>	<u>2,655,155</u>
Apr-14	<del>3,084,882</del>	<u>3,177,964</u>	Apr- <del>15</del> <u>16</u>	<del>2,804,371</del>	<u>3,103,117</u>
May-14	<del>3,253,813</del>	<u>3,351,992</u>	May- <del>15</del> <u>16</u>	<del>2,957,941</del>	<u>3,273,047</u>
Jun-14	<del>3,195,546</del>	<u>3,291,967</u>	Jun- <del>15</del> <u>16</u>	<del>2,904,971</del>	<u>3,214,434</u>
Jul-14	<del>3,037,777</del>	<u>3,457,656</u>	Jul-16	<del>3,108,627</del>	<u>3,315,122</u>
Aug-14	<del>3,058,744</del>	<u>3,481,521</u>	Aug-16	<del>3,130,083</del>	<u>3,338,004</u>
Sep-14	<del>3,070,344</del>	<u>3,494,724</u>	Sep-16	<del>3,141,953</del>	<u>3,350,662</u>
Oct-14	<del>3,088,264</del>	<u>3,515,121</u>	Oct-16	<del>3,160,291</del>	<u>3,370,218</u>
Nov-14	<del>2,926,136</del>	<u>3,330,584</u>	Nov-16	<del>2,994,383</del>	<u>3,193,290</u>
Dec-14	<del>2,762,849</del>	<u>3,144,728</u>	Dec-16	<del>2,827,287</del>	<u>3,015,094</u>
Jan-15	<del>2,750,104</del>	<u>3,130,221</u>	Jan-17	<del>2,814,245</del>	<u>3,001,186</u>
Feb-15	<del>2,266,152</del>	<u>2,579,378</u>	Feb-17	<del>2,319,006</del>	<u>2,473,050</u>
Mar-15	<del>2,491,943</del>	<u>2,836,377</u>	Mar-17	<del>2,550,063</del>	<u>2,719,455</u>
Apr-15	<del>2,912,370</del>	<u>3,314,915</u>	Apr-17	<del>2,980,295</del>	<u>3,178,266</u>
May-15	<del>3,071,853</del>	<u>3,496,442</u>	May-17	<del>3,143,498</del>	<u>3,352,310</u>
Jun-15	<del>3,016,844</del>	<u>3,433,830</u>	Jun-17	<del>3,087,206</del>	<u>3,292,278</u>

**Newlands System**

*[FIGURES OMITTED FROM PUBLIC VERSION DUE TO COMMERCIAL CONFIDENTIALITY]*

<b>Month</b>	<b>System Gtk (,000 gtk)</b>	<b>Month</b>	<b>System Gtk (,000 gtk)</b>
Jul-13	<a href="#">232,686</a>	Jul- <del>14</del> 15	<a href="#">225,534</a>
Aug-13	<a href="#">239,531</a>	Aug- <del>14</del> 15	<a href="#">232,169</a>
Sep-13	<a href="#">228,631</a>	Sep- <del>14</del> 15	<a href="#">221,603</a>
Oct-13	<a href="#">201,111</a>	Oct- <del>14</del> 15	<a href="#">194,930</a>
Nov-13	<a href="#">235,119</a>	Nov- <del>14</del> 15	<a href="#">227,893</a>
Dec-13	<a href="#">206,619</a>	Dec- <del>14</del> 15	<a href="#">200,269</a>
Jan-14	<a href="#">223,518</a>	Jan- <del>15</del> 16	<a href="#">216,648</a>
Feb-14	<a href="#">154,757</a>	Feb- <del>15</del> 16	<a href="#">150,001</a>
Mar-14	<a href="#">203,905</a>	Mar- <del>15</del> 16	<a href="#">197,638</a>
Apr-14	<a href="#">215,758</a>	Apr- <del>15</del> 16	<a href="#">209,126</a>
May-14	<a href="#">230,188</a>	May- <del>15</del> 16	<a href="#">223,112</a>
Jun-14	<a href="#">233,937</a>	Jun- <del>15</del> 16	<a href="#">226,747</a>
Jul-14	<a href="#">273,486</a>	Jul-16	<a href="#">211,951</a>
Aug-14	<a href="#">281,531</a>	Aug-16	<a href="#">218,187</a>
Sep-14	<a href="#">268,719</a>	Sep-16	<a href="#">208,257</a>
Oct-14	<a href="#">236,375</a>	Oct-16	<a href="#">183,190</a>
Nov-14	<a href="#">276,346</a>	Nov-16	<a href="#">214,168</a>
Dec-14	<a href="#">242,849</a>	Dec-16	<a href="#">188,207</a>
Jan-15	<a href="#">262,710</a>	Jan-17	<a href="#">203,600</a>
Feb-15	<a href="#">181,893</a>	Feb-17	<a href="#">140,967</a>
Mar-15	<a href="#">239,658</a>	Mar-17	<a href="#">185,735</a>
Apr-15	<a href="#">253,589</a>	Apr-17	<a href="#">196,532</a>
May-15	<a href="#">270,548</a>	May-17	<a href="#">209,675</a>

<b>Month</b>	<b>System GtK (,000 gtk)</b>	<b>Month</b>	<b>System GtK (,000 gtk)</b>
Jun-15	<a href="#"><u>274,956</u></a>	Jun-17	<a href="#"><u>213,091</u></a>



## Schedule G

### Network Management Principles

#### ~~14~~1 Train Service Entitlements

##### ~~14.1~~1.1 Train Service Entitlements:

- (a) for the same types of traffics, will be defined using consistent terminology;<sup>36</sup> and
- (b) will be expressed in terms that can be interpreted for the development of a Strategic Train Plan (**STP**), a Master Train Plan (**MTP**), an Intermediate Train Plan (**ITP**), where necessary, and a Daily Train Plan (**DTP**).

#### ~~15~~2 Strategic Train Plan principles

- (a) The purpose of the STP for each Coal System is to demonstrate that Aurizon Network has sufficient capacity to deliver existing Train Services Entitlements in:
  - (i) the relevant Coal System; and
  - (ii) the Customer Specific Branch Lines in each Coal System.
- (b) The STP must be developed for and be considered as part of the Baseline Capacity Assessment that Aurizon Network must undertake under **clause 7A.4.1** of this Undertaking.
- ~~(a)~~(c) Aurizon Network will make the STP available to:
  - (i) the QCA ~~within [three (3) Months] after the Approval Date for the first STP at the same time it makes the outcomes of the Baseline Capacity Assessment available to the QCA in accordance with **clause 7A.4.1** of this Undertaking;~~ and
  - (ii) in respect of each subsequent STP, in each June after the Approval Date to the QCA and to each Access Holder (or its Customer) and; each Access Seeker that requests the relevant STP ~~and the QCA in each June after the Approval Date.~~
- ~~(b)~~(d) Aurizon Network must provide each STP as a complete and transparent document:

<sup>36</sup> For example, Timetabled Traffics may be defined in terms of a path between certain locations, on particular days, and at particular times. Cyclic Traffics may be defined in terms of a number of train paths per specified period of time.

- (i) to the QCA on an unredacted basis; and
- (ii) to Access Holders and Access Seekers;
  - (A) to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the STP (and if those obligations permit disclosure if required by the Undertaking then for the avoidance of doubt Aurizon Network is required to disclose the information contained in the STP), on an unredacted basis; and
  - (B) if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
    - (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the STP on an unredacted basis;
    - (2) in respect of the information referred to in **paragraph (iA)** or for which consent is obtained under **paragraph (iiB)(1A)**, on an unredacted basis; and
    - (3) in respect of the information that does not satisfy **paragraph (Ai)** or for which consent is not obtained under **paragraph (Bii)(1A)**:
      - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed;
      - to the extent not possible, on a redacted basis.

~~(e)~~(e) Aurizon Network must not agree to any confidentiality obligations which prevent the disclosure of the information contained in the STP or that does not permit disclosure of information required by the Undertaking.

~~(e)~~(f) An STP must provide:

- (i) an estimate of the Existing Capacity that is anticipated by Aurizon Network:
  - (A) to be necessary to meet its obligations in relation to Train Service Entitlements for a subsequent period of at least one year (but not more than two years) commencing on 1 July; and

- (B) in each individual Coal System STP and in aggregate for all Coal System STPs on a Monthly and Yearly basis and in million tonnes per annum, indicating:
  - (4) the number of Train Service Entitlements that can be provided on a System by System and Customer Specific Branch Line basis;
  - (5) the number of Train Service Entitlements that cannot be provided on a System by System and Customer Specific Branch Line basis; and
  - (6) available Capacity by Train Paths for each Month and Year for each System and each Customer Specific Branch Line.
- (ii) validation of total contracted Train Service Entitlements on a System by System basis; and
- (iii) identification of Operational Constraints (including a quantification of, and any qualifications applicable to, such constraints).

~~(e)~~(g) Aurizon Network must prepare, on an annual basis:

- (i) a STP in relation to all Train Service Entitlements in all Coal Systems in aggregate; ~~and~~
- (ii) a separate STP for each Coal System; and
- (iii) if requested by the QCA (acting reasonably), a separate STP for groups of Coal Systems or a combination of individual and groups of Coal Systems.

~~(f)~~(h) In preparing a STP, Aurizon Network will consider:

- (i) only the Train Paths that are System Paths;
- (ii) the known and reasonably anticipated:
  - (A) track maintenance requirements; and
  - (B) impacts of the construction of Expansions, for the period of the STP;
- (iii) the relevant System Operating Parameters; and
- (iv) any other factors that may materially impact on the Existing Capacity necessary for Aurizon Network to meet its obligations in relation to Train Service Entitlements for the period of the STP.

~~(g)~~(i) The STP must specify the material assumptions that Aurizon Network has made during its preparation.

~~(h)~~(j) The QCA may require any STP (and relevant modelling methodology) to be:

- (i) reviewed by an independent expert (appointed by the QCA) and amended in accordance with any recommendation of the expert approved by the QCA; and
- (ii) audited in accordance with **clause 10.6.3**~~Error! Reference source not found.~~

## ~~16.3~~ Master Train Plan principles

### ~~16.13.1~~ Purpose and form of the MTP

- (a) The purpose of the MTP is to demonstrate how Aurizon Network plans to deliver Train Service Entitlements in each Coal System, having regard to Planned Possessions, Existing Capacity, the System Operating Parameters and other relevant characteristics of each Coal System.
- (b) The MTP ~~will~~ must be published in a tabular timetable form that is readily convertible to an ITP and DTP (with additional time/distance (location) formats if deemed necessary by Aurizon Network) and must specify the capability of Aurizon Network to deliver Train Service Entitlements in each Coal System for a period of at least one (1) Month up to three (3) Months given other activities on the relevant Rail Infrastructure.
- (c) In preparing the MTP, Aurizon Network must consider:
  - (i) any Planned Possessions, including:
    - ~~(i)~~(A) planned track maintenance requirements;
    - ~~(ii)~~(B) any planned system outages;
  - ~~(iii)~~(ii) the construction of any Expansions that may impact on the Existing Capacity;
  - ~~(iv)~~(iii) the System Operating Parameters for each Coal System; and
  - ~~(v)~~(iv) any other factors that may materially impact on the Existing Capacity necessary for Aurizon Network to meet its obligations in relation to Train Service Entitlements.
- (d) The MTP will separately identify where applicable:
  - (i) for Cyclic Traffics:
    - (A) the System Paths allocated to Cyclic Traffics ~~and the System Paths that remain available to Cyclic Traffic after the scheduling of each Access Holder's Train Service Entitlements;~~ and
    - (B) the Train Paths allocated to non-coal traffic;

- (ii) for Timetabled Traffics, the particular Train Paths allocated in accordance with the Train Service Entitlements;
  - (iii) each Access Holder's Train Service Entitlements for each Coal System;
  - (iv) contracted Cross System Train Service traffic;
  - (v) each Access Holder's Train Paths;
  - (vi) Cross System Train Service traffic paths;
  - (vii) time allocated for Planned Possessions; and
  - (viii) any other factors known to or anticipated by Aurizon Network that may materially impact on the Existing Capacity necessary for Aurizon Network to meet its obligations in relation to Train Service Entitlements.
- (e) The MTP must specify the material assumptions that Aurizon Network made during its preparation.
- (f) Aurizon Network must, on a Monthly basis, provide the MTP for each Coal System as a complete and transparent document:
- (i) if requested, to the QCA on an unredacted basis; and
  - (ii) on its Website;
    - (A) to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the MTP (and if those obligations permit disclosure if required by the Undertaking then for the avoidance of doubt Aurizon Network is required to disclose the information contained in the MTP), on an unredacted basis; and
    - (B) if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
      - (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the MTP on an unredacted basis;
      - (2) in respect of the information referred to in **paragraph (A*i*)** or for which consent is obtained under **paragraph (B*ii*)(1A)**, on an unredacted basis; and
      - (3) in respect of the information that does not satisfy **paragraph (A*i*)** or for which consent is not obtained under **paragraph (B*ii*)(1A)**:

- to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed;
  - to the extent not possible, on a redacted basis.
- (g) Aurizon Network must not agree to any confidentiality obligations which prevent the disclosure of the information contained in the MTP or that does not permit disclosure of information required by the Undertaking.

### **16.23.2 Modifying the MTP**

- (a) Unless otherwise expressly provided in an Access Holder's Access Agreement or a Train Operations Deed (as applicable), Aurizon Network may make modifications to the MTP on a case-by-case basis only where:
- (i) an Access Holder notifies Aurizon Network that it wishes to make a long-term Train Service Change, provided:
    - (A) that change:
      - (1) is within the scope of its Train Service Entitlement; and
      - (2) does not result in any other Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met; and
    - (B) the Access Holder has given Aurizon Network reasonable prior notice of that change having regard to the necessary process to be complied with, and factors to be considered, by Aurizon Network;
  - (ii) a Planned Possession is cancelled;
  - (iii) a new or additional Train Service Entitlement has been created, through the signing of an Access Agreement or the negotiation of a variation to an Access Agreement (including where that new or amended Access Agreement arises as a result of a Transfer), provided that the new or varied Train Service Entitlement does not result in any other Access Holder's Train Service/s or a Planned Possession, set out in the MTP, not being met;
  - (iv) an Access Holder's Access Agreement allows Aurizon Network to alter the Access Holder's Train Service

Entitlement – for example, by resuming Access Rights through a capacity resumption process; or

- (v) after consulting with any Access Holders ([or their Train Operators, if applicable](#)) whose Train Service/s or Train Service Entitlements are affected by the proposed modification to the MTP, and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession, where:
- (A) Aurizon Network notifies all affected Access Holders that it wishes to make a long-term Train Service Change, provided that change:
- (1) is within the scope of the relevant Access Holders' Train Service Entitlement/s; and
  - (2) is intended to accommodate:
    - the creation of a new or varied Train Service Entitlement, through the signing of an Access Agreement or the negotiation of a variation to an Access Agreement (including where that new or amended Access Agreement arises as a result of a Transfer), where that new or varied Train Service Entitlement cannot otherwise be reasonably accommodated on the MTP;
    - the creation of new Planned Possessions or the modification of existing Planned Possessions; or
    - any other Operational Constraint affecting the MTP; and
  - (3) where it results in any existing Access Holder's Train Service Entitlement not being met, is only made with the agreement of that existing Access Holder (such agreement not to be unreasonably withheld); or
- (B) Aurizon Network notifies all affected Access Holders, within the time period specified in the relevant System Rules, of a long-term Train Service Change for the purpose of carrying out Major Periodic Maintenance provided that, where that change is not within the scope of an Access

Holder's Train Service Entitlement, Aurizon Network has used reasonable endeavours to mitigate the impact on that Access Holder. Any limitations (if any) on Aurizon Network's ability to exercise this right will be specified in individual Access Agreements.

- (b) Aurizon Network may make modifications to the MTP where Aurizon Network and all affected Access Holders, agree in writing. Aurizon Network will invite all Access Holders (and their Train Operators, if applicable) whose Train Service Entitlements are affected by the proposed modification to the MTP to consider the modification in an appropriate forum (which may include a face to face meeting, a telephone conference or any other forum that provides the affected Access Holders with a reasonable opportunity to participate). Each affected Access Holder will be provided with a copy of the proposed changes five (5) Business Days prior to the scheduled consideration of the modification in the forum.
- (c) Aurizon Network must consult with any Infrastructure Service Providers, and any Railway Manager for Private Infrastructure that is directly connected to the Rail Infrastructure, ~~who Aurizon Network considers~~ may be affected by any modification to the MTP that is proposed to be agreed under **clause 3.2(a)(v)** or **3.2(b)** and must take into account comments it receives in preparing the MTP.
- (d) Aurizon Network must notify any person who is a Railway Manager for Private Infrastructure that is directly connected to the Rail Infrastructure who (in that capacity as a Railway Manager) may be affected by any modification to the MTP that is made under this **clause 3.2** within five (5) Business Days of becoming aware that that person may be affected by a modification to the MTP.
- (e) Notwithstanding:
  - (i) any aspect of this **clause 3.2**, Aurizon Network must not make unilateral amendments to the MTP if there is any possibility that those amendments will materially disadvantage any Access Holder (or its Customer); and
  - (ii) any other provision of this **Schedule G**, the Undertaking or an Access Agreement, any affected Access Holder (or its Customer) may refer a change or amendment to the MTP to the QCA for determination in accordance with **clause 11.1.5**.

## 174 Intermediate Train Plan principles

- (a) An ITP is an intermediate scheduling step in progressing from the MTP to the DTP. Aurizon Network will consider Planned Possessions, the Train Paths and the System Paths detailed in the



MTP, Train Service Entitlements and Train Orders when developing an ITP for the Relevant Period.

- (b) The scheduling horizon of an ITP will be consistent with the period specified in the relevant System Rules for an ITP.
- (c) Train Orders for an ITP must, unless otherwise advised by Aurizon Network, be submitted to Aurizon Network:
  - (i) in the manner and timeframe specified within the relevant System Rules; or
  - (ii) if there are no relevant System Rules, before 1200 hours on the Wednesday immediately prior to the period for which an ITP is to be prepared.
- (d) Aurizon Network will plan Cyclic Traffics in the ITP in accordance with the relevant System Rules. If the process of planning Cyclic Traffics in the ITP involves the allocation of a Contested Train Path between Access Holders for Cyclic Traffic, Aurizon Network:
  - (i) may require a meeting of all affected Access Holders; and
  - (ii) will use the decision making process in **clause 8** to allocate the Contested Train Path.
- (e) The ITP must identify all allocated Train Paths, all Train Paths allocated to maintenance and all available System Paths.
- (f) Once it is finalised but in any event by ~~Thursday~~ 1600 hours on the Thursday immediately prior to the commencement of the period for the next ITP (unless otherwise stated in the System Rules), Aurizon Network must provide the ITP as a complete and transparent document to:
  - (i) all Access Holders; and
  - (ii) each Customer,on the following basis:
  - (iii) to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the ITP (and if those obligations permit disclosure if required by the Undertaking then for the avoidance of doubt Aurizon Network is required to disclose the information contained in the ITP), on an unredacted basis; and
  - (iv) if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
    - (A) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the ITP on an unredacted basis;

- (B) in respect of the information referred to in **paragraph (iii)** or for which consent is obtained under **paragraph (iv)(A)**, on an unredacted basis; and
- (C) in respect of the information that does not satisfy **paragraph (ii)** or for which consent is not obtained under **paragraph (iv)(A)**:
  - (1) to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed;
  - (2) to the extent not possible, on a redacted basis.
- (g) Aurizon Network must not agree to any confidentiality obligations which prevent the disclosure of the information contained in the ITP or that does not permit disclosure of information required by the Undertaking.
- (h) Aurizon Network will notify relevant Infrastructure Service Providers and the operator of any relevant unloading facilities of the ITP in accordance with any process in the relevant System Rules for such notification.

## **18.5** Daily Train Plan principles

### **18.15.1** Purpose and form of a DTP

A DTP indicates all scheduled Train Services and Planned Possessions, [Urgent Possessions and Emergency Possessions \(to the extent known\)](#) for a particular day, in a form that indicates the time/distance (location) relationship of all activities on that part of the Rail Infrastructure to which the DTP relates.

### **18.25.2** Scheduling and notification of a DTP

Aurizon Network:

- (a) will schedule a DTP at least 24 hours (or such other time required under the relevant System Rules) prior to the day [\(commencing at 0000 hours and ending at 2359 hours\)](#) to which the DTP relates (**Day of Operation**);
- (b) provide all Access Holders and Infrastructure Service Providers with a copy of the DTP (specifying all Train Services for all Train Operators) by 1400 hours on the day prior to the Day of Operation; and
- (c) provide each DTP as a complete and transparent document:
  - (i) to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the DTP (and if those obligations permit disclosure if required by the

Undertaking then for the avoidance of doubt Aurizon Network is required to disclose the information contained in the DTP), on an unredacted basis; and

- (ii) if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
  - (A) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the DTP on an unredacted basis;
  - (B) in respect of the information referred to in **paragraph (c)(i)** or for which consent is obtained under **paragraph (c)(ii)(A)**, on an unredacted basis; and
  - (C) in respect of the information that does not satisfy **paragraph (c)(i)** or for which consent is not obtained under **paragraph (c)(ii)(A)**:
    - (1) to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed;
    - (2) to the extent not possible, on a redacted basis;
- (d) must not agree to any confidentiality obligations which prevent the disclosure of the information contained in the DTP or that does not permit disclosure of information required by the Undertaking.

### **18.35.3 Application of a DTP to performance targets**

The DTP will represent the expected train operation performance target over its period and will be used as base information for performance monitoring, including for the purposes of the quarterly reports under **clause 10.3.410.1.5** of this Undertaking (for example, in applying the Allotted Time Threshold).

### **18.45.4 Scheduling a DTP in variation to the ITP**

- (a) A DTP may be scheduled in variation to the ITP in accordance with the timeframes specified in the System Rules.
- (b) A request or notice by an Access Holder to Aurizon Network in relation to scheduling the DTP in variation to the ITP must be in the form and provided in accordance with Aurizon Network's reasonable requirements from time to time. For clarity, Aurizon Network will notify ~~of~~ Access Holders of ~~these~~ its requirements ~~in advance from time to time~~
  - (i) as at the Approval Date, within two (2) Business Days after the Approval Date; and

~~(b)~~(ii) after the Approval Date, from time to time in advance (provided the notice provides reasonable time for the Access Holder to comply).

- (c) The DTP must be scheduled in variation to the ITP where at least 48 hours (or such other time required under the relevant System Rules) prior to the Day of Operation:
- (i) an Access Holder notifies Aurizon Network that it wishes to make a short-term Train Service Change at which its Train Services, as scheduled in the ITP, operate, whether or not within the scope of its Train Service Entitlement, provided that change does not result in any other Access Holder's scheduled Train Services, or a Planned Possession, not being met;
  - (ii) Aurizon Network receives a request from an Access Holder to run an additional Train Service which is within the scope of their Train Service Entitlement or an Ad Hoc Train Service, provided that the additional Train Service or Ad Hoc Train Service, as applicable, would not result in any Access Holder's scheduled Train Services, or a Planned Possession, not being met;
  - (iii) a Planned Possession is cancelled;
  - (iv) Aurizon Network notifies all affected Access Holders that it wishes to make a short-term Train Service Change at which any scheduled Train Service/s operate, provided that:
    - (A) the change is intended to accommodate:
      - (1) the modification of an existing Planned Possession;
      - (2) the creation of an Urgent Possession; or
      - (3) any other Operational Constraint affecting the DTP; and
    - (B) either:
      - (1) the change is within the scope of the relevant Access Holders' Train Service Entitlements; or
      - (2) where the change results in an Access Holder's Train Service Entitlement not being met, that Access Holder has consented to the change (which consent must not to be unreasonably withheld or delayed);
  - (v) Aurizon Network requests a short-term Train Service Change at which any scheduled Train Services operate,

whether or not within the scope of the applicable Access Holders' Train Service Entitlements, for the purpose of accommodating an Emergency Possession; or

- (vi) Aurizon Network and all affected Access Holders agree.
- (d) Aurizon Network may schedule the DTP in variation to the ITP:
  - (i) under any of **clauses 5.4(c)(i) to (iii)**, without the need for consultation;
  - (ii) under **clauses 5.4(c)(iv) or (v)**, after consulting with any affected Access Holders; or
  - (iii) under **clause 5.4(c)(vi)**, after:
    - (A) inviting relevant affected Access Holders to consider the modification in an appropriate forum (which may include a face to face meeting, a telephone conference or any other forum that provides the affected Access Holders with a reasonable opportunity to participate), that occurs prior to the Day of Operation; and
    - (B) providing those affected Access Holders with a copy of the proposed modification as soon as practicable prior to the forum.
- (e) Where the DTP is scheduled in variation from the ITP under this **clause 5.35.4**, Aurizon Network will notify any Railway Manager for Private Infrastructure that is directly connected to the Rail Infrastructure and who may be affected by those variations. The notification will be given to the Railway Manager in that person's capacity as a Railway Manager.

#### **18.55.5 Variations to a DTP after it is scheduled**

- (a) Variations to the DTP, either prior to or during the Day of Operation, may occur: ~~in accordance with the relevant System Rules, or alternatively, as agreed between Aurizon Network and the affected Access Holders.~~
  - (i) without consultation with Access Holders, if the variation does not result in:
    - (A) those Access Holders' scheduled Train Services not being provided; or
    - (B) any Possession not being met; and
  - ~~(a)(ii)~~ if clause 5.5(a)(i)(A) does not apply, as agreed between Aurizon Network and the affected Access Holders.
- (b) Once the DTP is scheduled, variations to the DTP may only be made where:

- (i) in the case of an Access Holder requesting or notifying Aurizon Network seeking a variation to the DTP, the request or notice is in the form and provided in accordance with Aurizon Network's reasonable requirements from time to time (which requirements Aurizon Network will notify ~~of~~ Access Holders in advance ~~from time to time~~); and
- (ii) any one or more of the following apply:
  - (A) each of the following is satisfied:
    - (1) before the Day of Operation, Aurizon Network receives a request from an Access Holder to run an additional Train Service which is within the scope of their Train Service Entitlement or an Ad Hoc Train Service; and
    - (2) the additional Train Service or Ad Hoc Train Service, as applicable, would not result in any existing Access Holder's scheduled Train Services not being met, or a Possession (whether a Planned Possession, Emergency Possession or Urgent Possession) not being met;
  - (B) each of the following is satisfied:
    - (1) before the relevant Train Service commences, an Access Holder notifies Aurizon Network that it wishes to make a change to the times at which its Train Service operates;
    - (2) that change is within the scope of the Access Holder's Train Service Entitlement; and
    - (3) that change does not result in any other Access Holder's scheduled Train Service not being met or a Possession (whether a Planned Possession, Emergency Possession or Urgent Possession) not being met; or
  - (C) before the relevant Train Service commences, Aurizon Network notifies the Access Holder that an Emergency Possession is required.
- (c) Other than as detailed in this **clause 5.5**, once the DTP is scheduled, any changes to the plan will be reflected as deviations from the DTP, not variations to the scheduled DTP. Deviations to the DTP may occur on the Day of Operation under **clause 7** including in the event of

Out-Of-Course Running. Those deviations will occur according to the Network Control principles in **clause 7**.

- (d) For clarity, if:
  - (i) a variation is requested or notified to Aurizon Network under **clause 5.5(b)(ii)(A) or (B)** and Aurizon Network (acting reasonably) refuses to make that variation; and
  - (ii) despite that refusal the relevant Access Holder seeks to operate the Train Service in accordance that proposed variation,

then any such operation of the Train Service will be treated as a deviation from the DTP caused by the relevant Access Holder.

- (e) Where a variation to the DTP occurs under this **clause 5.5**, Aurizon Network will notify any Railway Manager [and Infrastructure Service Providers](#) for Private Infrastructure that is directly connected to the Rail Infrastructure who may be affected by those variations.

## **196** Effect of cancellations on other Access Agreement obligations

The cancellation of a Train Service or Train Services in accordance with the Network Management Principles does not necessarily excuse either Aurizon Network or an Access Holder from other Access Agreement obligations relating to the conduct in question.

## **207** Network Control principles

### **20.17.1** Objective of Network Control

A fundamental objective of Network Control is to facilitate the safe running of Train Services, and the commencement and completion of Planned Possessions, Emergency Possessions and Urgent Possessions, as scheduled in the DTP.

### **20.27.2** Effect of deviations from DTP on Day of Operation

The ability of Aurizon Network or an Access Holder to deviate from the DTP on the Day of Operation, as specified below, does not necessarily excuse either Aurizon Network or the Access Holder from any other Access Agreement obligations relating [to](#) that deviation.

### **20.37.3** General principles

- (a) The following general principles apply to Train Operators, Network Controllers and Aurizon Network (as applicable):
  - (i) the Train Operators and Network Controllers will ensure that operational safety is maintained through compliance with the Safeworking Procedures, the Safety Standards, Rollingstock

- Interface Standards ~~(subject to any Approved Derogation)~~ and applicable IRMPs ~~and, where applicable, EIRMPs;~~
- (ii) Train Operators will ensure that Above Rail issues, including Train crewing, locomotive and wagon availability and loading and unloading requirements, are appropriately managed to ensure that such issues do not prevent the DTP from being met;
  - (iii) Aurizon Network will manage the Rail Infrastructure based on agreed entry/exit times as specified in the DTP with the objective of managing Trains according to their schedule for on time exit, not contributing to late running and, if a Train is running late, making up time and holding the gain where reasonably possible;
  - (iv) train control and traffic management processes must consider the System Rules and Train Service Entitlements of Access Holders, with the objective of an equitable outcome maximising the ability of each Coal System to meet contractual entitlements;
  - (v) decisions involving reordering the sequence of a train's arrival at an unloader must be referred to the unloading terminal ~~for~~ to assist with the determination of priority; and
  - (vi) at all times, the exercise of Train Network Controller discretion must be transparent and equitable.
- (b) The handling of Out-Of-Course Running is dependent on the particular circumstances of a rail corridor, including the traffic type using the corridor. The management of Out-Of-Course Running will be conducted so as not to unfairly disadvantage one Access Holder over another, and as a result, the identity of an Access Holder will not of itself be a legitimate basis for Network Controllers to alter a scheduled Train Service.

#### **20.47.4 Application of traffic management decision making matrix**

- (a) The traffic management decision making matrix in **clause 9** will be provided to assist Network Controllers in the resolution of disputes in accordance with the general Network Control principles under **clause 7.3**.
- (b) Subject to **clause 7.4(c)**, where the operation of a Train Service differs from the DTP, Network Controllers will apply the traffic management decision making matrix in **clause 9** for the purposes of Network Control.
- (c) Aurizon Network may depart from the traffic management decision making matrix in **clause 9** in the period following a Network Incident, or a Force Majeure Event which materially affects Aurizon Network's ability to achieve the DTP, for any of the following purposes:



- (i) ensuring Aurizon Network complies with its duties and obligations under any Law relating to safety or health including the Rail Safety Act;
- (ii) maximising the throughput of Trains on the Rail Infrastructure; and
- (iii) restoring normal operations on the Rail Infrastructure, provided that Aurizon Network:
  - (iv) only departs from the traffic management decision making matrix in **clause 9** where:
    - (A) it has no other options available to restore the Rail Infrastructure to normal operations; or
    - (B) the departure is required for safety reasons, ~~and the period of departure will not exceed [twenty-four (24) hours];~~ and Aurizon Network uses all reasonable endeavours to minimise the length of its departure from the traffic management decision making matrix in **clause 9**, acting reasonably and having due regard to the traffic management decision making matrix in **clause 9**;
  - (v) complies with this **clause 7**; and
  - (vi) uses reasonable endeavours to return to normal Network Control procedures for resolving conflicts that arise from Out-Of-Course Running as soon as reasonably practicable after the occurrence of the Network Incident or Force Majeure Event (as applicable).
- (d) Where **clause 7.4(c)** applies, Aurizon Network will keep affected Access Holders reasonably informed of the status of the Network Incident or Force Majeure Event (as applicable) including progress towards returning to normal Network Control procedures for resolving conflicts that arise from Out-Of-Course Running.

#### **20.57.5 Provision of information to Access Holders**

Aurizon Network will provide Access Holders with:

- (a) real time Network Control information that indicates actual running of that Access Holder's Train Services against the relevant DTP;
- (b) upon request and subject to reasonable terms and conditions, access to Network Control diagrams that indicate actual running of that Access Holder's Train Services against the relevant DTP; and
- (c) information about the type of Train Services (for example, non-coal freight, passenger or coal Train Services) operated by other Access Holders on the same network to assist Access Holders to determine whether the Network Controller is applying the principles in this **Schedule G** in a consistent manner between Access Holders.

## **20-67.6 Monthly Train Service Entitlement notice**

After the end of each Month, Aurizon Network must:

- (a) provide a notice to each Access Holder and ~~each End User which its Customer or Train Operator, as applicable, which~~ identifies for each origin to destination pair:
  - (i) the number of Train Paths that the Access Holder was entitled to under the Access Holder's Train Service Entitlement;
  - ~~(ii)~~ the number of Train Paths:
    - (A) planned in the MTP, the ITP and the DTP; and
    - (B) cancelled in the ITP and the DTP,
  - ~~(iii)~~ in relation to that Train Service Entitlement;
  - (iii) the number of Train Paths in respect of which Train Services were operated for the Access Holder under the relevant Train Service Entitlement;
  - (iv) the number of Train Paths cancelled in that Month and the reasons for those cancellations;
  - (v) the extent to which the Access Holder's Train Service Entitlement was used; and
  - (vi) the Year-to-date Train Service Entitlement position ~~and a projection to Year-end~~, both for the Access Holder and for each Coal System,for that Month; and
- (b) publish on its Website the aggregated Train Service Entitlement reconciliation reports for each Coal System.

## **21.8 Contested Train Path decision making process**

### **21.18.1 Purpose**

The purpose of this **clause 8** is to outline the principles that Aurizon Network will have regard to when allocating a Contested Train Path to an Access Holder for the purpose of developing the ITP (under **clause 4**) with the objective of (in the following order of precedence):

- (a) ensuring Aurizon Network meets its contractual obligations with Access Holders; then
- (b) ensuring Access Holders are not unfairly differentiated between in respect of the use of their Train Service Entitlement; then
- (c) maximising the throughput of Trains on the Rail Infrastructure subject to:
  - (i) Operational Constraints; and

- (ii) other restrictions or constraints affecting the whole, or partial unavailability of, the Supply Chain.

## **21.28.2 TSE Reconciliation Report**

- (a) For the purpose of the planning and scheduling of Train Orders<sup>37</sup>, after the end of each Relevant Period, Aurizon Network will provide a report (**TSE Reconciliation Report**) to each Access Holder and their Customers which identifies as at the end of that Relevant Period, in respect of that Access Holder's Train Service Entitlement under which Train Services were entitled to operate during that Relevant Period:
  - (i) the extent to which the Train Service Entitlement:
    - (A) was used in the Relevant Period;
    - (B) has been used in the relevant Access Provision Period to date; and
    - (C) has been used in the relevant Year to date, for each origin to destination pair of the Train Service Entitlement; and
  - (ii) the remaining balance of the Train Service Entitlement for:
    - (A) the relevant Access Provision Period; and
    - (B) the relevant Year, for each origin to destination pair of the Train Service Entitlement.
- (b) For the purpose of **clause 8.2(a)(i)**, the extent to which a Train Service Entitlement was or has been used in respect of a particular origin to destination pair will be calculated as the greater of:
  - (i) the number of the Train Services operated in accordance with the Train Service Entitlement for that origin to destination pair for the Relevant Period; and
  - (ii) the number of **Train-System** Paths scheduled for Train Services in accordance with Train Service Entitlement for that origin to destination pair for the Relevant Period.
- (c) The principles used to determine the number of **Train-System** Paths scheduled or operated for the purpose of **clause 8.2(b)** include the following:
  - (i) ~~The~~ **the** point at which a schedule for Train Services is considered final will be:
    - (A) as specified in the System Rules; or

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<sup>37</sup> For clarity, the TSE Reconciliation Report and the calculations made for the purposes of that report do not affect or apply in relation to the calculation of Take or Pay.

- (B) if the System Rules do not specify that point or there are no applicable System Rules, ~~Train~~ System Paths are taken to be scheduled 48 hours prior to the Day of Operation subject to **clause 8.2(c)(i)**~~8.2(e)(iii); and~~.
- (ii) ~~The~~ the number of ~~Train-System~~ Paths scheduled will be reduced by the number of scheduled ~~Train-System~~ Paths not provided due to Aurizon Network Cause or a Force Majeure Event affecting Aurizon Network in the period to which the schedule applies as per **clause 8.2(c)(i)**.
- ~~(iii) If:~~
- ~~(A) an Access Holder submits Train Orders for less than its Train Service Entitlement for a particular origin to destination pair as set out in the MTP for a Relevant Period (First Entitlement); and~~
- ~~(B) that Access Holder also submits Train Orders for a different Train Service Entitlement for a particular origin to destination pair for a Relevant Period in excess of its Train Service Entitlement for that origin destination pair as set out in the MTP (Additional Path based on Pooled Entitlement);~~
- ~~and the path is allocated to the Additional Path based on Pooled Entitlement, that path will be deemed to be scheduled and operated against the First Entitlement.~~
- ~~(iv)(iii)~~ (iii) Where the scheduled time of the Train Path is varied in accordance with **clause 5**, that variation is not taken to involve the scheduling of more than one Train Path unless, for clarity, that variation is a cancellation of the Train Path in which case (subject to **clause 8.2(c)(ii)**) the Train Service Entitlement is taken to be operated in respect of that cancelled Train Path.
- ~~(v)(iv)~~ (iv) To the extent an Access Agreement requires Aurizon Network to provide to an Access Holder a reasonable alternative Train Path or to determine whether infrastructure has not been made available due to Aurizon Network Cause or a Force Majeure Event affecting Aurizon Network, a Train Path will be deemed to be a reasonable alternative Train Path where it is within the same period to which the schedule applies and it is practical for the Access Holder to use it (acting reasonably).
- (d) The remaining balance of a Train Service Entitlement, as amended from time to time, for a particular origin to destination pair for an Access Provision Period under **clause 8.2(a)(ii)(A)** is calculated as:

- (i) the number of ~~Train-System~~ Paths ~~for that origin to destination pair~~ for that Access Provision Period that Aurizon Network is obliged to make available during that Access Provision Period in accordance with the Train Service Entitlement (including as amended from time to time) as set out in the MTP; less
  - (ii) the Train Service Entitlement ~~for a particular origin to destination pair~~ used in the Access Provision Period to date (determined in accordance with **clause 8.2(a)(i)(B)**).
- (e) The remaining balance of a Train Service Entitlement, as amended from time to time, for a particular origin to destination pair for the relevant Year under **clause 8.2(a)(ii)(B)** is calculated as:
- (i) the number of ~~Train-System~~ Paths for that origin to destination pair for that Year that Aurizon Network is obliged to make available during that Year in accordance with the Train Service Entitlement (including as amended from time to time) as set out in the MTP; less
  - (ii) the Train Service Entitlement for a particular origin to destination pair used in the Year to date (determined in accordance with **clause 8.2(a)(i)(C)**).

### **21.38.3 Contested Train Path principles**

- (a) Aurizon Network will determine which Access Holder is allocated a Train Path that is a Contested Train Path, using the following principles in order of precedence:
  - (i) Firstly, the Access Holder whose request for the Contested Train Path is within the scope of its individual Train Service Entitlement for an origin to destination pair as set out in the MTP.
  - (ii) If a Contested Train Path is not allocated in accordance with **clause 8.3(a)(i)**, where the relevant Access Holders agree amongst themselves who should be allocated the Contested Train Path, the Contested Train Path will be allocated as agreed by the Access Holders.
  - ~~(iii) If there is no agreement between the relevant Access Holders under **clause 8.3(a)(ii)** and a Supply Chain Group has been established to manage or oversee Supply Chain logistics for multiple Access Holders, in accordance with the direction of that body.~~
  - ~~(iv)~~ (iii) If there is no relevant Supply Chain Group or it does not provide a direction in respect of the allocation of the Contested Train Path, the Access Holder whose request for the Contested Train Path is within the scope of its relevant Train Service Entitlement adjusted for Aurizon Network

Cause or a Force Majeure Event affecting Aurizon Network as follows:

- (A) the Train Paths finally scheduled, in accordance with **clause 8.2(c)(i)**, for which Train Services did not operate due to Aurizon Network Cause or a Force Majeure Event affecting Aurizon Network Year to date; less
- (B) the greater of:
  - (1) zero; and
  - (2) the relevant Train Service Entitlement used for Year to date less Train Service Entitlement set out in the MTP Year to date.

~~(iv)~~ (iv) If a Contested Train Path remains unallocated after the application of **clause 8.3(a)(iii)**~~8.3(a)(iv)~~, the Access Holder who is most behind for the relevant Access Provision Period, by calculating as a percentage the Train Service Entitlement for the relevant origin to destination pair used in the Access Provision Period to date as per **clause 8.2(a)(i)(B)** plus the remaining balance of the Train Service Entitlement for that origin to destination pair for the Access Provision Period as set out in the MTP compared against the Train Service Entitlement for that origin to destination pair for that Access Provision Period as set out in the MTP at the commencement of the Access Provision Period or as amended from time to time.

(v) If a Contested Train Path remains unallocated after the application of **clause 8.3(a)(iv)**~~8.3(a)(v)~~, the Access Holder who is most behind for the relevant Year, by calculating as a percentage the Train Service Entitlement for the relevant origin to destination pair used in the Year to date as per **clause 8.2(a)(i)(C)** plus the remaining balance of the Train Service Entitlement for that origin to destination pair for the Year as set out in the MTP compared against the Train Service Entitlement for that origin to destination pair for that Year as set out in the MTP at the commencement of the Year or as amended from time to time.

(vi) If a Contested Train Path remains unallocated after the application of **clause 8.3(a)(v)** and a Supply Chain Group has been established to manage or oversee Supply Chain logistics for multiple Access Holders, in accordance with the direction of that body.

(vii) If a Contested Train Path remains unallocated after the application of **clause 8.3(a)(vi)**~~(v)~~, Aurizon Network may

unilaterally determine which Train Service is scheduled, and will keep a record of that decision and the reasoning behind that decision. Aurizon Network will seek to ensure that, over time, no Access Holder is favoured over another and, where possible, if one Access Holder is favoured this time, taking into account the Train Service Entitlement held by an Access Holder, next time they are not favoured. In other words, if one Access Holder has an entitlement to [ten \(10\)](#) Train Services per week, and another Access Holder has an entitlement to [twenty \(20\)](#) Train Services per week, then it could not be said that favouritism was shown to the second Access Holder if they received priority over the first Access Holder on two out of three consecutive occasions.

- (viii) Aurizon Network will advise each Access Holder (and their Customers) of the Contested Train Path decision, including details of the contest and the principle that determined the result.

## 229 Traffic management decision making matrix

For the purposes of the traffic management decision making matrix below the meaning of **On Time**, **Ahead** and **Late** are determined by the scheduling of Train Paths in the DTP. For example, if a Train is travelling in accordance with the DTP path allocated to it, it is running **On Time**.

		Train A – Current Status			
		Train A	Train Running “On Time”	Train Running “Ahead”	Train Running “Late”
Train B – Current Status	Train B	Objective	On Time Exit	On Time Exit	<ol style="list-style-type: none"> <li>1. Lose no more time</li> <li>2. Make up time</li> <li>3. Hold the gain</li> </ol>
	Train Running “On Time”	On Time Exit	Scheduled Cross	B Rule 2	B Rule 3
	Train Running “Ahead”	On Time Exit	A Rule 2	A or B Rule 2	B Rule 3
	Train Running “Late”	<ol style="list-style-type: none"> <li>1. Lose no more time</li> <li>2. Make up time</li> <li>3. Hold the gain</li> </ol>	A Rule 1	A Rule 1	A or B Rule 4

- Rule 1:** Train B may be given priority on condition Train A will still meet its “On Time” objective, or as permitted by rules 5, 6, 7 and 8.
- Rule 2:** Both Trains must meet their “On Time” objective.
- Rule 3:** Train A may be given priority on condition Train B will still meet its “On Time” objective, or as permitted by rules 5, 6, 7 and 8.
- Rule 4:** Priority may be given to the Train where performance indicates it will lose least or no more time and even make up time and hold the gain, or as permitted by rules 5, 6, 7 and 8.
- Rule 5:** Passenger and livestock Trains may be given priority over other Trains if the Network Controller reasonably believes that this is consistent with the objectives of the Trains in question, as specified in the Train Service



Entitlement/s for those Trains and/or the requirements of a Passenger Priority Obligation.

- Rule 6:** Where a Train is running “Late” due to a Below Rail Delay, it may be given preference over other Trains if the Network Controller reasonably believes that this is consistent with the critical objectives of the Trains in question, and that it will result in less aggregated consequential delays to other Trains than otherwise would be the case.
- Rule 7:** Where a Network Controller has to decide which of two Trains to give priority to, and both of those Trains are operated by the same Access Holder, the Network Controller may ask the Access Holder how it would prefer the Trains to be directed and, provided that taking the Access Holder’s preferred course of action does not adversely affect the Train Services of any other Access Holder, the Network Controller will follow the Access Holder’s request.
- Rule 8:** Where a Network Controller has to decide which of two Trains to give priority to, and those Trains are operated by different Access Holders, one may be given preference over the other if the Network Controller reasonably believes that this is consistent with meeting the coal supply objective(s) detailed in the System Rules.

## ~~Schedule G~~ Schedule H

### Explanatory diagrams and flowcharts

The diagrams and flowcharts in this **Schedule H**:

- (a) are intended to assist users of this Undertaking to conceptualise specific processes set out in **Part 1** to **Part 12** (inclusive) of this Undertaking; and
- (b) must not be used in substitution for the relevant provisions set out in **Part 1** to **Part 12** (inclusive) of this Undertaking.

#### **Negotiation process**

[Drafting Note: Diagram that clearly and accurately reflects the **Part 4** processes (and showing relevant linkages to other parts of the Undertaking) to be included.]

#### **Capacity ~~Allocation~~ allocation – no Extension**

[Drafting Note: Diagram that clearly and accurately reflects the **Part 4** processes (and showing relevant linkages to other parts of the Undertaking) to be included.]

~~Schedule H~~ Schedule I

Confidentiality Agreement

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[Insert Name of Discloser]

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Aurizon Network Pty Ltd

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# Confidentiality Agreement

# Contents

1	Definitions	446
2	Consideration	447
2.1	Consideration	447
2.2	No offer or acceptance for Transaction	447
3	Confidentiality	447
4	Exceptions	448
5	Counterparty's obligations	450
6	Aurizon Network obligations	450
7	Benefit of agreement	451
7.1	Benefit of third party	451
7.2	Benefit of agreement	451
8	Breach of agreement	451
9	Termination	452
10	Notices	453
10.1	Form of Notice	453
10.2	Method of giving Notices	453
10.3	Particulars for giving of Notices	453
10.4	Notice by post	453
10.5	Notice by fax	453
10.6	Notice by email	453
10.7	After hours Notice	454
11	General	454
11.1	No licence	454
11.2	Variation	454
11.3	No assignment	454
11.4	Costs	454
11.5	Counterparts	454
11.6	Effect of execution	454
11.7	Construction	454
12	Governing law and jurisdiction	455
	Schedule 1 Reference Schedule	456

## Date

## Parties

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

The person specified in **item 1** of **schedule 1 (Counterparty)**

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## Background

- A The parties have agreed to enter into this agreement to facilitate the exchange of information between Aurizon Network and the Counterparty.
- B This agreement provides for the disclosure of Confidential Information between the Counterparty and Aurizon Network.
- 

## Agreed terms

### 1 Definitions

- (a) In this agreement the following terms have the following meanings:
- |                     |  |
|---------------------|--|
| <b>Business Day</b> | A day which is not a Saturday, Sunday or bank or public holiday in Brisbane.   |
| <b>Purpose</b>      | The purpose for which the Confidential Information is to be used set out in <b>item 2</b> of <b>schedule 1</b> .   |
| <b>Transaction</b>  | The transaction for which the owner of the Confidential Information agrees to permit the Recipient with access to the Confidential Information, as set out in <b>item 3</b> of <b>schedule 1</b> .   |
| <b>Undertaking</b>  | The current access undertaking submitted by Aurizon Network to the Queensland Competition Authority and approved by the Queensland Competition Authority under the <i>Queensland Competition Authority Act 1997</i> (Qld) as at the date of this agreement and as amended or replaced from time to time. |
- (b) Unless the context otherwise requires, terms defined in the Undertaking have the same meanings in this agreement.

## 2 Consideration

### 2.1 Consideration

- (a) Each party enters into this agreement for valuable consideration from the other party and receipt of the consideration is acknowledged by each party.
- (b) Without limitation to **clause 2.1(a)**, each party agrees to pay to the other party \$1.00 on demand in consideration of that other party entering into this agreement.

### 2.2 No offer or acceptance for Transaction

This agreement and the disclosure of Confidential Information to the Recipient [under this agreement](#) is not an offer or acceptance of an offer to enter into the Transaction. Nothing in this agreement obliges any party to enter into the Transaction.

## 3 Confidentiality

Each party:

- (a) undertakes to keep confidential and not disclose any Confidential Information of the other party or permit any person employed or engaged by it to disclose any such Confidential Information to any person (including other individuals employed or engaged by that party) except in accordance with this agreement or the Undertaking;  
~~and~~
- (b) undertakes to use the Confidential Information of the other party only for the Purpose;
- (c) must secure and protect the Confidential Information of the other party from unauthorised disclosure, access or use;
- (d) is responsible for any use or disclosure of Confidential Information of the other party which is contrary to the provisions of this agreement by persons to whom the Recipient discloses the Confidential Information;
- (e) must take all steps as may be necessary to prevent any improper use or disclosure (including enforcing any confidentiality deed or confidentiality provisions contained in another arrangement under which the Recipient disclosed that Confidential Information) of Confidential Information of the other party; and
- (f) must not copy or reduce into tangible, visible or recorded form or allow to be copied or reduced into tangible, visible or recorded form, any Confidential Information disclosed to it by the other party except to the extent necessary to carry out a Purpose.

## 4 Exceptions

- (a) **Clause 3(a)** does not apply to the Recipient [under this agreement](#) if the owner of the Confidential Information provides its prior written approval, which approval must not be unreasonably withheld.
- (b) **Clause 3(a)** does not apply to the Counterparty if the disclosure is:
  - (i) required or compelled by any Law;
  - (ii) required or compelled by any order of a court;
  - (iii) required or compelled by notice validly issued by any Authority;
  - (iv) necessary for the conduct of any legal proceedings, dispute resolution process or audit under the Undertaking, the Act or an agreement entered with Aurizon Network;
  - (v) if the process in **clause 4(e)** is observed, required under any stock exchange listing requirement or rule;
  - (vi) necessary for the effective response to an emergency or natural disaster or for clearing an incident or emergency that is preventing the operation of Train Services on the Rail Infrastructure; or
  - (vii) to the Safety Regulator.
- (c) **Clause 3(a)** does not apply to Aurizon Network if the disclosure is permitted by **clause 3.133-12** of the Undertaking and Aurizon Network complies with the process set out in that clause permitting disclosure of Confidential Information.
- (d) Prior to any disclosure under **clause 4(b)(v)**, the Counterparty must:
  - (i) consult with Aurizon Network as to the nature and extent of the disclosure of the Confidential Information;
  - (ii) accept any requests made by Aurizon Network (acting reasonably) to limit the disclosure of the Confidential Information; and
  - (iii) to the extent reasonably possible, coordinate the disclosure of the Confidential Information with any similar disclosure by Aurizon Network that is required under any stock exchange listing requirement or rule relating to Aurizon Network.
- (e) For the purposes of **clause 4(a)**, it is unreasonable for the owner of the Confidential Information to refuse to approve the disclosure of its Confidential Information by the Recipient to that Recipient's external consultants, independent advisers or, if the Recipient is an Access Seeker [or Access Holder](#), to the Recipient's Customer [or Train Operator](#), if the Recipient enters into a contract with the recipient of the Confidential Information which:



- (i) specifies:
    - (A) the persons employed by the recipient who may have access to any Confidential Information provided under the contract; and
    - (B) that those persons must not disclose any Confidential Information provided under the contract to any other person unless otherwise agreed by the Recipient and the owner of the Confidential Information; and
  - (ii) requires the recipient to execute a confidentiality deed in favour of the owner of the Confidential Information on terms and conditions substantially similar to this agreement;
  - (iii) advises the recipient that a conflict of interest may exist with respect to the recipient providing services on a related matter to a Related Operator or Related Competitor; and
  - (iv) requires that if the external consultant or independent advisor is also advising a Related Operator or Related Competitor in relation to the same or a related matter, the recipient to ensure that those individuals are not, and will not for as long as the information remains Confidential Information, be working for a Related Operator or Related Competitor on the same or a related matter.
- (f) If consent is sought by Aurizon Network under **clause 4(a)**:
- (i) during the process of responding to an Access Application or negotiating an Access Agreement:
    - (A) where such consent has been sought during the Negotiation Period and the owner of the Confidential Information fails to ~~provide consent~~ respond to Aurizon Network's request for consent within five Business Days of its receipt of Aurizon Network's written request (referred to as the **Consent Response Date**), then all relevant timeframes applicable to Aurizon Network under **Part 4** of the Undertaking will be extended by the same number of days as the day on which the response ~~consent~~ is given exceeds the Consent Response Date; or
    - (B) where such consent has been sought during the Negotiation Period and the owner of the Confidential Information unreasonably refuses its consent to the disclosure of that Confidential Information, or fails to respond to Aurizon Network's request for consent within 20 Business Days of its receipt of Aurizon Network's written

request, then Aurizon Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with **clause 4.12** of the Undertaking; or

- (ii) during the process of administering an Access Agreement or a Train Operations Deed, if the owner of the Confidential Information fails to respond to Aurizon Network's request for consent within twenty (20) Business Days of its receipt of Aurizon Network's written request, then consent is deemed to be given.

## 5 Counterparty's obligations

~~If the Recipient is the Counterparty, t~~The Counterparty:

- (a) confirms it is aware of and understands the Aurizon Network's ~~Group's~~ obligations regarding Confidential Information under the Undertaking;
- (b) acknowledges it may not provide the Confidential Information received from Aurizon Network to any other party, including any person employed or engaged by it, without the consent of Aurizon Network and then only on the terms and conditions required by Aurizon Network (acting reasonably);
- (c) confirms it must secure and protect the Confidential Information received from Aurizon Network from unauthorised disclosure, access or use;
- (d) consents to Aurizon Network recording in the Confidential Information Register all information required by the Undertaking in respect of its use of the Confidential Information;
- (e) agrees to provide any information requested by Aurizon Network to enable it to complete the Confidential Information Register; and
- (f) agrees to attend any training course required by Aurizon Network (acting reasonably) in respect of the Counterparty's use and management of the Confidential Information.

## 6 Aurizon Network obligations

Aurizon Network agrees to comply with ~~(and procure the Aurizon Group's compliance with)~~ all obligations of ~~the~~ Aurizon Network Group under **Part 3** of the Undertaking relating to Confidential Information, subject to the exceptions, exclusions and permitted disclosures of Confidential Information in the Undertaking.

## ~~7~~ Benefit of agreement

### ~~7.1~~ Benefit of third party

~~To the extent that Aurizon Network's obligations under the terms of this agreement relate to the Confidential Information belonging to a third party, the QCA holds the rights under this agreement as agent of and trustee for that third party, and that third party must be treated to this extent as a party to this agreement.~~

### ~~7.2~~ Benefit of agreement

~~This agreement is provided in favour of the QCA.~~

## ~~8~~7 Breach of agreement

- (a) The owner of the Confidential Information may take legal proceedings against the Recipient and/or any third party if there is any actual, threatened or suspected breach of this agreement ~~or a breach by a Aurizon Party of a confidentiality deed or confidentiality provisions contained in another arrangement with Aurizon Network which the Confidential Information was disclosed to it.~~
- (b) The parties acknowledge that damages may be inadequate compensation for breach of this agreement and, subject to the court's discretion, the owner of the Confidential Information may seek specific performance of this agreement and may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of this agreement.
- ~~(c) Subject to **clause 8(c)(ii)**, if the Counterparty can establish that a Related Operator is in possession of the Counterparty's Confidential Information, then:~~
- ~~(i) Aurizon Network must pay the Counterparty an amount of \$[10,000] as liquidated damages in full and final settlement of any claim that the Counterparty may have against Aurizon Network in respect of the breach, unless Aurizon Network can establish that the Related Operator came into possession of the Confidential Information by means other than as a result of a breach by Aurizon Network of this agreement or a breach by a Aurizon Party of a confidentiality deed or confidentiality provisions contained in another arrangement with Aurizon Network under which the Confidential Information was disclosed to it;~~
- ~~(ii) the parties acknowledge and agree that the amount of liquidated damages specified in **clause 8(c)(i)** is a genuine pre-estimate of the loss that the Counterparty would suffer as a result of the relevant breach; and~~

- ~~(iii) any dispute arising in connection with this **clause 8(c)** may be referred to the QCA. The QCA's review will determine whether Aurizon Network is liable to pay the liquidated damages specified in **clause 8(c)(i)**.~~
- ~~(d) If the Counterparty establishes that it has suffered more than \$50,000 loss or damage as a result of a breach by Aurizon Network of this agreement or a breach by a Aurizon Party of a confidentiality deed or confidentiality provisions contained in another arrangement with Aurizon Network under which the Confidential Information was disclosed to it, this agreement does not preclude the Counterparty from taking action to recover compensation from Aurizon Network in any court of competent jurisdiction. In these circumstances the parties agree that Aurizon Network is not liable to the Counterparty for the payment of liquidated damages under **clause 8(c)(i)**.~~

## 98 Termination

- (a) This agreement terminates on:
- (i) the execution by the parties of:
    - (A) the document containing the terms of the Transaction; or
    - (B) a subsequent confidentiality agreement imposing confidentiality obligations on Aurizon Network in respect of the Confidential Information; or
  - (ii) in the case of an Access Agreement or Train Operations Deed:
    - (A) the cessation of negotiations in respect of the Transaction, in accordance with the Undertaking; or
    - (B) the withdrawal by the Discloser of its Access Application relating to the Transaction.
- (b) Where termination occurs under **clause 8(a)(i)**, this agreement terminates immediately.
- (c) Where termination occurs under **clause 8(a)(ii)(A)** ~~8(a)(ii)~~ or **(B)**, this agreement terminates immediately on the date specified in **Item 5 of schedule 1**.
- (d) To the extent permitted by law and subject to the provisions of this agreement, neither party may terminate this agreement and in no other circumstance or event may this agreement be terminated.

## ~~10.9~~ Notices

### ~~10.19.1~~ Form of Notice

Any notice, demand, invoice, process or other communication relating to this agreement (**Notice**) must be in English and may be given by an agent of the sender and may, if agreed by Aurizon Network, be in electronic form.

### ~~10.29.2~~ Method of giving Notices

A Notice may be given by being:

- (a) personally delivered to a party;
- (b) left at the party's current delivery address for service;
- (c) sent to the party's current postal address for service by pre-paid ordinary mail;
- (d) sent by facsimile transmission to the party's current facsimile number for service; or
- (e) if agreed by Aurizon Network, sent by email to the party's current email address for service.

### ~~10.39.3~~ Particulars for giving of Notices

The particulars for giving of Notices are detailed in **item 4** of ~~S~~chedule 1, or as most recently notified to the party sending the Notice.

### ~~10.49.4~~ Notice by post

Subject to **clause 9.7**, a Notice is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten (10) Business Days after posting.

### ~~10.59.5~~ Notice by fax

Subject to **clause 9.7**, a Notice is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

### ~~10.69.6~~ Notice by email

Subject to **clause 9.7**, a Notice is given if sent by email, on the next Business Day after being sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

### **10.79.7 After hours Notice**

If a Notice is given:

- (a) after 5:00pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9:00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

## **11.10 General**

### **11.110.1 No licence**

This agreement does not grant the Recipient any licence or other rights relating to any Confidential Information or other intellectual property rights owned by the owner of the Confidential Information.

### **11.210.2 Variation**

No provision of this agreement may be varied other than in writing executed by the parties to this agreement.

### **11.310.3 No assignment**

No party may assign, transfer, charge or deal in any other way with the benefit of any right (or agree to do so), or create or declare (or agree to do so), or allow to arise, any trust in respect of the benefit of any right conferred by or arising under this agreement without the prior consent in writing of the other party.

### **11.410.4 Costs**

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this agreement.

### **11.510.5 Counterparts**

This agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one agreement.

### **11.610.6 Effect of execution**

This agreement is not binding on any party unless it or a counterpart has been duly executed by each person named as a party to this agreement.

### **11.710.7 Construction**

In this agreement:

- (a) any schedule and annex to it is an integral part of it and any reference to this agreement includes a reference to that schedule and annex;
- (b) the headings in it are used for ease of reference only and are not to be taken into account for the purposes of construing it;

- (c) any reference to it or any other agreement, contract, document or instrument includes any variation or replacement of any of them;
- (d) any references to any clause, schedule, annex and provision are references to that clause, schedule, annex and provision contained in it; ~~and~~
- (e) the words 'including', 'include' and 'includes' are to be construed as if followed by the words 'without limitation';~~;~~
- (f) a reference to a person includes any company, partnership, joint venture, unincorporated association, corporation or other body corporate and a government or statutory body or authority;
- (g) words in the singular include the plural and vice versa; and
- (h) if a word or phrase is defined its other grammatical forms have corresponding meanings.

## 1211 Governing law and jurisdiction

This agreement is governed by the laws applicable in Queensland and each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any court competent to hear appeals from any of those courts.

# Schedule 1

## Reference Schedule

Item	Description	Details
1	<b>Counterparty</b>	Name: [insert] ABN: [insert] Address: [insert]
2	<b>Purpose</b>	[insert] [If for negotiation of an Access Agreement or Train Operations Deed, insert: "To facilitate the negotiations in respect of the potential granting of Access by Aurizon Network under an Access Agreement or the use of that Access under a Train Operations Deed (as applicable).]
3	<b>Transaction</b>	[insert] [If for negotiation of an Access Agreement or Train Operations Deed, insert: "The execution of an Access Agreement or Train Operations Deed (as applicable) under which Aurizon Network agrees to provide the Counterparty with Access (under an Access Agreement) or the right to use that Access (under a Train Operations Deed).]
4	<b>Particulars for giving Notices</b>	<b>Aurizon Network</b> Delivery address: [insert] Postal address: [if there is no PO box, insert 'Same as delivery address'] Facsimile: [insert] Email address: [insert] Attention: [insert]
5		<b>Counterparty</b> Delivery address: [insert] Postal address: [if there is no PO box, insert 'Same as delivery address'] Facsimile: [insert] Email address: [insert] Attention: [insert]



Item	Description	Details
6	Termination date	The date that is [insert] Months after an event in clause 8(a)(i) <del>5(a)(ii)</del> or (ii) <del>(iii)</del> occurs.

# Execution

**Executed** as a an agreement.

**[Appropriate execution blocks to be inserted]**

## ~~Schedule I~~ Schedule J

### Coal loss mitigation provisions

#### 1 Coal loss mitigation - general coal loading, unloading, profiling and veneering obligations

##### 1.1 Background to Coal Loss Mitigation Provisions

- (a) Across the Central Queensland coal supply chain, participants:
- (i) are committed to implementing a range of effective dust mitigation strategies including operational procedures and the application of new techniques to improve awareness and reduce the risk of environmental harm, while ensuring this aspect of the coal supply chain network continues to have community support<sup>38</sup>; and
  - (ii) recognise the need for industry 'best practice' to mitigate coal dust, and that a whole-of-supply chain approach should provide the most effective mitigation approach to coal dust<sup>39</sup>.
- (b) The following actions have been identified as 'best practice' and have proven, through extensive research and testing, to be highly effective in minimising potential dust impacts<sup>40</sup>:
- (i) **(Moisture content management)** Coal producers wash their coal or blend it to achieve an optimum moisture level which reduces dust and achieves market qualities.
  - (ii) **(Improved loading practices)** Improved loading practices can reduce coal deposits on coal wagon ledges and wheel surfaces that are prone to spillage during transport. It also supports the ability to create a consistent surface of coal in each wagon.
  - (iii) **(Load profiling of coal surface)** The profile of the loaded coal wagon refers to the shape of the exposed surface of coal on the top of in the wagon. A flat surface with gradually sloping sides is a tried and proven method of dust suppression.
  - (iv) **(Veneering)** Veneering is the application of a biodegradable polymer onto the surface of the loaded coal. The veneer forms a crust over the coal load, which along with the use of

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<sup>38</sup> CDMP, paragraph 2.

<sup>39</sup> CDMP, paragraph 1.3.

<sup>40</sup> Coal dust management plan for the South West System, released in November 2013.

- a modified loading chute suggests that a significant reduction in coal dust lift-off from wagons is achievable.
- (v) **(Ongoing dust monitoring)** Commitment to a program of ongoing dust monitoring to validate the effectiveness of mitigation measures and confirm that dust levels, particularly coal dust levels, continue to meet environmental standards.
  - (c) The principal objective of the Coal Loss Mitigation Provisions is the Prevention of Coal Loss in an effort to achieve 'best practice'.
  - (d) The significant strategies to achieve the Prevention of Coal Loss are the loading, profiling and veneering of wagons in accordance with the Standards, and implementation timeframes, provided under the Coal Loss Mitigation Provisions. This includes:
    - (i) meeting the Queensland Department of Environment and Heritage Protection's targets for coal dust emissions from wagons;
    - (ii) no parasitic or fugitive coal (other than coal dust to standard) falling from wagons; and
    - (iii) meeting height and weight requirements in relation to the loading of wagons to protect below rail assets.
  - (e) The Private Infrastructure Owner as the loading practitioner has primary responsibility to ensure wagons are loaded, profiled and veneered in a manner that achieves the Prevention of Coal Loss, and this is reflected in the Coal Loss Mitigation Provisions.

## 1.2 Definitions

In this **Schedule J**:

**CDMP** means Aurizon Network's Coal Dust Management Plan dated 22 February 2010 as approved by the Department of Environment and Heritage Protection in May 2010;

**Loading Breach** means, in respect of a train, a breach of **clause 1** or **clause 2** of this **Schedule J** relating to the loading of coal into the train, the veneering and profiling of coal loaded into the train and the unloading of coal from the train at the Transfer Facilities;

**Preventing Coal Loss** has the meaning given to the term in **clause 1.3** of this **Schedule J**;

**Private Land** has the meaning given to the term in the Standard Rail Connection Agreement.

**Quality Management System** includes the system by which the Private Infrastructure Owner manages the quality of its coal loading operations at the Transfer Facilities;

**Rectification Notice** has the meaning given in **clause 1.7(a)**~~1.7~~ of this **Schedule J**;

**Standards** has the meaning given in **clause 1.3(a)** of this **Schedule J**;

**Suspension Notice** has the meaning given in **clause 1.7(d)**~~1.7(a)~~ of this **Schedule J**;

**Transfer Facilities** means any coal loading facilities which utilise the Private Infrastructure and any alterations, additions and replacements of such facilities made by the Private Infrastructure Owner from time to time.

### 1.3 Meaning of Preventing Coal Loss

(a) In the Coal Loss Mitigation Provisions, **Preventing Coal Loss** means taking all reasonable and practicable measures during the handling and loading of coal at the Transfer Facilities to prevent coal loss (including emissions of coal dust and spillage from wagons) during the transport of such coal by rail on the Connecting Infrastructure or the ~~Network~~ Rail Infrastructure to satisfy (subject to **clause 1.3(b)** of this **Schedule J**) the standards, targets, levels or other measures (**Standards**) set for coal loss:

- (i) in accordance with all applicable laws; and
- (ii) in accordance with all requirements, instructions, guidelines, standards or other directions whether now or at any time in the future in effect issued or published by an Authority responsible for the administration of environmental Laws in Queensland,

and references to **Prevents Coal Loss**, **Prevent Coal Loss** and **Prevention of Coal Loss** must be interpreted in a corresponding way.

(b) If any one or more of the Standards referred to in **clause 1.3(a)** of this **Schedule J** cannot be complied with without failing to comply with another applicable Standard, then as between those mutually inconsistent Standards, Standards referred to in **clause 1.3(a)(i)** of this **Schedule J** prevail over Standards referred to in **clause 1.3(a)(ii)** of this **Schedule J**.

### 1.4 General obligation

(a) Notwithstanding any other provision in the Coal Loss Mitigation Provisions, the Private Infrastructure Owner must, at all times, and without adversely affecting the capacity of the ~~coal supply~~ Supply Chain, use its reasonable endeavours to Prevent Coal Loss, taking into account factors which include (but are not limited to):

- (i) prevailing business conditions at the time any decision to implement a mitigation strategy is required;
- (ii) the effectiveness of the particular mitigation approach given technology and cost constraints;
- (iii) the timeframes required to implement mitigation strategies;

(iv) the overall strategy undertaken given the specific characteristics underlying the relevant owner's contribution to dust; and

(v) consideration of the impact on other ~~s~~Supply ~~C~~Chain participants,

(collectively, the **Limiting Factors**).

(b) For the avoidance of doubt, the Private Infrastructure Owner will not be taken to have failed to Prevent Coal Loss in respect of the spillage of coal from a wagon during the transport of the coal by rail if the spillage is caused by the malfunction of the wagon's kwik drop doors.

(c) Without limiting any other obligation of the Private Infrastructure Owner under the Agreement, the Private Infrastructure Owner must comply with:

(i) all applicable Laws relating to coal loss (including the emission of coal dust);

(ii) all requirements, instructions, guidelines, standards or other directions relating to coal loss (including the emission of coal dust) whether now or at any time in the future in effect which would customarily be observed by a reasonable and prudent owner or operator of facilities such as the Transfer Facilities (including any such things issued or published by an Authority responsible for the administration of environmental Laws in Queensland); and

(iii) the Private Infrastructure Owner's obligations and the standards and requirements set out in this **Schedule J** (including the rail asset restrictions specified by Aurizon Network from time to time),

during the handling, loading and unloading of coal using the Transfer Facilities.

(d) The Private Infrastructure Owner must supply any labour, materials, plant, equipment and facilities required to enable it to properly perform its obligations under the Coal Loss Mitigation Provisions.

## 1.5 **Obligation to install and operate veneering equipment**

(a) Without limiting any other obligation of the Private Infrastructure Owner under this **clause 1** of **Schedule J**, the Private Infrastructure Owner must use reasonable endeavours to, at its cost:

(i) install (or procure the installation of) suitable veneering equipment as part of the Transfer Facilities; and

(ii) after the veneering equipment is installed:

(A) operate (or procure the operation of) the veneering equipment; and

- (B) ensure an effective veneering agent is applied onto the exposed surface of coal loaded into wagons at the Transfer Facilities,

for the purpose of Preventing Coal Loss during transport except that it is reasonable for the Private Infrastructure Owner to not do some or all of the above as a result of the Limiting Factors.

- (b) Without limitation to **clause 1.5(a)(ii)(B)** of this **Schedule J**, the veneering agent applied in accordance with **clause 1.5(a)(ii)(B)** must:
  - (i) be applied to all loaded wagons;
  - (ii) achieve a nil dust lift off from loaded wagons regardless of coal type;
  - (iii) remain intact from the time the train enters the ~~Network-Rail~~ [Infrastructure](#) until the time the train is unloaded;
  - (iv) meet the requirements of all relevant environmental Laws; and
  - (v) be accepted at the relevant unloading destination to permit unloading of wagons.
- (c) The Private Infrastructure Owner will not use or permit the use of any veneering agent, or a change in the properties of any veneering agent, without first providing to Aurizon Network the following documents and information, which must be acceptable to Aurizon Network:
  - (i) Material Data Safety Sheet;
  - (ii) toxicology reports detailing the physical and chemical makeup of the product, the ~~affects-effects~~ and impact of the product and components on humans, fauna, flora, wildlife and whole ecosystems; and
  - (iii) a full list of constituents.

## 1.6 Monitoring

- (a) Without limiting any other provisions of the Agreement, and upon ~~reasonable~~ [giving not less than two \(2\) Business Days](#) notice to the Private Infrastructure Owner, Aurizon Network is entitled:
  - (i) to enter and be upon Private Land:
    - (A) once every twelve (12) Months; and
    - (B) at any other time, upon receipt of consent from the relevant owner to enter and be upon Private Land, [provided that Aurizon Network, acting reasonably, has formed the opinion that the Private Infrastructure Owner is not complying with its obligations under this clause 1 of Schedule J](#); and

- (ii) to access the Transfer Facilities (including the veneering equipment),

to enable Aurizon Network, from time to time:

- (iii) to verify compliance by the Private Infrastructure Owner with its obligations under this **clause 1** of this Schedule J; and
- (iv) to investigate the effectiveness of the veneering equipment (and its operation) or any other measures (including the veneering agent) used by the Private Infrastructure Owner in connection with any matters referred to in **clauses 1.4** or **1.5** of this **Schedule J**,

and the Private Infrastructure Owner must also provide any reasonable assistance requested by Aurizon Network in respect of such matters (including, if requested by Aurizon Network, providing evidence from the Private Infrastructure Owner's Quality Management System or other similar system verifying the Private Infrastructure Owner's compliance with the Coal Loss Mitigation Provisions).

- (b) For the avoidance of doubt, a reference to Aurizon Network in **clause 1.6(a)** of this **Schedule J** includes a reference to the employees, agents and contractors of Aurizon Network and any third party authorised by Aurizon Network.

(c) If Aurizon Network accesses Private Land under **clause 1.6(a)** of this **Schedule J**, Aurizon Network must, and must procure that its representatives and contractors who access the Private Land:

- (i) ~~;~~ comply with:
  - (A) all site and safety rules applicable to the Private Land as notified by the Private Infrastructure Owner or the owner of the Private Land prior to such access~~;~~
  - (B) any reasonable direction given by any representative of the Private Infrastructure Owner or the owner of the Private Land; and
  - (C) any other reasonable conditions specified by the Private Infrastructure Owner or the owner of the Private Land; and
- (ii) minimise interference with the Private Infrastructure Owner's activities to the extent possible.~~;~~

~~(e)~~(d) Aurizon Network will monitor the Private Infrastructure Owner's compliance with its obligations under this **clause 1** of **Schedule J** through, without limitation:

- (i) the installation of coal dust monitoring equipment at various locations on the ~~Network~~Rail Infrastructure;



- (ii) periodic assessment of the Private Infrastructure Owner's impact on coal fouling across the ~~Network~~[Rail Infrastructure](#); and
- (iii) the periodic observation of:
  - (A) the Private Infrastructure Owner's coal loading, profiling, veneering and other operations at the Transfer Facilities; and
  - (B) trains loaded at the Transfer Facilities during transport.

~~(d)~~[\(e\)](#) Aurizon Network must [at its cost](#) ensure that any coal dust monitoring equipment used by Aurizon Network to monitor the Private Infrastructure Owner's compliance with its obligations under this **clause 1 of Schedule J** are in proper working order and calibrated.

~~(e)~~[\(f\)](#) Within 10 Business Days after end of each Quarter, Aurizon Network will provide the Private Infrastructure Owner with a written report in respect of Aurizon Network's monitoring of Private Infrastructure Owner's compliance with its obligations under this **clause 1 of Schedule J** during that Month (together with supporting information in respect of any non-compliance detected by Aurizon Network).

## 1.7 Suspension of rights

- (a) If the Private Infrastructure Owner fails to carry out an obligation under the Coal Loss Mitigation Provisions, Aurizon Network may give the Private Infrastructure Owner a notice (**Rectification Notice**) requiring the Private Infrastructure Owner to:
  - (i) in the case of any default which is capable of remedy, remedy the default; and
  - (ii) in the case of a default which is not capable of remedy, take reasonable steps to prevent the reoccurrence of the event or circumstance that resulted in the default,

within the period (which must be at least 90 days) specified in the Rectification Notice.
- (b) If a Rectification Notice is given to the Private Infrastructure Owner under **clause 1.7(a)**, Aurizon Network and the Private Infrastructure Owner must meet to discuss and agree upon a reasonable program (having regard to the Limiting Factors) setting out the activities, and a timetable to undertake those activities, required to prevent the reoccurrence of the event or circumstance that resulted in default.
- (c) The Private Infrastructure Owner will keep Aurizon Network informed of the activities undertaken to comply with the Rectification Notice.
- (d) If the Private Infrastructure Owner does not comply with a Rectification Notice within the time required by the Rectification Notice then Aurizon Network may give the Private Infrastructure Owner a

notice (**Suspension Notice**), suspending the Private Infrastructure Owner's rights under the Agreement and any other agreement to utilise, and to authorise or allow others to utilise, the Connecting Infrastructure for the passage of loaded coal trains.

- (e) A Suspension Notice must specify that it is a notice given under **clause 1.7(d)1.7(a)** of this **Schedule J**.
- (f) A suspension of the Private Infrastructure Owner's rights in accordance with **clause 1.7(a)** of this **Schedule J** will continue until the earlier of the following dates:
  - (i) if the relevant default is capable of remedy, the date that the Private Infrastructure Owner does the things specified in **clause 1.7(a)(i)** of this **Schedule J**;
  - (ii) if the relevant default is not capable of remedy, the date that the Private Infrastructure Owner does the things specified in **clause 1.7(a)(ii)** of this **Schedule J**;
  - (iii) if Aurizon Network notifies the Private Infrastructure Owner of the cessation of the suspension, the date which Aurizon Network notifies the Private Infrastructure Owner as the date on which the suspension will cease.

~~(g)~~ If   :

~~(h)~~ Aurizon Network exercises its right of suspension under **clause 1.7(a)** of this **Schedule J**; and

~~(i)~~ the Private Infrastructure Owner disputes the exercise of that right by Aurizon Network, the suspension will not take effect unless   :

~~(j)~~ the Dispute is resolved in favour of Aurizon Network during the period of the Dispute resolution process under in accordance with **clause 10.1Part 11** (at which time, the suspension will take effect); ~~or~~

~~(k)(g)~~ ~~the Dispute remains unresolved 30 days after the day the Private Infrastructure Owner gives Aurizon Network a Dispute Notice under in accordance with clause 11.1 (at which time, the suspension will take effect despite the Dispute being unresolved).~~

~~(l)(h)~~ The exercise by Aurizon Network of its rights and remedies under this **clause 1.7** of **Schedule J** does not limit or restrict Aurizon Network from exercising, at any time, any other rights or remedies of Aurizon Network in respect of the relevant default (including its rights of termination under Clause 20 of the Standard Rail Connection Agreement).

## 1.8 Reporting

- (a) Within 15 Business Days after the end of each Quarter, the Private Infrastructure Owner must submit a written report (in the form reasonably required by Aurizon Network) to Aurizon Network in respect of any material non-compliance by the Private Infrastructure

Owner with an obligation of Private Infrastructure Owner under the Coal Loss Mitigation Provisions, provided always that such reporting obligation only applies to the strategies the Private Infrastructure Owner is able to implement to Prevent Coal Loss as have been agreed between the parties.

- (b) Without limiting **clause 1.8(a)** of this **Schedule J**, within five Business Days after the occurrence of any of the following events, the Private Infrastructure Owner must submit a written report to Aurizon Network providing reasonable details in respect of the event:
- (i) the breakdown of, or the inability to operate, any veneering equipment;
  - (ii) any damage to the ~~Network~~Rail Infrastructure in connection with any non-compliance by the Private Infrastructure Owner with its obligations under the Coal Loss Mitigation Provisions;
  - (iii) any event arising in connection with any non-compliance by the Private Infrastructure Owner with its obligations under the Coal Loss Mitigation Provisions which interferes, or may interfere, with the proper functioning or operation of the ~~Network~~Rail Infrastructure; and
  - (iv) any event that results, or is likely to result, in the Private Infrastructure Owner being unable to perform a material obligation under the Coal Loss Mitigation Provisions.
- (c) The Private Infrastructure Owner must:
- (i) maintain a record of the operation of the veneering equipment, including the dates and times of operation (Veneering Log); and
  - (ii) provide a copy of the Veneering Log to Aurizon Network within 24 hours of receiving a request from Aurizon Network to view the Veneering Log.

## 1.9 Continuous improvement

The Parties must meet at least once each Quarter to discuss:

- (a) the effectiveness of the then current practices for preventing coal loss; and
- (b) new or modified practices which could be implemented to improve the prevention of coal loss,

and use their reasonable endeavours to achieve 'best practice' (subject to the Limiting Factors, cost constraints and the potential impact on other ~~s~~Supply ~~e~~Chain participants), including (but not limited to) giving due consideration to:

- (c) the "Coal Producers Dust Mitigation Activities" outlined in Table 3.1.2 and Annexure B of the CDMP; and

- (d) the actions that have been identified as 'best practice' specified in **clause 1.1(b)** of this **Schedule J**.

## 2 Coal loading, profiling and veneering

### 2.1 Coal Loss Management

- (a) The Private Infrastructure Owner must be able to demonstrate its compliance with its obligations under this **Schedule J** through its Quality Management System, but only to the extent it is able to implement strategies to Prevent Coal Loss.
- (b) The Private Infrastructure Owner must consider current best industry practice with respect to Preventing Coal Loss when choosing an appropriate loading methodology. Best industry practice at this date of this Agreement includes matters such as:
  - (i) operating procedure review and training to reduce the sources of coal loss;
  - (ii) Quality Management System procedures and reporting to enable a 'lessons learnt' approach;
  - (iii) inbound wagon identification system to determine class of wagon about to be loaded;
  - (iv) inbound overload detection devices to measure the tare weight of each incoming wagon;
  - (v) batch weighing system to load the correct amount of coal into each wagon;
  - (vi) telescopic loading chute to profile the load in each wagon or, as an interim measure until such a chute is operating effectively, a suitable profiling blade on the exit side of the load-out;
  - (vii) outbound overload detection devices to measure the gross and bogey weights of each outgoing wagon;
  - (viii) volumetric scanning to measure the profile of each outgoing wagon; and
  - (ix) veneering spray stations on exit side of load-out (after profiling has been achieved).

### 2.2 General Management of Coal Loading

- (a) The Private Infrastructure Owner, in loading wagons at the Transfer Facilities, must comply with:
  - (i) the wagon design maximum load and volume for wagons and the network asset restrictions including height and weight requirements specified by Aurizon Network from time to time; and

- (ii) the rail asset restrictions specified by Aurizon Network from time to time.
- (b) The Private Infrastructure Owner must ensure the design of the Transfer Facilities and its adoption of suitable loading and unloading methodologies each achieve the following:
  - (i) loading to an appropriate profile and clearance to Prevent Coal Loss en route to the unloading facilities; and
  - (ii) Prevent Coal Loss from the wagons after entering the ~~Network~~[Rail Infrastructure](#).
- (c) The Private Infrastructure Owner must use reasonable endeavours to ensure that coal is loaded into wagons in a manner which ensures that the coal (including coal dust) cannot leave the wagon until it is unloaded from the wagon at an unloading facility.

### 2.3 Loading and profiling of wagons

- (a) The Private Infrastructure Owner must ensure the loading methodology (including the approach to coal profiling) chosen by the Private Infrastructure Owner Prevents Coal Loss. The Private Infrastructure Owner must demonstrate to Aurizon Network that its adopted loading methodology Prevents Coal Loss and complies with the rail asset restrictions specified by Aurizon Network from time to time.
- (b) Without limitation to the Private Infrastructure Owner's obligations regarding the loading methodology, the Private Infrastructure Owner and Aurizon Network must agree upon suitable profiling requirements having regard to the Limiting Factors, using the following requirements as 'best practice' that should be achieved (if possible):
  - (i) Prevent the loading of coal to the very edges and ends of the wagons leaving sufficient "freeboard" (i.e. - not loaded to top of wagon side) at the sides and ends of loaded wagons to Prevent Coal Loss. See **Figure 1** below.
  - (ii) The method of loading must ensure that loading is even over the length and width of each wagon up to the maximum allowable height as specified by Aurizon Network from time to time (currently 3950mm above rail level). However, achieving loading to this height and shape is ultimately dependant on the density of coal being transported, provided that the profile must have a flat surface and spillage over the sides must be avoided.

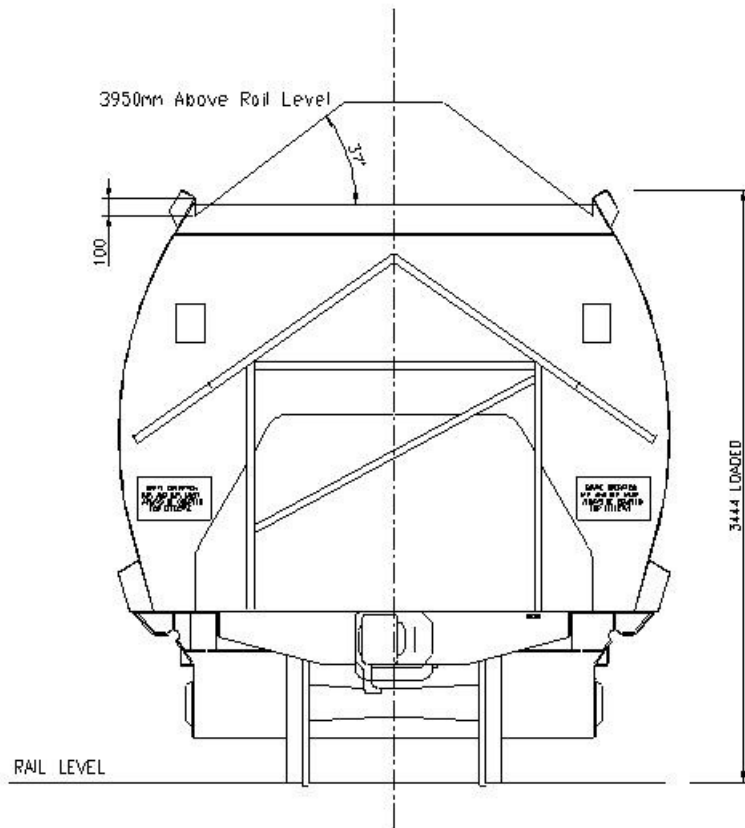


Figure 1 - End View of **Wagon wagon** showing maximum allowable loading profile requirements.

- (c) A suitable profiler must be used to profile the coal so as to result in a loaded wagon with a coal profile that optimises the effectiveness of veneering agents applied in order to Prevent Coal Loss. Without limiting the type of profile that the Private Infrastructure Owner may adopt, an appropriately designed and maintained telescopic loading chute can achieve a 'garden-bed' profile (standard loading profile as shown in **Figure 2** below) to mitigate the risk of coal lift-off and to optimise the effectiveness of veneering agents applied in order to Prevent Coal Loss.



**Figure 2 - Top of loaded coal wagon showing 'Garden Bed' style profile.**

- (d) The loading chute and associated skirts must achieve a slope on the side of the load less than the natural angle of repose of the coal and must ensure the product is not left on the wagon sills (side and end).
- (e) To the extent the Private Infrastructure Owner is able to implement strategies to Prevent Coal Loss that do not use the loading methods outlined in this **clause 2.3**, the Private Infrastructure Owner must not permit the loading of coal into wagons from:
  - (i) front-end loaders; or
  - (ii) Clam shell type loading facilities.

#### **2.4 Parasitic and fugitive coal removed from wagons**

Unless otherwise agreed by Aurizon Network, the Private Infrastructure Owner must use reasonable endeavours to remove any visible coal that has fallen onto wagon sills and surfaces or running gear immediately after the coal is loaded, in order to avoid the risk of coal falling off the wagon during transit.

#### **2.5 Kwik Drop Doors (KDDs)**

The Private Infrastructure Owner is responsible for the type of coal loaded into the wagons. The Private Infrastructure Owner must use reasonable endeavours to ensure that coal fineness and moisture content will not facilitate coal loss via the KDDs during transportation from the Transfer Facilities to the unloading facility.