

## Part 10: Reporting, compliance and audits

### [Marked up against the QCA's CDD amended Undertaking]

#### 10.1 Overview

- (a) This ~~Part 10~~**Part 10** sets out various provisions relating to the reporting requirements for Aurizon Network, in particular:
- ~~(b)~~**(i)** ~~clause 10.210.210.3~~**clause 10.210.210.3** sets out the reports that Aurizon Network must provide in respect of network performance, including maintenance cost reports and network performance reports;
- ~~(c)~~**(ii)** ~~clause 10.310.310.4~~**clause 10.310.310.4** 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;
- ~~(d)~~**(iii)** ~~clause 10.410.410.5~~**clause 10.410.410.5** 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;
- ~~(e)~~**(iv)** ~~clause 10.510.510.6~~**clause 10.510.510.6** sets out the audits that Aurizon Network must undertake and the rules that relate to any audits required by this Undertaking; and
- ~~(f)~~**(v)** ~~clause 10.610.610.7~~**clause 10.610.610.7** sets out general matters relating to provision of information, errors in reports and certification by Aurizon Network's Executive Officer.
- ~~(f)~~**(b)** For clarity, any information given to the QCA under this **Part 10** is subject to the QCA's obligations under section 239 of the Act.

#### 10.2 General Principles

~~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~~**10.2 Network performance**

##### ~~10.3.1~~**10.2.1 Annual maintenance plan**

- ~~(a)~~**(a)** Aurizon Network must provide Access Holders, and their Customers, if applicable, with a briefing in the form of a report and presentation on details of

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the planned scope of maintenance and renewals for the forthcoming Year, and the contents of the maintenance cost reports for the previous Year, within three (3) Months before the commencement of each Year:-

- (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.

**10.3.210.2.2 Quarterly maintenance cost report**

(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) 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.

(a) Unless otherwise agreed between Aurizon Network and the QCA, Aurizon Network will, 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) containing the following information:

- (i) details of total quarterly maintenance costs; and
- (ii) by Coal System:
  - (A) total quarterly maintenance costs;
  - (B) maintenance costs in respect of following activities:
    - (1) ballast undercutting;
    - (2) rail grinding;
    - (3) resurfacing; and
    - (4) general maintenance costs;

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- (C) Quarterly Below Rail Transit Times;
- (D) the number of derailments where the costs to Aurizon Network, ~~to Aurizon Network~~ of recovery from the derailment that are known to Aurizon Network at the time of the relevant report, 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

(b) For the purpose of a report under clause 10.2.2(a), the term 'Coal System' excludes the Goonyella to Abbot Point System. **Note: we propose that the GAP System is excluded from maintenance reporting, as the relevant metrics are already captured within the Newlands and Goonyella systems.**

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**10.3.310.2.3 Annual maintenance cost report**

(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 10.2.3(d)~~~~10.2.3(d)~~~~10.3.3(e)~~. 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.

~~(b)~~(c) For the purpose of a report under clause 10.2.3(a), the term 'Coal System' excludes the Goonyella to Abbot Point System. **Note: we propose that the GAP System is excluded from maintenance reporting, as the relevant metrics are already captured within the Newlands and Goonyella systems.**

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~~(e)~~(d) The maintenance cost report required by clause 10.2.3(a)~~10.2.3(a)~~~~10.3.3(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:
    - (1) General Track Maintenance;
    - (2) structures and facilities maintenance;
    - (3) trackside systems maintenance;
    - (4) electrical overhead maintenance; and

- (5) telecommunications maintenance;
- (B) for mechanised maintenance:
  - (1) separately for each type of maintenance (including ballast cleaning, rail grinding, and rail resurfacing);
  - (2) in addition to a report for each Coal System, 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);
- (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 10.2.3(d)(i)(A)10.2.3(d)(i)(A)10.3.3(e)(i)(A)~~ in aggregate for all Coal Systems:
    - (1) for mechanised maintenance, separately for each Coal System and in aggregate for all Coal Systems; and
    - (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:
    - (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 10.2.3(d)(vi)**~~10.2.3(d)(vi)~~~~10.3.3(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.

**10.3.4**~~10.2.4~~ **Quarterly network performance report**

~~(a)~~ Unless otherwise agreed between Aurizon Network and the QCA, Aurizon Network must, within 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)~~ in relation to each Month in the relevant Quarter containing the information set out in **clauses 10.2.4(b)**~~10.2.4(b)~~~~10.3.4(b)~~ to **10.2.4(i)**~~10.2.4(i)~~~~10.3.4(i)~~, inclusive.

**[Text deleted as Aurizon Network already has an obligation under section 230 of the QCA Act not to provide information which it knows is false or misleading.]**

- ~~(a)~~~~(b)~~ Information on the number and reliability of Train Services that operated each Month in the relevant 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;
    - (C) due primarily to other matters not identified in either **paragraph (A)** or ~~(B)~~~~(B)~~; and
  - (iii) the total number of Train Services.

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~~(b)~~(c) Information on the average transit times of Train Services that operated each Month in the relevant Quarter, 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.

~~(e)~~(d) Information on the availability of the network for Train Services in each Month in the relevant 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, 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, 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, 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;

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- (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 10.2.4(k)10.2.4(k)10.3.4(k)~~, for each Coal System information for each Month in the relevant 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.

~~(h)~~(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**.

~~(i)~~(j) Subject to ~~clause 10.2.4(k)10.2.4(k)10.3.4(k)~~ and ~~(l)(4)~~, for the purposes of ~~clauses 10.2.4(b)10.2.4(b)10.3.4(b)~~ to ~~10.2.4(d)10.2.4(d)10.3.4(d)~~, the Train Services will be aggregated as follows, Train Services operated for the purpose of:

- (i) transporting coal;
- (ii) transporting freight products, and bulk minerals (other than coal); and
- (iii) providing long distance passenger transport.

~~(k)~~ In addition to the report published under **clause 10.2.4(a)10.2.4(a)10.3.4(a)**, unless otherwise agreed between Aurizon Network and the QCA, Aurizon Network must, within 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:

**[Text deleted as Aurizon Network already has an obligation under section 230 of the QCA Act not to provide information which it knows is false or misleading.]**

~~(j)~~

- (i) the information set out in **clauses 10.2.4(b)10.2.4(b)10.3.4(b)** to

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~~10.2.4(i)~~~~10.2.4(i)~~~~10.3.4(i)~~ inclusive for the previous Quarter;  
and

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- (ii) a comparative presentation against the aggregate, published information for the corresponding Quarter of the preceding Year,

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.

~~(\*)~~(l) Aurizon Network will, in conjunction with its public release of a report under this **clause 10.2.4**~~10.2.4~~~~10.3.4~~, 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~~~~10.3~~ **Reports**

#### ~~10.4.1~~~~10.3.1~~ **Annual financial report**

- (a) The financial statements referred to in **clause 3.7.1(a)** must be certified as being in accordance with this Undertaking by Aurizon Network's Executive Officer.
- (b) Within 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 10.3.1(a)**~~10.3.1(a)~~~~10.4.1(a)~~.
- (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.

#### ~~10.4.2~~~~10.3.2~~ **Public annual Regulatory Asset Base roll-forward report**

- (a) To the extent that the QCA has accepted Aurizon Network's proposed roll-forward of the Regulatory Asset Base under **clause 1.3 of Schedule E**, 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 10.3.2(b)**~~10.3.2(b)~~~~10.4.2(b)~~.
- (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.

**10.4.310.3.3 Conditions Based Assessment**

- (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,
 in accordance with this **clause ~~10.3.310.3.3~~ 10.4.3 (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 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 10.3.3(j)~~~~10.3.3(i)~~~~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 propose 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 as~~ required by this Undertaking.

~~(k)(l)~~ For 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.

#### **10.5.10.4 Compliance with this Undertaking**

##### **10.5.10.4.1 Compliance Officer**

- (a) Aurizon Network must appoint a Compliance Officer and 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 Undertaking by Aurizon Network and advising of any remedial action

proposed or taken by Aurizon Network in respect of the breach.

~~10.5.2~~**10.4.2** *Annual compliance report*

- (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 ~~10.4.2(c)~~~~10.4.2(e)~~~~10.5.2(e)~~ and ~~(d)~~~~(e)~~** and which will be accompanied by an audit report prepared in accordance with **clause ~~10.5.3~~~~10.5.3~~~~10.6.3~~** in respect of Aurizon Network's compliance with its obligations under this **clause ~~10.4.2~~~~10.4.2~~~~10.5.2~~**.
- (b) Aurizon Network must, in conjunction with the publication on the Website of an annual compliance report in accordance with **clause ~~10.4.2(a)~~~~10.4.2(a)~~~~10.5.2(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

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provided within the applicable timeframe nominated in **clause 4.6**, the average delay (in days) taken to provide the Indicative Access Proposals;

- (vii) the number of instances where an Access Dispute arose and was referred for resolution under **Part 11**;
- (viii) the number of instances where an Access 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 Access Seeker, Access Holder or Train Operator 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 Access Seeker, Access Holder or Train Operator 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 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.
- (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.

**10.5.310.4.3 Breach reports to the QCA**

- (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 10.4.310.4.310.5.3~~ 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 ~~alleged by an Access Seeker, Access Holder or Train Operator~~, 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 ~~or Train Operator~~ 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 10.4.3(c)(i)10.4.3(c)(ii)10.5.3(c)(i) to 10.4.3(c)(iv)10.4.3(c)(iv)10.5.3(c)(iv).~~
- (d) The QCA and any Auditor appointed under this ~~Part 10Part 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.

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## ~~10.6~~10.5 **Audit**

### ~~10.6.1~~10.5.1 **Report auditing**

- (a) An audit of Aurizon Network's compliance with all or a part of its reporting obligations under this ~~Part 10~~**Part 10** must be conducted:
  - (i) annually and as otherwise required in writing by the QCA; and
  - (ii) subject to this ~~clause 10.5.1~~**clause 10.5.1**~~10.5.1~~**10.5.1**~~10.6.1~~**10.6.1**, in accordance with ~~clause 10.5.1~~**clause 10.5.1**~~10.6.4~~**10.6.4**.
- (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~~**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~~**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.

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### ~~10.5.2~~ **Conflicts-Ringfencing audit**

#### ~~10.6.2~~ **[Renamed for clarity]**

- (a) An audit of:
  - (i) Aurizon Network's compliance with its obligations under ~~Part 3~~**Part 3**; and
  - (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 ~~clause 10.5.3~~**clause 10.5.3**~~10.5.3~~**10.5.3**~~10.6.3~~**10.6.3**) in accordance with ~~clause 10.5.1~~**clause 10.5.1**~~10.6.4~~**10.6.4**.
- (b) In considering Aurizon Network's compliance with its obligations under ~~Part 3~~**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~~**Part 3** and, if not, details as to the relevant non-compliance.

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### ~~10.6.3~~10.5.3 **Compliance audit requested by the QCA**

- (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 Auditor to undertake an audit, in accordance with ~~clause~~**clause**

~~10.5.410.5.410.6.4~~, 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 ~~10.5.410.5.410.6.4~~**.
- (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 ~~10.5.310.5.310.6.3~~** will be incorporated in the Adjusted Allowable Revenue in accordance with **clause 3.3 of Schedule F**.

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#### **10.6.410.5.4 Audit process**

An audit process under this Undertaking must be conducted in accordance with the following process:

- (a) Aurizon Network will appoint 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;
  - (iii) be subject to professional standards of ethics and independence; and
  - (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 and Aurizon Network having the right to appoint a replacement Auditor subject to the QCA's approval of that auditor under this clause 10.5.4(b)(iv);
- (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;

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- (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 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**, 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;
- ~~(j)~~(i) the Auditor will provide 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

~~(j) as soon as reasonably practicable after an audit report has been provided to the QCA under clause 10.5.4(i), Aurizon Network must provide to the QCA its response to the audit report including any actions that Aurizon Network proposes to take in response to that audit report.~~

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~~(k)~~

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~~(i) prepare and provide to the QCA an implementation plan; and~~

~~(ii) use reasonable endeavours to implement,~~

~~any recommendations made by the Auditor in the audit report or any other letters or reports provided under clause 10.6.4(j), 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;~~

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~~(l) following the provision of an audit report to the QCA in accordance with clause 10.6.4(j):~~

~~(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) will constitute a breach of this Undertaking by Aurizon Network.~~

## 10.7.10.6 General

### 10.7.10.6.1 Information provision

- (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.

- (b) In addition to **clause 10.6.1(a)10.6.1(a)10.7.1(a)**, 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 **10.6.1(d)10.6.1(d)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.
- (e) Aurizon Network must comply with a request by the QCA under **clause 10.6.1(a)10.6.1(a)10.7.1(a)** by the day stated in the notice, unless Aurizon Network has a reasonable excuse for noncompliance.
- (f) Except for documents that are to be made public in accordance with the terms of this Undertaking, nothing in this **clause 10.610.610.7** permits the QCA to disclose any information (including the contents of a document) provided to it under this **clause 10.6.110.6.110.7.1**.

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#### **10.7.210.6.2 Errors in reports**

- (a) If a report has been published under **Part 10Part 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

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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.

**10.7.310.6.3 Certifications required from Aurizon Network's Executive Officer**

- (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 10.6.3(b)**~~10.6.3(b)~~~~10.7.3(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) 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

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- (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.