



# The 2014 Undertaking

Volume 1 The Access Undertaking and Schedules

Volume 2 The Standard User Funding Agreement

Volume 3 Other Standard Agreements

**Volume 1 of 3**

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## 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)**, 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.

### 2.2 Intent

The intent of this Undertaking is to:

- (a) facilitate the negotiation of access agreements by Aurizon Network and Access Seekers;
- (b) 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, 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.
- (c) provide an efficient, effective and binding Dispute resolution process;
- (d) provide that actions pursuant to 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 provides otherwise; and
- (g) 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 coal 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 Scope**

- (a) This Undertaking provides only for the negotiation and provision of Access and is not applicable to the negotiation or provision of services other than Access.
- (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) 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.
- (d) Nothing in this Undertaking can require Aurizon Network or any other party to an Access Agreement or a Train Operations Agreement, executed before the Approval Date, to vary that Access Agreement or Train Operations Agreement or to act in a way that is inconsistent with the relevant Access Agreement or Train Operations Agreement.
- (e) Nothing in this Undertaking affects the rights of Aurizon Network under the Act.
- (f) This Undertaking will not apply to the extent that it is inconsistent with an Access Agreement or a Train Operations Agreement.

### **2.4 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.

## Part 3: Ringfencing

### Section A – General Provisions

#### 3.1 Preamble

- (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.
- (h) 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.

### **3.2 General principles of non-discrimination**

- (a) Aurizon Network will not:
  - (i) engage in conduct for the purpose of preventing or hindering an Access Seeker's or Access Holder's Access;
  - (ii) unfairly differentiate between Access Seekers in a way that has a material adverse effect on the ability of one or more of the Access Seekers to compete with other Access Seekers; or
  - (iii) provide Access to:
    - (A) a Related Operator; or
    - (B) a Related Party in respect of a port owned or operated by the Related Party where the port is connected to the Rail Infrastructure,  
  
on more favourable terms than the terms on which Aurizon Network provides Access to competitors of the Related Operator or Related Party, 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).
- (b) Aurizon Network will not discriminate in the granting of Access Rights to an Expansion based on the source of funding for the Expansion.
- (c) Aurizon Network will ensure that:
  - (i) all transactions between Aurizon Network and Related Operators in relation to Access are conducted on an arm's-length basis; and
  - (ii) all Access Seekers and Train Operators, irrespective of whether they are a Related Operator or a Third Party are provided with a consistent level of service with respect to Access and:
    - (A) in respect of Train Operators, are given an equal opportunity to operate Train Services in accordance with corresponding Access Rights; and
    - (B) in respect of Access Seekers, are given an equal opportunity to obtain Access Rights.
- (d) Aurizon Network will ensure that, subject to the express provisions of the Act and this Undertaking, all decisions made under this Undertaking are consistent between all Access Seekers, Access Holders and/or Train Operators in the same circumstances.

- (e) Aurizon Network will not engage in:
  - (i) anti-competitive cost shifting;
  - (ii) anti-competitive cross-subsidies; or
  - (iii) anti-competitive price or margin squeezing.

### **3.3 Aurizon Holdings to execute Deed in support of this Part 3**

- (a) Aurizon Network will request that its Ultimate Holding Company provides a Ultimate Holding Company Support Deed (**Deed**) in the form set out in **schedule D**.
- (b) In the event that the Ultimate Holding Company fails to give or maintain in force a Deed in the form required by **clause 3.3(a)**, or fails to comply with the requirements of the Deed, this Undertaking will cease to authorise the disclosure of Protected Information to any person or entity outside Aurizon Network until:
  - (i) the Ultimate Holding Company provides a current deed of the type required by **clause 3.3(a)**; or
  - (ii) the Ultimate Holding Company rectifies its failure to comply with the Deed to the satisfaction of the QCA.

## **Section B – Aurizon Network’s Functional Responsibility**

### **3.4 Function of Aurizon Network in the Aurizon Group**

- (a) The primary function of Aurizon Network is to provide and manage the Rail Infrastructure in a manner consistent with its role as a Rail Infrastructure Manager under the Rail Safety Act, and to provide and manage Access to the Rail Infrastructure.
- (b) The Access-related Functions to be performed only by Aurizon Network are:
  - (i) the primary function described in **clause 3.4(a)**;
  - (ii) negotiating Access Agreements and, where applicable, Train Operations Agreements for the Rail Infrastructure with Access Seekers and Train Operators, as applicable, and managing Access Agreements with Access Holders and Train Operations Agreements with Train Operators;
  - (iii) receiving, assessing and responding to Access Applications;
  - (iv) procuring appropriate levels of maintenance for and renewal of the Rail Infrastructure in a manner consistent with its role as a Rail Infrastructure Manager under the Rail Safety Act, 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, to the DTMR, and to its infrastructure lessors;

- (v) assessing, allocating and managing Capacity;
- (vi) providing scheduling and Network Control Services for Rail Infrastructure in accordance with the Network Management Principles; and
- (vii) the administration of the process for network development, planning, studies and Expansions in accordance with **Part 8**.

### **3.5 Obligation of Aurizon Network to perform Access-related functions**

- (a) The Access-related Functions to be performed by Aurizon Network will not be transferred or delegated to, contracted out to, or otherwise undertaken, by a Related Operator.
- (b) Aurizon Network will not undertake the operation or marketing of Train Services on the Rail Infrastructure, unless for the purpose of performing an Access-related Function or the provision of services in respect of Private Infrastructure. For clarity, nothing in this **clause 3.5(b)** allows Aurizon Network to compete with Rail Operators in the market for Above Rail Services on the Rail Infrastructure.
- (c) Subject to **clause 3.5(b)**, 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 an Access-related Function; or
  - (ii) prevents Aurizon Network from undertaking any function which is not an Access-related Function .
- (d) 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(b)(vi)** to the extent that they comprise:
  - (i) Field Incident Management; or
  - (ii) Yard Control services at yards other than Major Yards.

### **3.6 Staffing of Aurizon Network**

- (a) Aurizon Network will ensure that an employee engaged to work for Aurizon Network and whose duties primarily involve the performance of Access-related Functions, will:
  - (i) work primarily 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) subject to **clause 3.6(c)**, secondments of employees, subject to the requirements in this Undertaking on the handling of Protected Information;
- (iii) subject to **clause 3.6(c)**, 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 Protected 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;
- (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 Protected Information.
- (c) Aurizon Network employees whose duties primarily involve the performance of Access-related Functions may not be seconded or transferred to the Marketing Division on a temporary (i.e. less than 6 months) basis.
- (d) Subject to compliance with Aurizon Network's obligations under this **Part 3**, Aurizon Network will be entitled to obtain assistance in the performance by Aurizon Network of Access-related Functions 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.



### **3.7 Accounting separation**

Aurizon Network will develop, on an annual basis, the financial statements required by and in accordance with **Part 10**. The financial statements will be prepared for Aurizon Network's business in respect of the Below Rail Services regulated by this Undertaking and will not include information relating to any other business conducted by Aurizon Network.

## **Section C – Management of Aurizon Network**

### **3.8 The Network Executive Team**

- (a) Aurizon Network will be managed by a team comprising:
  - (i) a Aurizon Network's Executive Officer and his or her direct reports; and
  - (ii) any other person nominated by Aurizon Network's Executive Officer,  
**(Network Executive Team)**.
- (b) Aurizon Network will ensure that Related Operators do not participate in the process for the appointment of Aurizon Network's Executive Officer or in the appointment of any other person to the Network Executive Team.

### **3.9 Management separation from Related Operators**

- (a) Aurizon Network's Executive Officer or any other person appointed to the Network Executive Team:
  - (i) must not have direct management responsibility for a Related Operator;
  - (ii) may have direct management responsibility for an Aurizon Group business unit that is not a Related Operator; and
  - (iii) must have an independent management reporting line that does not include any person with direct management responsibility for a Related Operator.
- (b) The Ultimate Holding Company Support Deed required by **clause 3.3** will provide that:
  - (i) Aurizon Network's Executive Officer be maintained at the same or greater level of seniority within the organisational structure of the Aurizon Group, as the position of the executive manager with direct management responsibility for a Related Operator; or
  - (ii) in the event there is more than one Related Operator, at the same or greater level of seniority within the organisational structure of the Aurizon Group as the position of the most

senior executive manager with direct management responsibility for a Related Operator.

- (c) A person has direct management responsibility for a Related Operator when that person has the authority to make decisions about the day-to-day management and operation of a Related Operator, but does not include:
- (i) a director (including a managing director) of Aurizon Holdings;
  - (ii) a director (including a managing director) of Aurizon Operations;
  - (iii) the Chief Executive Officer of the Aurizon Group; or
  - (iv) the Chief Financial Officer of the Aurizon Group.

### **3.10 Independent management of Access Rights**

- (a) Aurizon Network will not act on directions from a Related Operator in respect of the granting or exercise of Access Rights to or by:
- (i) a 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 the Related Operator providing a direction to Aurizon Network in relation to the exercise of the Related Operator's Access Rights in accordance with the terms of an Access Agreement between the Related Operator and Aurizon Network.

## **Section D – Protected Information**

### *Section D1 – General provisions*

#### **3.11 Definition of Protected Information**

Protected Information means any and all communications, documents and information (whether in writing or otherwise) disclosed to Aurizon Network by, or obtained by Aurizon Network from, a Third Party Access Seeker (or their Customer), Third Party Access Holder (or their Customer) or a Third Party Train Operator (**Discloser**):

- (a) as part of, or in preparation of, an Access Application or Indicative Access Proposal (including any related discussions or disclosures);
- (b) in the course of negotiations for Access or negotiations for entering into a Train Operations Agreement;
- (c) that has been obtained under, in accordance with, or in the performance of, an Access Agreement or Train Operations Agreement; or

- (d) in the course of negotiations for an Expansion or Customer Specific Branch Line,  
or otherwise created or held by Aurizon Network in the performance of Access-related Functions and which:
  - (e) if disclosed by Aurizon Network to a Related Operator, without the consent of the Discloser, might reasonably be expected to adversely affect the commercial interests of the Discloser; or
  - (f) is designated by the Discloser as protected,
 but does not include any such information that:
  - (g) is in or comes into the public domain other than through a breach of confidence;
  - (h) was independently developed by Aurizon Network other than in the course of providing Access to the Discloser, and which Aurizon Network can prove was in its possession at the time of disclosure or which was otherwise known to it other than through any breach of confidence;
  - (i) is aggregated with other information in a way that de-identifies the information as the Discloser's information and where the disclosure of that aggregated information occurs in the ordinary course of business or so as to allow for compliance with legal, listing rule, business or other reporting requirements of the Aurizon Group; or
  - (j) is disclosed by Aurizon Network to:
    - (i) an End User regarding the performance or terms of a Train Operator's Train Operations Agreement for Access Rights utilised for the benefit of that End User; or
    - (ii) a Train Operator in relation to a relevant End User Access Agreement and the Access Rights under that End User Access Agreement, to the extent that such a disclosure is:
      - (A) reasonably necessary for negotiation of the relevant End User Access Agreement or the relevant Train Operations Agreement;
      - (B) reasonably necessary for the performance of obligations or the exercise rights under either the End User Access Agreement or the Train Operations Agreement;
      - (C) in connection with the safe operation of the Rail Infrastructure; or
      - (D) to a person or an entity in accordance with a provision of this Undertaking.

### **3.12 Examples of Protected Information**

Without limitation, where the requirements of **clause 3.11** are met, examples of Protected Information would include:

- (a) Access Applications and information provided in the context of an Access Application by an Access Seeker;
- (b) forecasts or predictions about the likely future requirements of an individual Access Seeker;
- (c) information exchanged in the management of an Access Agreement;
- (d) information about an Access Seeker's business strategy, pricing, or product development; and
- (e) information relating to an Access Seeker's or Access Holder's Rollingstock research and development.

### **3.13 Exclusion of Undertaking by voluntary agreement**

- (a) This **section D** applies to Protected Information disclosed to Aurizon Network by a Third Party Access Seeker or Third Party Access Holder unless Aurizon Network and the relevant Third Party voluntarily enter into a binding agreement which expressly excludes the operation of some or all of this **Part 3** in relation to the Protected Information.
- (b) 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 will prevail over the provisions of this **Part 3** to the extent of any inconsistency.

### **3.14 Request for Aurizon Network to enter confidentiality agreement**

If, during the Negotiation Period, an Access Seeker or Train Operator (as applicable) requests Aurizon Network to enter into a confidentiality agreement in relation to the Protected Information, Aurizon Network and the Access Seeker or Train Operator (as applicable) will, unless otherwise agreed, enter into a confidentiality agreement in the form set out in **schedule I**.

### **3.15 Overarching commitment to information security**

Aurizon Network undertakes:

- (a) to keep confidential and to not disclose Protected Information, unless in accordance with this Undertaking;
- (b) to use Protected Information only for the purpose for which it is disclosed to Aurizon Network, and only to the extent necessary for that purpose; and
- (c) not to use or disclose Protected Information for the purpose of a Related Operator obtaining an unfair commercial advantage.

## *Section D2 - Control framework for Protected Information*

### **3.16 Disclosure of Protected Information to Marketing Division**

- (a) Aurizon Network must not disclose Protected Information (without the written consent of the relevant Third Party Access Seeker or Third Party Access Holder) to the Marketing Division.
- (b) Aurizon Network acknowledges and agrees that nothing in this Undertaking operates to permit a disclosure of Protected Information to the Marketing Division without the written consent of the relevant Third Party Access Seeker or Third Party Access Holder.

### **3.17 Persons or business units with access to Protected Information**

- (a) The following individuals or business units will have access to Protected Information collected by Aurizon Network without the need for compliance with **clause 3.18**:
  - (i) the Aurizon Holdings board of directors;
  - (ii) the Aurizon Operations board of directors;
  - (iii) the Aurizon Network board of directors;
  - (iv) the Chief Executive Officer of the Aurizon Group;
  - (v) the Chief Financial Officer of the Aurizon Group;
  - (vi) the Company Secretary of the Aurizon Group or any assistant Company Secretary;
  - (vii) the General Counsel of the Aurizon Group;
  - (viii) the Chief Internal Auditor of the Aurizon Group;
  - (ix) the Chief Information Officer of the Aurizon Group;
  - (x) the Network Executive Team;
  - (xi) the division(s) within Aurizon Network that are responsible for responding to Access Applications, negotiating and administering Access Agreements, capacity planning and network development;
  - (xii) the division(s) within Aurizon Network that are responsible for administering Aurizon Network's financial affairs; and
  - (xiii) any person providing executive support or clerical, or administrative assistance to the individuals or business units identified by **paragraphs (i) to (xii)**.
- (b) Subject to the limitations on disclosure to the Marketing Division in **clause 3.16**, disclosure of Protected Information by Aurizon Network to a Recipient is permitted without observance of the process in **clause 3.18** 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, dispute resolution process or audit under this Undertaking, the Act or a Standard Agreement;
- (v) 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) 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;
- (vii) to an Aurizon Group banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements;
- (viii) to the Safety Regulator;
- (ix) to a person or business unit within Aurizon Network for the purpose of that person or business unit undertaking or performing any Access-related Function;
- (x) to employees within Aurizon Network to the extent necessary for those employees to perform their duties;
- (xi) 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 to keep the Protected Information disclosed to it by Aurizon Network confidential;
- (xii) 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 an agreement on terms that are enforceable by the relevant Third Party Access Seeker, Third Party 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;
- (xiii) to external legal, accounting, financial, engineering, environmental or other advisers, consultants or service providers to Aurizon Network, and:

- (A) whose role in advising or providing services to Aurizon Network requires the disclosure to be made; and
    - (B) who are under an obligation of confidentiality to Aurizon Network;
  - (xiv) by Aurizon Network to a Customer of an Access Seeker for the purpose of making assessments of, and decisions on, matters required or contemplated by this Undertaking; and
  - (xv) authorised by the owner of the Protected Information providing its prior written approval to such disclosure or alternative use, with such approval not to be unreasonably withheld.
- (c) Subject to the restrictions in **clause 3.17(d)**, disclosure of Protected Information by Aurizon Network to a Recipient within the Aurizon Group is permitted without observance of the process in **clause 3.18** when the disclosure is:
- (i) for the purpose of:
    - (A) Safeworking Procedures;
    - (B) Safety Standards;
    - (C) incident investigations;
    - (D) Aurizon Network obtaining project delivery, engineering or rail construction services, in relation to the procurement, construction or design of Rail Infrastructure;
    - (E) Aurizon Network obtaining Rail Infrastructure maintenance services, including asset maintenance planning service;
    - (F) Aurizon Network obtaining advice on Rollingstock and Rollingstock interface issues; or
    - (G) allowing a person employed within the Aurizon Group in an area employed in the provision of shared services and corporate functions to different functional areas and parts of the Aurizon Group, to provide such services to Aurizon Network in the performance of Access-related Functions and/or compliance with the requirements of this Undertaking;
  - (ii) to the real estate division within the Aurizon Group in relation to property issues;
  - (iii) for the purpose of normal corporate governance arrangements and management reporting, and consistent

- with good business practices, including the purposes of financial oversight, obtaining capital expenditure approvals and reporting requirements; or
- (iv) to Aurizon Group employees or contractors employed or engaged in internal audit, the provision of information services, safety-related services, environmental-related services or insurance management services, to the extent necessary for those employees or contractors to perform their duties.
- (d) Aurizon Network acknowledges and agrees that the right of disclosure permitted by **clause 3.17(c)**:
- (i) does not operate to permit a disclosure of Protected Information to the Marketing Division, consistent with the limitations in **clause 3.16**;
  - (ii) only permits disclosure of the Protected Information to a Recipient when the Recipient has a legitimate business purpose for requiring access to the defined category of Protected Information, and access to the Protected Information is limited such that disclosure to the Recipient is only to the extent necessary for that purpose;
  - (iii) is subject to any Protected Information disclosed to a Recipient being clearly identified as such; and
  - (iv) is subject to the Recipient of the Protected Information being informed by Aurizon Network of the need to keep the Protected Information confidential and in particular, of the prohibition on disclosure of it to the Marketing Division.

### **3.18 Process for authorised disclosure of Protected Information**

Subject to the limitations on disclosure to the Marketing Division in **clause 3.16**, Aurizon Network's Executive Officer or the Compliance Officer of Aurizon Network may authorise persons, functional service areas or external advisors (**Recipients**) in addition to those identified in **clause 3.17**, to have access to defined categories of Protected Information, provided:

- (a) the Recipient has a legitimate business purpose for requiring access to the defined category of Protected Information, and access to the Protected Information is limited such that disclosure to the Recipient is only to the extent necessary for that purpose;
- (b) Protected Information is clearly identified as such;
- (c) the Recipient has signed a declaration signifying their awareness and understanding of the Aurizon Group's obligations regarding Protected Information;



- (d) the Recipient and the defined category of Protected Information to which they have access is recorded in the Protected Information Register;
- (e) if the Recipient is not within Aurizon Network, or within an Aurizon Group company to which the Ultimate Holding Company Support Deed relates, that Aurizon Network enters into a legally enforceable agreement with the Recipient, on terms that are enforceable by the owner of the Protected Information and Aurizon Network, requiring the Recipient (and any of its employees) to keep the Protected Information confidential, and to only use it for the purpose for which it was disclosed; and
- (f) if the Recipient is not within Aurizon Network, a review date is recorded in Protected Information Register at which authorisation under this **clause 3.18** shall expire.

### **3.19 Need for consent for disclosure of Protected Information to some Recipients**

- (a) Aurizon Network may only disclose Protected Information to a Recipient employed by a Third Party that is advising or otherwise working for Aurizon Network and a Related Operator in relation to the same matter where:
  - (i) such disclosure is considered necessary by Aurizon Network; and
  - (ii) Aurizon Network first obtains the consent of the Discloser of the Protected Information.
- (b) If consent is sought under **clause 3.19(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 Protected Information fails to provide consent 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** will be extended by the same number of days as the day on which consent is given exceeds the Consent Response Date;
    - (B) where such consent has been sought during the Negotiation Period and the owner of the Protected Information refuses its consent to the disclosure of that Protected 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**; or

- (ii) during the process of administering an Access Agreement or a Train Operations Agreement:
  - (A) such consent shall not be unreasonably withheld; and
  - (B) if the owner of the Protected Information fails to respond to Aurizon Network's request for consent within 20 Business Days of its receipt of Aurizon Network's written request, then consent shall be deemed to have been given.

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

#### **3.20 Protected Information Register**

- (a) The Compliance Officer will be responsible for establishing and maintaining a Protected Information Register.
- (b) The Protected Information Register will contain:
  - (i) the identity of Recipients who have been approved pursuant to **clause 3.18** to have Access to Protected Information, and the defined category of Protected Information to which they have access;
  - (ii) a record of Recipients that have signed a declaration signifying their awareness and understanding of Aurizon Network's obligations regarding Protected Information in accordance with **clause 3.18(c)**;
  - (iii) a record of the signing of an exit certificate by employees working within Aurizon Network that have transferred to work for another business unit within the Aurizon Group;
  - (iv) details of any compliance issues in relation to Protected Information where an investigation revealed a breach of Aurizon Network's obligations.
- (c) A Third Party Access Seeker, Third Party Access Holder or Third Party Train Operator may, upon request, view information in the register which relates to Protected Information that it has disclosed to Aurizon Network.
- (d) The QCA may, upon request, view the Protected Information Register and may require the Protected Information Register to be subject to a compliance audit in accordance with **Part 10**.

#### **3.21 Mandatory Protected Information training and exit certificates**

- (a) Aurizon Network will ensure that:

- (i) all Aurizon Group (including Aurizon Network ) employees, receiving, or having access to, in the course of performing their duties, Protected Information;
- (ii) all Aurizon Group employees working in the Marketing Division (excluding employees not involved in coal transport areas); and
- (iii) all Aurizon Group employees working in the Legal Risk, Audit and Policy functional units of the Aurizon Group,

are aware of the Aurizon Group's obligations relating to the management of Protected Information, and complete training for this purpose.

- (b) Where Aurizon Network employees that have had access to Protected Information leave Aurizon Network to work for another Aurizon Group business unit, including for temporary secondments, they will undergo a debriefing to remind them of Aurizon Network's obligations relating to the management of Protected Information, and will be asked to sign an exit certificate (that includes an acknowledgement of having undergone such a debriefing process). A record of exit certificates signed will be included in the Protected Information Register.
- (c) Where Aurizon Network employees that have had access to Protected Information leave Aurizon Network to work for another employer outside the Aurizon Group, Aurizon Network will request those employees to undergo and will provide a debriefing session to remind them of Aurizon Network's and their own obligations relating to the management of Protected Information, and will ask those employees to sign an exit certificate (that includes an acknowledgement of having undergone such a debriefing process). A record of exit certificates signed will be included in the Protected Information Register.

### **3.22 Secure premises**

- (a) Aurizon Network will ensure that its major office premises have in place adequate security measure to ensure that employees working for a Related Operator are unable to access the Aurizon Network offices, unless:
  - (i) access to the Aurizon Network offices is authorised by an Aurizon Network employee; and
  - (ii) the employee of the Related Operator is accompanied by an Aurizon Network employee, to the extent reasonably practicable, while in the Aurizon Network offices.
- (b) **Clause 3.22(a)** does not require that Aurizon Network be located in a different building to a Related Operator.

## Section E – Complaints and Waiver

### 3.23 Complaint handling

- (a) If a Third Party Access Seeker, Third Party Access Holder or Third Party Train Operator considers that Aurizon Network has breached one or more of its obligations under this **Part 3** they may lodge a written complaint with Aurizon Network.
- (b) Unless otherwise notified in writing by the Third Party Access Seeker, Third Party Access Holder or Third Party Train Operator, the written complaint and any accompanying information (whether documentary or otherwise) will be Protected Information.
- (c) Aurizon Network will advise the QCA, as soon as practicable, of any complaints it receives pursuant to **clause 3.23(a)**.
- (d) Aurizon Network will:
  - (i) investigate complaints received pursuant to **clause 3.23(a)** ;  
and
  - (ii) advise the complainant and the QCA in writing of the outcome of that investigation and Aurizon Network’s proposed response, if any, and use reasonable endeavours to do so within 20 Business Days after receiving such a complaint.
- (e) Where the complainant is not satisfied with the outcome of Aurizon Network’s investigation, the complainant can 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 10.8**.

### 3.24 Waiver by the QCA

Aurizon Network may apply in writing to the QCA for a waiver of some or all of its obligations under this **Part 3** on either a temporary or permanent basis.

## 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 an access seeker may apply for, negotiate and develop an Access Agreement. In particular, under **Part 4**:
  - (i) An 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 Access Application for Access by an Access Seeker must be provided in the appropriate form and 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 (**clause 4.3**).
  - (iii) Aurizon Network will provide an Acknowledgement Notice and confirm preparation of an Indicative Access Proposal 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 Indicative Access Proposal (IAP) for the Access Rights sought. The Access Seeker may notify Aurizon Network regarding concerns about the IAP (**clause 4.6**).
  - (v) An Access Seeker must provide written notification to Aurizon Network if it intends to progress its Access Application, based on the arrangements within the IAP (**clause 4.7**).
  - (vi) 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**.

## **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 will provide prospective access seekers with information regarding the Access Application process. All Preliminary Information and the application form(s) for Access Applications will be displayed on the Website.

(c) A prospective access seeker may lodge a request for Capacity Information with Aurizon Network and Aurizon Network will provide that Capacity Information within 10 Business Days after receiving that request.

(d) Aurizon Network must keep the Preliminary 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 Access Seeker agrees to be bound by all the provisions of this Undertaking as they relate to Access Seekers.

(c) If a purported Access Application has not been properly completed, Aurizon Network must, within 10 Business Days after receipt of the purported Access Application, write to the person who lodged it:

(i) notifying them that the purported Access Application is incomplete; and

(ii) specifying what information is required to make the application complete and compliant.

(d) Within 10 Business Days after receipt of an Access Application Aurizon Network may write to the person who lodged the Access Application requesting more evidence or information to the extent reasonably required, including evidence or information:

(i) regarding their ability to fully 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; and
- (ii) required to assess Capacity allocation related issues and to prepare an IAP.
- (e) A person referred to in **clause 4.3(c)** or **(d)** must provide the revised Access Application or the requested information under **clause 4.3(d)** within 20 Business Days of Aurizon Network's notice or request, as applicable, or such other period as may be agreed. If the revised Access Application or required information is not provided to Aurizon Network within that time, Aurizon Network may provide the relevant person with a Negotiation Cessation Notice.
  - (f) For the purposes of **clauses 4.3(d)(i)** and **(e)**, a person does not fail to comply with a notice under **clause 4.3(d)(i)** where the person has not provided evidence or information requested by Aurizon Network because that evidence or information is not available provided that:
    - (i) reasonable grounds exist demonstrating that the evidence or information is not available; and
    - (ii) Aurizon Network has been notified (as soon as possible prior to the end of the timeframe under **clause 4.3(e)**) that the evidence or information is not available and of the relevant grounds demonstrating that non-availability.

#### **4.4 Acknowledgement of Access Application**

- (a) Within 10 Business Days after receiving a properly completed Access Application or the further information requested under **clause 4.3(d)**, as applicable, Aurizon Network will give the relevant Access Seeker a written Acknowledgement Notice:
  - (i) acknowledging receipt of the Access Application; and
  - (ii) confirming that Aurizon Network will prepare an Indicative Access Proposal for the requested Access.
- (b) The date of the Acknowledgement Notice will be the date on which the Access Seeker's Access Application will be deemed to have been received for the purposes of this Undertaking.
- (c) If an Access Application is received by Aurizon Network which is, in whole or part, for Access Rights which cannot be provided in the absence of an Expansion or Customer Specific Branch Line:
  - (i) **clause 8.2 to 8.10** will apply;
  - (ii) the negotiation process for Access can be suspended (before or after the provision of an Indicative Access Proposal) by either Aurizon Network or the relevant Access Seeker giving written notice to the other (provided that a written notice given under this clause must give reasons for the suspension); and

- (iii) a suspension of the negotiation process under **clause 4.4(c)(ii)** continues until either:
- (A) there is agreement with Aurizon Network on or a determination of a relevant Dispute specifies what Expansion or Customer Specific Branch Line is required and this Undertaking, an agreement to which Aurizon Network is a party or a determination of a relevant Dispute specifies how that Expansion or Customer Specific Branch Line is to be funded; or
  - (B) 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 or Customer Specific Branch Line.
- (d) Where a Provisional Capacity Allocation (as defined under **clause 8.5(r)**) 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 pending the outcome of negotiations with the holder of the Provisional Capacity Allocation.
- (e) Subject to **clause 4.4(c)**, if:
- (i) an Access Application is received by Aurizon Network for Access Rights which do not commence until more than three 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) (Receipt Date)**; and
  - (ii) either:
    - (A) the Access Rights are proposed to commence on a date more than five years after the Receipt Date; or
    - (B) where the Access Rights are proposed to commence on a date more than three years but no more than five years after the Receipt Date, Aurizon Network (acting reasonably) considers that seeking the Access Rights so far in advance of the proposed commencement of Access Rights is not required taking into account the lead time reasonably necessary to accommodate:
      - (1) the infrastructure, facilities and equipment that need to be constructed, installed, procured or otherwise available in order to use the Access Rights including:
        - mine development; and



- transport logistics chain development (including, for example, the acquisition of Rollingstock or Rollingstock facilities and the development of rail infrastructure other than Rail Infrastructure);

(2) any Expansion, Customer Specific Branch Line, Connecting Infrastructure or capital expenditure project involving Asset Replacement and Renewal Expenditure; and

(3) export terminal facilities being developed, expanded or otherwise enhanced or becoming available,

and taking into account the likelihood of the Access Seeker utilising the Access Rights from the date on which they are proposed to commence,

then Aurizon Network may, subject to **clause 4.4(f)**, reject the Access Application and the relevant Access Seeker must provide a new Access Application no more than three years from when the proposed Access Rights are to commence.

(f) Where Aurizon Network notifies an Access Seeker that Aurizon Network is rejecting the Access Seeker's Access Application under **clause 4.4(e) (Rejection Notice)**:

(i) the rejection will take effect five Business Days after Aurizon Network gives the Rejection Notice and all time periods and obligations relating to the Access Application (except in relation to a Dispute referred to in **clause 4.4(f)(ii)**) are suspended; and

(ii) where, within five Business Days after Aurizon Network gives the Rejection Notice, the Access Seeker commences a Dispute under **clause 11.1** in respect of whether the requirements in **clause 4.4(e)** have been satisfied:

- (A) (1) the Access Application's rejection; and
- (2) the time periods and obligations relating to the Access Application (except in relation to the relevant Dispute),

continue to be suspended until the Dispute is determined in accordance with **clause 11.1** or is withdrawn by the Access Seeker;

- (B) where the Dispute is determined in favour of the rejection or is withdrawn by the Access Seeker, the suspension of the rejection is lifted and the Access Application is immediately rejected; and
  - (C) where the Dispute is not determined in favour of the rejection:
    - (1) the Access Application is not rejected and all time periods and obligations cease to be suspended; and
    - (2) where applicable, all time periods adversely affected by the suspension under **clause 4.4(f)(ii)(A)(2)** are taken to be extended by the period from (and including) the date on which Aurizon Network gave the Rejection Notice to (and including) the date on which the Dispute was determined.
- (g) When Aurizon Network suspends the negotiation process in accordance with **clause 4.4(c)**, the Access Seeker must each six months thereafter write to Aurizon Network to:
- (i) confirm, in writing, the Access Seeker's ongoing requirement for the Access Rights;
  - (ii) confirm, in writing, 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)**~~Error! Reference source not found.~~; and
  - (iii) if requested by Aurizon Network, provide information or evidence of the Access Seeker's ability to fully 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.

#### 4.5 Revisions to an Access Application

- (a) After an Acknowledgement Notice has been given to an Access Seeker by Aurizon Network under **clause 4.4(a)** but prior to Aurizon Network giving an Indicative Access Proposal to the Access Seeker, the Access Seeker may (acting reasonably and in good faith) vary its Access Application, provided that the variation is not a Material Variation.
- (b) If Aurizon Network is of the view that a requested variation is a Material Variation, Aurizon Network will give written notice to the Access Seeker of its view and may suspend preparing an Indicative Access Proposal for the Access Seeker.

- (c) If, within five Business Days after Aurizon Network gives a notice under **clause 4.5(b)**, the relevant Access Seeker gives written notice to Aurizon Network that it wishes to continue with the Access Application without the proposed variation, then:
- (i) the process under this Undertaking in respect of that request for Access will continue; and
  - (ii) the time within which Aurizon Network is required to provide an Indicative Access Proposal 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(b)** to (and including) the date on which the Access Seeker gives Aurizon Network a notice under this **clause 4.5(c)**.
- (d) If, within five Business Days after Aurizon Network gives a notice under **clause 4.5(b)**, a notice is not given by the Access Seeker under **clause 4.5(c)**, then:
- (i) the Access Seeker will be taken to have withdrawn the original Access Application;
  - (ii) the original Access Application subject to the relevant variations will comprise a new request for Access that is deemed to have been received by Aurizon Network on the date that is five Business Days after the date on which Aurizon Network gave the notice under **clause 4.5(b)**; and
  - (iii) the process under this **Part 4** will recommence in respect of that request for Access from **clause 4.3(b)**.
- (e) If a notice is not given by Aurizon Network under **clause 4.5(b)**, 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 Indicative Access Proposal, Aurizon Network may, by written notice to the Access Seeker, extend the date by which it must give the Indicative Access Proposal to the Access Seeker by a period of no more than that from (and including) the date on which Aurizon Network was notified by the Access Seeker of the relevant variation to (and including) the date on which Aurizon Network notifies the Access Seeker under this **clause 4.5(e)**.
- (f) If:
- (i) Aurizon Network gives a notice under **clause 4.5(b)**; and
  - (ii) within five Business Days after Aurizon Network has provided that notice, the relevant Access Seeker commences a Dispute under **clause 11.1** in respect of whether the relevant variation is a Material Variation,

then:

- (iii) the time periods under **clauses 4.5(c)** and **(d)** are suspended from the date on which the relevant Dispute Notice was given to Aurizon Network until the Dispute is determined in accordance with **clause 11.1**; and
- (iv) following determination of the Dispute:
  - (A) **clauses 4.5(b)** to **(e)** must be applied in a manner consistent with the determination of that Dispute; and
  - (B) where applicable, the time within which Aurizon Network is required to provide an Indicative Access Proposal 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(b)** to (and including) the date on which the Dispute was determined in accordance with **clause 11.1**.

#### **4.6 Indicative Access Proposal**

- (a) Aurizon Network will review the information received and assess the Access Application to develop an Indicative Access Proposal (**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, for coal carrying Train Services, Aurizon Network's assumptions regarding Rollingstock, section run times and loading and unloading times used in preparing that assessment, except:
    - (A) to the extent that either the System Rules indicate, or Aurizon Network considers, such an assessment is not required; and
    - (B) where Aurizon Network considers, such an assessment is not required, it has notified the Access Seeker of the reasons why the assessment is not required;
  - (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 further information 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 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) Aurizon Network will provide the IAP within 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 written notice to the Access Seeker (to be given as soon as practicable and in any case no later than 15 Business Days after the Acknowledgement Notice), extend the period for the giving of an IAP by up to a further 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 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 **clause 4.4(c)**; 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 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 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 10 Business Day period, a reasonable period notified by Aurizon Network to the Access Seeker in writing within 5 Business Days after the Access Seeker's notice to Aurizon Network under **clause 4.6(f)**.
- (h) Aurizon Network has no obligation to produce an IAP for an Access Seeker that notifies Aurizon Network in writing 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 under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in the IAP (as varied in accordance with **clause 4.6(g)**, if applicable), the Access Seeker must notify Aurizon Network of its intention in writing, 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)** of its intention to progress its Access Application prior to the IAP's expiry, the Access Application and the IAP are taken to have been withdrawn on the IAP's expiry date.

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

- (a) Where 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 of one of the other parties for that Access, this Undertaking and Aurizon Network will treat the Customer as the Access Seeker (**Customer Access Seeker**) and Aurizon Network may negotiate solely with that Customer Access Seeker; or
  - (ii) the only parties that applied for Access are Railway Operators, this Undertaking and Aurizon Network will treat the Railway Operator nominated in writing by the Customer to Aurizon Network as the Access Seeker and Aurizon Network may negotiate solely with that Railway Operator.

- (b) Where **clause 4.8(a)(i)** applies, the Customer Access Seeker may give written notice to Aurizon Network nominating a Railway Operator (**Nominee Operator**) to act on its behalf for the purposes 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 that nomination is revoked by notice to Aurizon Network:
- (i) the Nominee Operator will for the purpose of this Undertaken 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.

However, where 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) In the event that:
- (i) the Customer does not nominate the relevant Railway Operator under **clause 4.8(a)(ii)** within a reasonable time (which need not be prior to the date on which Aurizon Network issues an Indicative Access Proposal to each of the relevant Railway Operators); and
  - (ii) any one or more of the relevant Railway Operators has served a notice of intention under **clause 4.7**,

Aurizon Network may by written notice to the Customer and the competing Railway Operators, suspend the negotiation process under this **Part 4** for each Access Seeker pending the provision of that notification.

- (d) Where **clause 4.8(a)(ii)** applies and the relevant Customer nominates a relevant Railway Operator prior to Aurizon Network preparing an Indicative Access Proposal for each of the relevant Railway Operators, Aurizon Network may prepare an Indicative Access Proposal only for the Railway Operator nominated by the Customer.
- (e) Aurizon Network may:

- (i) for the purpose of **clause 4.8(a)**, disclose to the Customer the fact of the Railway Operators' Access Application; and
- (ii) for the purpose of **clause 4.8(c)**, disclose to the Customer and the relevant Railway Operators the fact of the multiple Access Applications and the reasons for the notice under **clause 4.8(c)**.

Such disclosures will not constitute a breach of the confidentiality obligations owed by Aurizon Network under **Part 3**.

- (f) Access Applications that constitute Mutually Exclusive Access Applications will be dealt with in accordance with **clause 7.5**.

## **4.9 Train Operators**

- (a) A request by a prospective Train Operator for Aurizon Network to enter into a Train Operations Agreement must be provided in writing and:
  - (i) identify the relevant End User;
  - (ii) provide a copy of the notification from the End User nominating them as the "Train Operator"; and
  - (iii) 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 Agreement.
- (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(a)** the prospective Train Operator agrees to be bound by all the provisions of this Undertaking as they relate to Train Operators. Where Aurizon Network, acting reasonably, considers that a prospective Train Operator has materially failed to comply with the provisions of this Undertaking, Aurizon Network may, without prejudice to any other rights it may have, cease negotiations for a Train Operations Agreement by written Negotiation Cessation Notice to the prospective Train Operator.

## **4.10 Negotiation process**

### **4.10.1 Negotiation Period**

- (a) A Negotiation Period in respect of:
  - (i) an Access Seeker's Access commences on the date on which the Access Seeker provides a notification of intent to progress an Access Application in accordance with **clause 4.7**; or
  - (ii) a Train Operator's Train Operations Agreement commences on the date that Train Operator has provided to Aurizon



Network all of the relevant information referred to in **clause 4.9(a)**.

- (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.
- (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 written 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 pursuant to **clause 4.12(a)**;
  - (iv) the date nine months after the commencement of the Negotiation Period 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 obligations under the negotiation framework in this **Part 4**, in which case, the Negotiation Period will, subject to **clause 4.12(d)(ii)**, continue until the Dispute's resolution subject to any extension of the period under this **clause 4.10.1(c)(iv)** agreed by the parties, or determined as part of the Dispute's resolution; or
  - (v) subject to **clause Error! Reference source not found.**, 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 by Aurizon Network adversely impacting Aurizon Network's ability to develop Infrastructure Enhancements contemplated by the IAP.
- (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 **(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) if requested by the Access Seeker within 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
- (iv) if, within 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 in accordance with this Undertaking 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 pursuant to **clause 4.10.1(d)** that would cause or contribute to it failing to comply with **Part 8**.

(e) For clarity:

- (i) to the extent that all or part of the Access Rights sought by the Access Seeker cannot be provided as referred to under **clause 4.10.1(d)(ii)**; or
- (ii) the negotiation process is not recommenced under **clause 4.10.1(d)(iv)** in respect of all or part of the Access Rights sought by the Access Seeker,

then as 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 need to start at the beginning of the negotiation process under this **Part 4**.

(f) A Train Operator's Negotiation Period ceases on:

- (i) the execution of the Train Operations Agreement;
- (ii) Aurizon Network receiving written notification by the Train Operator that it no longer wishes to negotiate or enter into the Train Operations Agreement;
- (iii) Aurizon Network issuing a Negotiation Cessation Notice to the Train Operator pursuant to **clause 4.12**;

- (iv) the expiration of nine months from the date that the Train Operator is nominated by the relevant End User, 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 obligations in this negotiation framework in this **Part 4**, in which case, the Negotiation Period will, subject to **clause 4.12**, continue until the Dispute's resolution;
- (v) the End User 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 Agreement. In order to facilitate this process:
  - (i) an End User must (if it has not done so already) nominate its Train Operator by written notice to Aurizon Network;
  - (ii) Aurizon Network will 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) an Operating Plan is to be prepared by the Access Seeker (other than End User) or the Train Operator, as applicable;
  - (iv) an Access Charge, determined in accordance with the pricing principles set out in **Part 6**, is to be provided by Aurizon Network including advice as to whether Aurizon Network has applied **clause 6.2.2(b)(i)** or **clause 6.2.3** 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) a Capacity Analysis and an investigation of operational impacts are to be undertaken by Aurizon Network 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) the definition of the relevant Train Service Entitlement and, where applicable, advice of the initial timetable for the proposed Train Services is to be provided by Aurizon Network;
  - (vii) the Access Seeker (other than an End User) or the Train Operator, as applicable, is to 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 (Operator), as applicable, with the Rollingstock Interface Standards; and
  - (viii) unless otherwise agreed by Aurizon Network and the Access Seeker, the terms and conditions comprising the Access Agreement are those provided in the Standard Access Agreement.
- (b) Without limiting the matters that an Access Seeker (other than an End User) or a Train Operator, as applicable, 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 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 Agreement, as applicable.
- (c) It would be reasonably necessary to conduct an Interface Risk Assessment for the purposes of **clause 4.10.2(b)** where, for instance:
- (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 Railway 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 Railway 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 Railway Operator's) or Aurizon Network's accreditation or safety management 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** during negotiations or information or evidence of the Access Seeker's ability to fully 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 will provide the information and evidence requested within 20 Business Days of the request (or such other period as may be agreed with Aurizon Network) and will facilitate the provision of such information from Third Parties, as applicable.

- (e) During the Negotiation Period, the Access Seeker may (acting reasonably and in good faith) vary its Access Application, provided that the variation is not a Material Variation.
- (f) If Aurizon Network is of the view that a requested variation is a Material Variation, Aurizon Network will give written notice to the Access Seeker of its view and may suspend negotiations with the Access Seeker.
- (g) If, within five Business Days after Aurizon Network gives a notice under **clause 4.10.2(f)**, the relevant Access Seeker gives written notice to Aurizon Network that it wishes to continue with the Access Application without the proposed variation, then:
  - (i) the process under this Undertaking in respect of that request for Access will continue; and
  - (ii) if Aurizon Network suspended negotiations under **clause 4.10.2(f)**, the nine month period under **clause 4.10.1(c)(iv)** is extended by the period from (and including) the date on which Aurizon Network notified the Access Seeker under **clause 4.10.2(f)** to (and including) the date on which the Access Seeker gives Aurizon Network a notice under this **clause 4.10.2(g)**.
- (h) If, within five Business Days after Aurizon Network gives a notice under **clause 4.10.2(f)**, a notice is not given by the Access Seeker under **clause 4.10.2(g)**, then:
  - (i) the Access Seeker will be taken to have withdrawn the original Access Application;
  - (ii) the original Access Application subject to the relevant variations will comprise a new request for Access that is deemed to have been received by Aurizon Network on the date that is five Business Days after the date on which Aurizon Network gave the notice under **clause 4.10.2(f)**; and
  - (iii) the process under this **Part 4** will restart at **clause 4.3(b)** in respect of that request for Access.
- (i) If a notice is not given by Aurizon Network under **clause 4.10.2(f)**, 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.

- (j) If:
- (i) Aurizon Network gives a notice under **clause 4.10.2(f)**; and
  - (ii) within five Business Days after Aurizon Network have that notice, the relevant Access Seeker commences a Dispute under **clause 11.1** in respect of whether the relevant variation is a Material Variation,
- then:
- (iii) the time periods under **clauses 4.10.2(g) and (h)** are suspended from the date on which the relevant Dispute Notice was given to Aurizon Network until the Dispute is determined in accordance with **clause 11.1**; and
  - (iv) following determination of the Dispute:
    - (A) **clauses 4.10.2(f) to (h)** must be applied in a manner consistent with the determination of that Dispute; and
    - (B) where applicable, the nine month period under **clause 4.10.1(c)(iv)** is extended by the period from (and including) the date on which Aurizon Network notified the Access Seeker under **clause 4.10.2(f)** to (and including) the date on which the Dispute was determined in accordance with **clause 11.1**.
- (k) In respect of the details required to be developed by the parties in accordance with **clause 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 Agreement, as applicable;
  - (ii) to make the commencement of Train Services under the Access Agreement or the Train Operations Agreement, 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 Agreement, as applicable, to address any subsequent cost or operating impacts arising in connection with the matters referred to in **clauses 4.10.2(k)(i) and (ii)** 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 Agreement.

#### 4.11 Negotiation of End User Access Agreements and Train Operations Agreements

- (a) Each:
  - (i) End User shall have the right to be present in any negotiation between Aurizon Network and a Train Operator for a Train Operations Agreement or the End User's Access Rights; and
  - (ii) End User shall have the right to require Aurizon Network to permit their Train Operator to be present at and participate in all negotiations between Aurizon Network and the End User for Access Rights proposed to be wholly or partially utilised by that Train Operator.
- (b) In negotiating an End User Access Agreement and for the purposes of this **Part 4**:
  - (i) Aurizon Network and an End User will seek to agree an assumed Operating Plan (which the End User may involve its Train Operator in the preparation of); and
  - (ii) if the End User does not provide required information regarding Rollingstock and Rollingstock Configurations for the End User's Train Services, Aurizon Network may assume:
    - (A) a Reference Train Service in respect of the Rollingstock and Rollingstock Configurations; and
    - (B) 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 Agreements is negotiated between Aurizon Network and the relevant Train Operator(s), the Train Operations Agreement(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 End User.
- (d) If, for whatever reason (except by reason of execution of the End User Access Agreement):
  - (i) negotiations in respect of the End User Access Agreement expire or are terminated; or



- (ii) the End User ceases to be an Access Seeker in respect of the Access Rights that relate to the relevant Train Operations Agreement; or
- (iii) where the End User has already executed an End User Access Agreement, the End User ceases to be an Access Holder in respect of the Access Rights that relate to the relevant Train Operations Agreement,

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

#### **4.12 Cessation of negotiations**

- (a) At any time during a Negotiation Period, Aurizon Network may give a Negotiation Cessation Notice to an Access Seeker or a Train Operator, as applicable, if:
  - (i) the Access Seeker or Train Operator, as applicable, does not comply with the relevant obligations and processes contained in this Undertaking, and such non-compliance is material;
  - (ii) 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 Agreement, as applicable, in a material way;
  - (iii) the Access Seeker fails to comply with **clause 4.4(f)**;
  - (iv) the Access Seeker has no genuine intention of obtaining Access Rights or has no reasonable likelihood of utilising Access at the level sought;
  - (v) subject to **clause 11.1.4(e)**, the Access Seeker or Train Operator, as applicable, does not comply with a determination of an expert pursuant to **clause 11.1.4**; or
  - (vi) the Access Seeker or the Train Operator, as applicable, does not comply with a determination of the QCA pursuant to **clause 11.1.5** in relation to a Dispute.
- (b) Without limitation to **clause 4.12(a)(ii)**, **clause 4.12(a)(ii)** is taken to be satisfied, 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 Agreement, 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 Agreement, as applicable.
- (c) Without limitation to **clause 4.12(a)(iv)**:
  - (i) **clause 4.12(a)(iv)** is taken to be 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, 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 Customer for those Access Rights or no reasonable likelihood of having such a Customer (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, 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)(iv)** is satisfied:
    - (A) whether the Access Seeker has secured, or is reasonably likely to secure, Supply Chain Rights;
    - (B) whether the Access Seeker 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;
    - (C) whether the Access Seeker or its Rail Operator has sufficient facilities (including Rollingstock,

provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Services to fully utilise the Access Rights sought; and

- (D) 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.
- (d) If an Access Seeker or Train Operator disputes that Aurizon Network was entitled to give it a Negotiation Cessation Notice and seeks to resolve the Dispute in accordance with **clause 11.1**, for the purposes of **clause 4.12(a)**, the Negotiation Cessation Notice will be deemed to have been issued only if and when the Dispute is resolved in Aurizon Network's favour. If the resolution of the Dispute identifies that Aurizon Network was not entitled to give the Negotiation Cessation Notice:
- (i) Aurizon Network will recommence negotiations with that Access Seeker or Train Operator immediately;
  - (ii) the time between the issuing of the wrongly issued Negotiation Cessation Notice and the date of the finding that Aurizon Network was not entitled to issue the Negotiation Cessation Notice will be added to the original period of negotiation for the purpose of determining the nine month period referred to in **clause 4.10.1(c)(iv)** or **4.10.1(f)(iv)**, as applicable; and
  - (iii) Aurizon Network, despite the outcome of the Dispute, is taken to have complied with this Undertaking and is not liable, howsoever that liability may arise, to the QCA or the relevant Access Seeker, Customer (if any), Train Operator (if any) or any other person provided Aurizon Network has made a good faith and reasonable attempt to comply with the relevant provisions of this **clause 4.12**.
- (e) Aurizon Network shall have the right, at its option, to recover its reasonable costs incurred in negotiations with the Access Seeker where it ceases negotiations in accordance with **clause 4.12(a)(iv)**. By submitting an Access Application the Access Seeker agrees to pay Aurizon Network's costs as referred to in this **clause 4.12(e)** including costs incurred by Aurizon Network to Third Parties engaged in assessing the relevant Access Application and scoping for and preparation for the provision of the requested Access.

## Part 5: Access Agreements

### 5.1 Development of Access Agreements

- (a) The granting of Access will be underpinned by an Access Agreement that will be developed and finalised as part of the 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 will be those terms agreed by Aurizon Network and the Access Seeker and both Aurizon Network and the Access Seeker must negotiate those terms acting reasonably and in good faith. Where the terms cannot be agreed, an Access Seeker may require, and Aurizon Network must offer to provide, Access on terms of:
  - (i) for coal-carrying services, where the Access Holder is the Railway Operator, the Standard Access Agreement (Operator);
  - (ii) for coal-carrying services, where the Access Holder will not be the Railway Operator:
    - (A) the Standard Access Agreement (Access Holder);  
or
    - (B) the Standard Access Agreement (End User); or
  - (iii) for non-coal-carrying services, an Access Agreement consistent with the relevant Standard Access Agreement subject to the changes necessary to reflect the fact that the Access is for non coal-carrying services.
- (d) Where the terms of an Access Agreement cannot be agreed and the matter is referred for dispute resolution under **Part 11**, the 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 relevant form of Standard Access Agreement referred to in **clause 5.1(c)**;
  - (ii) where Access if required for non-coal-carrying services, an Access Agreement which is consistent with the relevant Standard Access Agreement, subject to the changes necessary to reflect the fact that the Access is for non coal-carrying services.
- (e) Once the Access Seeker has notified Aurizon Network in writing that it is satisfied with the terms and conditions of the Access Agreement provided to it, Aurizon Network will, as soon as reasonably practicable, provide the Access Agreement (or, where appropriate, an

amendment to an existing Access Agreement) in final form to the Access Seeker for execution.

- (f) The parties will use reasonable endeavours to duly execute the final Access Agreement as soon as practicable after its completion by Aurizon Network.
- (g) Aurizon Network will execute an Access Agreement with an Access Seeker up to two years prior to the commencement of Train Services under the Access Agreement or such longer period as may be agreed.
- (h) Where an Access Seeker is seeking Access Rights that are additional rights to, or a variation of, an existing Access Agreement, 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.

## Part 6: Pricing principles

### 6.1 Application of pricing principles

- (a) Aurizon Network will apply the pricing principles set out in **clauses 6.2 to 6.4** in developing Access Charges.
- (b) To the extent that any of those pricing principles conflict, Aurizon Network will apply the pricing principles in the following order of precedence (from highest to lowest):
  - (i) **clause 6.2** (Price differentiation);
  - (ii) **clause 6.3** (Pricing limits);
  - (iii) **clause 6.4.1** (Rail Infrastructure utilisation); and
  - (iv) **clause 6.4.2** (Revenue adequacy).
- (c) In this **Part 6**, where Access Rights have been, or are to be granted, under an End User Access Agreement, the relevant End User and all of that End User's Train Operators will be treated as a single entity so that a reference to:
  - (i) an Access Seeker is a reference to the End User and its Train Operators collectively; and
  - (ii) an Access Holder is a reference to the End User and its Train Operators collectively.

### 6.2 Price differentiation

#### 6.2.1 Price differentiation right

- (a) Aurizon Network may only differentiate Access Charges between Access Seekers or between Access Seekers and Access Holders in accordance with this **clause 6.2**.
- (b) Aurizon Network will not be in breach of this **clause 6.2** by reason of the fact that in the case of an End User, the Access Charges payable may be split between that End User and its Train Operator(s).

#### 6.2.2 Price differentiation from a Reference Tariff

- (a) Where **clause 6.2.4** is relevant it will be applied to determine the relevant Reference Tariff before the application of this **clause 6.2.2**.
- (b) Subject to **clauses 6.2.2(c)** and **(d)**, where there is an applicable Reference Tariff, the Access Charge formulated by Aurizon Network for an Access Seeker will be consistent with that Reference Tariff unless:
  - (i) both of the following are satisfied:
    - (A) the characteristics of the relevant Train Service are different from the characteristics of the Reference

Train Service as set out in **clause 1.3** of **schedule F**; and

- (B) the cost or risk to Aurizon Network of providing Access for that Train Service differs from the cost or risk to Aurizon Network if that Train Service had the same characteristics as the Reference Train Service,

in which case the Access Charge formulated by Aurizon Network may be varied from the relevant Reference Tariff to reflect the difference in cost or risk referred to in **clause 6.2.2(b)(i)(B)**; or

- (ii) otherwise agreed with the QCA.
- (c) Where Aurizon Network has entered 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 may 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 the ongoing Access Charge.
  - (d) 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 6.2.2(d)(i)** does not apply, the number of reference Train Paths used by the proposed Train Service will be determined as follows:  
$$\text{rtp} = \max[(A/B), (B/A)]$$
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 Aurizon Network and the QCA agree an alternative methodology, in which case rtp will be calculated in accordance with that alternative methodology.

### **6.2.3 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 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 reflect, over time:

- (a) changes or differences in the cost or risk relevant to Aurizon Network providing Access;
- (b) Changes in Market Circumstances; or
- (c) limitations on Available Capacity in accordance with **clause 6.4.1(b)**.

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

#### **Exceptions**

- (a) Where an Access Seeker seeks Access Rights for coal carrying Train Services that require an Expansion to be funded by Aurizon Network under **clause 8.2.1(b)** the following shall apply:
  - (i) if the capital cost of the relevant Expansion or the increase in the Gtk Forecasts has not already been taken into account (including in the Capital Indicator) in the development of the System Reference Tariff, then Aurizon Network will seek a variation of the System Reference Tariff and the relevant Allowable Revenues and Gtk Forecasts, as necessary, to take account of the Expansion;
  - (ii) the System Reference Tariff (whether or not varied under **paragraph (i)**) will be the applicable Reference Tariff for the relevant Access Seeker's Train Services; and



- (iii) the remainder of this **clause 6.2.4** will not apply to that Expansion.

***Submissions and materiality***

- (b) Subject to **clause 6.2.4(n)**, if an Access Seeker seeks Access Rights for coal carrying Train Services that require an Expansion, Aurizon Network will, within 80 Business Days after the Feasibility SFA becomes unconditional for that Expansion, seek the QCA's acceptance of Aurizon Network's proposed:
  - (i) allocation of costs<sup>1</sup> arising from the Expansion (including capital, maintenance and operating costs) between the relevant Access Seekers and, if applicable, existing Access Holders (including on a Coal System basis if the Expansion relates to more than one Coal System), provided that allocation of costs to existing Access Holders will be proposed only to the extent which reflects benefits that existing Access Holders will receive from the Expansion;
  - (ii) calculations in accordance with **clause 6.2.4(i)**; and
  - (iii) determination as to which of **clause 6.2.4(j)** or **(k)** applies, **(Pricing Proposal)**.
- (c) Without limiting the material that Aurizon Network may submit accompanying the Pricing Proposal, Aurizon Network may also provide indicative new or varied Reference Tariffs that are consistent with the Pricing Proposal. These will be provided for the QCA's information. An application for approval of new or varied Reference Tariffs will be made to the QCA separately.
- (d) The QCA must:
  - (i) publish the Pricing Proposal;
  - (ii) invite persons to make submissions on the Pricing Proposal within a reasonable time period specified by the QCA; and
  - (iii) without limiting the principles in **clause 11.2**, provide Aurizon Network with a draft decision and a reasonable opportunity to respond to that draft decision and to any submissions made by persons in relation to the Pricing Proposal.
- (e) The QCA may:
  - (i) accept Aurizon Network's Pricing Proposal; or
  - (ii) refuse to accept Aurizon Network's Pricing Proposal, with reasons provided to Aurizon Network.

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<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.

- (f) Without limitation on the matters that the QCA can consider, the QCA may only approve cost allocation principles if it is satisfied that it is appropriate to do so having regard to the factors in section 138(2) of the QCA Act.
- (g) If the QCA refuses to accept a Pricing Proposal, Aurizon Network will, if applicable, submit a replacement Pricing Proposal under **clause 6.2.4(b)**.
- (h) Despite any other provision of this Undertaking:
  - (i) Aurizon Network, Access Seekers or their Customers are not obliged to enter into any arrangements in relation to the construction or funding of the Expansion prior to the QCA accepting Aurizon Network's Pricing Proposal relevant to the Expansion; and
  - (ii) the time taken to obtain the QCA's acceptance or approval will not constitute delay on the part of Aurizon Network triggering any rights or remedies in favour of the relevant Access Seekers or their Customers.

***Criterion for establishment of new Expansion Tariff***

- (i) For the purpose of submitting a Pricing Proposal in accordance with **clause 6.2.4(b)** Aurizon Network will calculate:
  - (i) which of the existing Reference Tariffs applicable to the relevant Coal System is the highest on a \$/NT Basis and after being adjusted in a manner consistent with the cost allocation principles based on the Expansion's Projected Cost (**Highest Reference Tariff**); and
  - (ii) whether the Highest Reference Tariff would, on a \$/NT Basis and as adjusted under **clause 6.2.4(i)(i)**, be increased by more than 5% (**threshold**) as a result of the increase (if any) in Allowable Revenue for that Highest Reference Tariff that would arise based on:
    - (A) that part of the Projected Cost for the Expansion that is for the benefit of the relevant Access Seekers (in accordance with the cost allocation principles) being included into the Regulatory Asset Base relating to the Highest Reference Tariff;
    - (B) the specified cost allocation principles;
    - (C) forecast volumes on which the Highest Reference Tariff is based;
    - (D) forecast volumes arising as a result of the Expansion; and

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

- (1) 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
- (2) the peak point for contracted Access by the Initial Access Holders,

and, on the basis of those calculations, determine which of **clauses 6.2.4(j)** and **(k)** will apply.

- (j) Where the Highest Reference Tariff would be increased by more than the threshold in accordance with **clause 6.2.4(i)(ii)**, Aurizon Network will prepare and submit to the QCA a draft amending access undertaking for a new Reference Tariff (**Expansion Tariff**), including the relevant Allowable Revenue and GtK Forecast, that will apply in relation to the Expansion.
- (k) Where the Highest Reference Tariff would not be increased by more than the threshold in accordance with **clause 6.2.4(i)(ii)**:
  - (i) the Highest Reference Tariff will be the applicable Reference Tariff for the relevant Access Seeker's Train Services; and
  - (ii) Aurizon Network will seek a variation of that Reference Tariff and the relevant Allowable Revenues and GtK Forecasts, as necessary, to take account of the Expansion after the actual cost of the Expansion is known on a basis consistent with the cost allocation principles accepted by the QCA.
- (l) Where the relevant cost allocation principles accepted by the QCA under **clause 6.2.4(e)(i)** allocate part of the cost of the relevant Expansion to a Reference Tariff other than:
  - (i) where **clause 6.2.4(j)** applies, the Expansion Tariff; or
  - (ii) where **clause 6.2.4(k)** applies, the relevant Highest Reference Tariff,  
  
Aurizon Network will seek a variation of that Reference Tariff on a basis consistent with those cost allocation principles.
- (m) For clarity, Aurizon Network is not obliged to submit a draft amending access undertaking for an Expansion Tariff or to seek a variation of a Reference Tariff under **clause 6.2.4(j)** or **(k)** until after the QCA has accepted Aurizon Network's Pricing Proposal.
- (n) For the purpose of **clause 6.2.4(b)** where:

- (i) the date on which the Feasibility SFA for the relevant Expansion, referred to in **clause 6.2.4(b)**, becomes unconditional 12 months or less from the Terminating Date; and
- (ii) the relevant Expansion will not be used for Train Services prior to the Terminating Date,

Aurizon Network may (acting reasonably) notify the relevant Access Seekers that it will address the reference tariff that will apply in relation to the Expansion in preparing proposed reference tariffs for a new access undertaking for the next regulatory period (having regard to the principles set out in **clauses 6.2.4(b) to (k)** – provided that any consideration of the effect of the capital expenditure for the Expansion on reference tariffs under the new access undertaking will be considered over the whole proposed regulatory period for that next access undertaking and not on the basis of specific points in time during that regulatory period).

#### ***Special requirements for Expansion Tariffs***

- (o) Subject to **clauses 6.2.4(p) and (q)**, an Expansion Tariff must only apply for no more than ten years commencing on the date on which the QCA approved the Expansion Tariff to apply or take effect (even if this was prior to the date of the QCA approval) (**10 Year Term**). At the end of the 10 Year Term, the Expansion Tariff will be socialised with the relevant System Reference Tariff and Aurizon Network will submit a variation of the System Reference Tariff to the QCA for approval to give effect to that socialisation.
- (p) Where the 10 Year Term will end during the regulatory period for the next access undertaking, Aurizon Network will include the effect of the socialisation at the end of that 10 Year Term in the preparation of the System Reference Tariff under the next access undertaking.<sup>2</sup>
- (q) Subject to **clause 6.2.4(r)**, if, after the point referred to in **clause 6.2.4(i)(ii)(E)(2)** relevant to an Expansion Tariff, the next highest Reference Tariff for the relevant Coal System on a \$/NT Basis would increase by no more than 5% if that Expansion Tariff and that next highest Reference Tariff were socialised, based on:
  - (i) the forecast volumes applicable to the Expansion Tariff and the forecast volumes for that next highest Reference Tariff ; and
  - (ii) the analysis being undertaken for the remainder of the regulatory period of this Undertaking,

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<sup>2</sup> For example, if the regulatory period for the next access undertaking is a four year period and the last day of the relevant 10 Year Term is the last day of the second year of that regulatory period, then in accordance with **clause 6.2.4(p)** the effect of the socialisation will commence at the start of the third year of that regulatory period.

then the Expansion Tariff may be socialised with that next highest Reference Tariff and Aurizon Network will submit a variation of that next highest Reference Tariff to the QCA for approval, giving effect to that socialisation and ending the Expansion Tariff.

- (r) Without limitation to **clause 6.2.4(p)**, where Aurizon Network is preparing proposed reference tariffs for a new access undertaking for the next regulatory period, it may apply **clause 6.2.4(q)** to determine whether the Expansion Tariff can be socialised with the next highest Reference Tariff for the purpose of the new access undertaking but with any analysis for **clause 6.2.4(q)** undertaken for the proposed regulatory period for the next access undertaking as a whole.
- (s) 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.

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

- (t) Subject to **clause 6.2.4(u)**, 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.
- (u) 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.

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

- (v) Where this **clause 6.2.4** 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 6.2.4(e)(i)**) 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.

***Interaction with Distance Discount***

- (w) This **clause 6.2.4** and **clause 6.2.5** potentially interact with each other in relation to the setting of an Access Charge. To seek to facilitate the proper application of those clauses, where this **clause 6.2.4** and **clause 6.2.5** both apply in any particular circumstances, they must be applied concurrently.

**6.2.5 Reference Tariff for new loading points and Private Infrastructure**

- (a) Where new or additional coal carrying Train Services commence after the Commencing Date and those Train Services will utilise:
  - (i) new or existing Private Infrastructure (with one or more loading points) connected to the Rail Infrastructure after the Commencing Date; or
  - (ii) Rail Infrastructure (including a Customer Specific Branch Line), for a new loading facility, established after the Commencing Date,

the Access Charge for those new or additional coal carrying Train Services will be determined based on:

- (iii) where:
  - (A) the Distance Discount is zero; and
  - (B) the Minimum Revenue Contribution is less than a relevant existing Reference Tariff (on a \$/NT Basis),

the relevant existing Reference Tariff except where a new Reference Tariff is being proposed under **clause 6.2.4**; or

- (iv) where **clause 6.2.5(a)(iii)** does not apply, a new or varied Reference Tariff with the effect that the relevant Reference Tariff applying to those new or additional coal carrying Train Services on a \$/NT Basis is the higher of:
  - (A) the Minimum Revenue Contribution; and
  - (B) the relevant existing Reference Tariff less the Distance Discount (with the Distance Discount first being subtracted from the AT<sub>3</sub> input of the Reference Tariff input (but not beyond the point where AT<sub>3</sub> equals zero) with any remainder subtracted from the AT<sub>4</sub> input of the Reference

Tariff (but not beyond the point where AT<sub>4</sub> equals zero)), on a \$/NT Basis.

- (b) A 'Distance Discount' under **clause 6.2.5(a)** in relation to a new or additional coal carrying Train Service is calculated in accordance with the following formula:

$$\{ART - MRC\} * \{Min(1, (Max[SL_{lower}, SL_{actual}] - SL_{lower}) / (SL_{upper} - SL_{lower}))\} * \{Min(1, ML_{actual} / ML_{ave})\}$$

where:

*ART* is the aggregate of the AT<sub>1</sub>, AT<sub>2</sub>, AT<sub>3</sub> and AT<sub>4</sub> components of the relevant existing Reference Tariff on a \$/NT Basis;

*SL<sub>actual</sub>* is the new spur's length in kilometres;

*SL<sub>upper</sub>* is 100 kilometres;

*SL<sub>lower</sub>* is 25 kilometres;

*ML<sub>ave</sub>* is the average mainline haul length from a Nominated Loading Facility to a Nominated Unloading Facility for the relevant Reference Tariff;

*ML<sub>actual</sub>* is the mainline haul length from the loading facility to the unloading facility for the new Train Service; and

*MRC* is the relevant Minimum Revenue Contribution.

- (c) The 'Minimum Revenue Contribution' under **clause 6.2.5(a)** in relation to a new or additional coal carrying Train Services is calculated as the AT<sub>1</sub> input for the relevant Reference Tariff plus the higher of:

- (i) the amount calculated as:
- (A) the increase in Allowable Revenue for the relevant Reference Tariff would occur if the relevant costs that would be incurred by Aurizon Network (including the cost of any Expansion or Customer Specific Branch Line whether or not incurred by Aurizon Network) as a consequence of providing the new or additional Access Rights were taken into account in the calculation of that Allowable Revenue; less
  - (B) any cost allocation to existing Access Rights (associated with any benefit existing Access Holders will receive from the relevant Expansion or Customer Specific Branch Line),

divided by 90% of the aggregate of the contracted tonnes in nt for the new or additional Train Service; or

- (ii) the sum of:
    - (A) the relevant AT<sub>2</sub> component of the relevant Reference Tariff (on a \$/NT Basis); plus
    - (B) 25% of the amount calculated as follows:
      - (1) Allowable Revenue attributable to the AT<sub>3</sub> and AT<sub>4</sub> components of the relevant Reference Tariff; divided by
      - (2) the Gtk Forecast for the relevant Reference Tariff for that Year,
- (on a \$/NT Basis).

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

- (a) Where Aurizon Network is negotiating Access Charges for Access Rights and a new Reference Tariff is to be applied under either **clause 6.2.4** or **6.2.5** in respect of those Access Charges, Aurizon Network will submit a proposed new Reference Tariff to the QCA.
  - (i) the proposed Reference Tariff must be consistent with **clause 6.2.5**, where **clause 6.2.5** applies; and
  - (ii) the QCA will:
    - (A) publish the proposed Reference Tariff;
    - (B) invite persons to make submissions on the proposed Reference Tariff to the QCA within a reasonable period of time specified by the QCA; and
    - (C) 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 matters listed in section 138(2) of the Act;
  - (iii) has complied with **clause 6.2.6(a)(ii)**; and
  - (iv) 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 6.2.6(f)**.
- (c) The QCA must consider a proposed Reference Tariff given to it by Aurizon Network and either approve or refuse to approve it within 40 Business Days after the date on which Aurizon Network submitted the



proposed Reference Tariff to the QCA or such further period as the QCA and Aurizon Network may agree.

- (d) 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 6.2.4(v)**, 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.
- (e) 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 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.
- (f) 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).
- (g) If the QCA refuses to approve the proposed Reference Tariff, Aurizon Network may resubmit the proposed Reference Tariff with

amendments and **clauses 6.2.6(a) to (f)** apply to that resubmitted Reference Tariff.

- (h) For the purposes of this **clause 6.2.6**:
  - (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.

### **6.2.7 Access Charge review provisions**

Without limitation to **clause 6.2.4(v)**, 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 will already contain review provisions in compliance with this **clause 6.2.7**.

## **6.3 Pricing limits**

### **6.3.1 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 6.3.2**.
- (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 6.3.2(a)(ii)**, for the primary purpose of promoting efficient investment by either Aurizon Network or another person in the relevant transport supply chain.

### 6.3.2 **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).
- (b) If Aurizon Network includes an Access Charge in an Access Agreement for an Access Seeker that does not comply with **clause 6.3.2(a)(i)**, then Aurizon Network will be deemed not to be in breach of **clause 6.3.2** provided that it complies with **clause 6.2** in subsequently setting an Access Charge for another Access Seeker for a Train Service that transports the same specified commodity in the same specified geographic area.

### 6.3.3 **Application of Maximum Allowable Revenue**

- (a) Without limitation to **clause 6.3.2(a)**, where it is necessary to calculate the price limit referred to in **clause 6.3.2(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:

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

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 6.3.3(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 6.3.3(e)**, at the end of the Evaluation Period.

- (d) For the purpose of determining the variables under **clause 6.3.3(b)**, 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 6.3.3(b)** will be determined using:
  - (i) if the value of assets is being calculated for the Coal Systems in aggregate, the aggregate value of the assets contained in the Regulatory Asset Base, as maintained in accordance with **schedule E**; or
  - (ii) in all other circumstances, the Depreciated Optimised Replacement Cost methodology.

## **6.4 Pricing objectives**

### **6.4.1 Rail Infrastructure utilisation**

- (a) Aurizon Network may establish different Access Charges for 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 6.4.1(c)**, if the Available Capacity is potentially insufficient to satisfy the requests for Access Rights of all current and likely Access Seekers, then:
  - (i) 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**);
  - (ii) 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
  - (iii) 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 6.3.3** 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 6.4.1(b)(iii)(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 6.4.1(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 6.4.1(b)** will not apply in respect of coal carrying Train Services.

#### **6.4.2 Revenue adequacy**

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

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

### **6.5 Reference Tariffs**

#### **6.5.1 Application of Reference Tariffs**

- (a) A Reference Tariff is an acceptable means by which Aurizon Network provides Access Seekers with information about the matters listed in sections 101(2)(a) to (c) of the Act.
- (b) If Aurizon Network formulates an Access Charge for an Access Seeker's proposed Train Services based on a Reference Tariff, then Aurizon Network is taken to have complied with **clauses 6.2** and **6.3**.
- (c) Unless otherwise approved 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.

### **6.5.2 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.

### **6.5.3 Publishing updated schedule F**

Where any matters in **clauses 6 to 10** 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 6 to 10** of **schedule F** which includes that amendment, variation, revision or adjustment.

## **6.6 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.

## **6.7 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.

## **6.8 Regulatory Asset Base**

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

## 6.9 Commercial Terms

- (a) Subject to **clauses 6.9(b)** and **8.2.2**, nothing in this Undertaking prevents Aurizon Network and an Access Seeker (or group of Access Seekers) agreeing Commercial Terms in relation to Access Rights that will require an Expansion or Customer Specific Branch Line.
- (b) Aurizon Network may not request or agree Commercial Terms that:
  - (i) restrict Access Seekers or their Customers from raising disputes with the QCA or disclosing proposed Commercial Terms or other contract terms to the QCA;
  - (ii) require Access Seekers, Access Holders or their Customers to disclose information that is confidential to one or more of them, to any other Access Seeker, Access Holder or their respective Customers, otherwise than as permitted by this Undertaking;
  - (iii) restrict the right of an Access Seeker or their Customer from proposing or entering into User Funding for the relevant Expansion or Customer Specific Branch Line; or
  - (iv) contravene a provision of this Undertaking or the Act.
- (c) For the avoidance of doubt:
  - (i) where an Access Seeker or Access Seekers do not wish to agree Commercial Terms proposed by Aurizon Network, the Access Seeker or Access Seekers, as applicable, may propose to enter into a User Funding Agreement for the funding of the Expansion in accordance with and subject to the provisions in **Part 8**; and
  - (ii) the terms of any agreed User Funding Agreement will not constitute a Commercial Term.



## 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 fully utilise those Access Rights. (**Clause 7.2**)
  - (ii) 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**)
  - (iii) Standard Access Agreements will include provisions allowing an Access Holder to relinquish Access Rights for a Transfer. Aurizon Network has obligations in relation to the allocation of Capacity to facilitate a Transfer. (**Clause 7.4.2**)
  - (iv) 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**)
  - (v) Where Aurizon Network has received Mutually Exclusive Access Applications, Aurizon Network will prioritise the granting of Access Rights having regard to a series of specified criteria. (**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)**)
  - (vi) Subject to the provisions of the relevant Access Agreement, scheduling and Network Control will be performed by Aurizon Network consistently with the Network Management Principles (including the System Rules). Aurizon Network has various rights and obligations in relation to amending System Rules. (**Clause 7.6**)
- (b) A diagrammatic representation of the capacity allocation process for Mutually Exclusive Access Applications is set out in **schedule H**.
- (c) To the extent that there is any inconsistency between any of:
- (i) **clause 7.2** (General requirement for allocation);
  - (ii) **clause 7.3** (Renewals);

- (iii) **clause 7.4.2** (Transfers); and
  - (iv) **clause 7.5** (Mutually Exclusive Access Applications),
- those provisions will apply in that order of precedence (from highest to lowest) to determine which of them prevails to the extent of the inconsistency.
- (d) 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.
  - (e) Except where otherwise expressly provided in this **Part 7** and without limitation to **clause 7.1(d)**, Aurizon Network will not discriminate in the performance of its obligations, and the exercise of its rights, under this **Part 7** as between Access Seekers on the basis of who is funding a Pre-Feasibility Study, a Feasibility Study or an Expansion. For example, Aurizon Network will not provide an Access Seeker 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 with a different source of funding.
  - (f) Nothing in **clauses 7.3, 7.4.2 or 7.5.2** obliges to Aurizon Network to grant Access Rights if there is insufficient Available Capacity to provide those Access Rights.

## **7.2 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 fully utilise the Access Rights requested from the time when the Access Rights are proposed to commence, including:

- (a) holding Supply Chain Rights;
- (b) having a contract for rail haulage utilising the relevant Capacity;
- (c) having sufficient facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable the Access Seeker to utilise the relevant Capacity;
- (d) where the Access Seeker 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), having or being likely to have a Customer for those Access Rights; and
- (e) where the relevant Capacity will be used to transport the output of a mine, there being sufficient anticipated output from the mine to support full utilisation of the relevant Capacity.

### 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, 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)**, where the relevant Access Rights relate to coal carrying Train Services, 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 the same requirement for Mainline Paths as the existing Train Services; and
  - (ii) the origin of the Train Services for the Renewal and the origin of the Train Services under the existing Access Rights relating to the Renewal are located in the same Track Segment.
- (c) For clarity, where a Renewing Access Seeker chooses to Renew only part of their existing Access Rights, the balance of those Access Rights not Renewed will become Available Capacity on the expiry of those existing Access Rights.
- (d) Despite any provision in **Part 4**, Aurizon Network:
- (i) is not obliged to negotiate the provision of Access that will use Capacity that will become Available Capacity on the expiry of an existing Access Right; and
  - (ii) must not 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 end user (that is, the Access Holder, where the Access Holder has no Customer, or otherwise the relevant Access Holder's Customer) has notified Aurizon Network that the end user does not intend to seek a Renewal; or
- (iv) the Renewing Access Seeker has not executed an Access Agreement for that Capacity with Aurizon Network under this

- clause 7.3** at least 12 months prior to the expiry of the Access Rights (or such lesser time prior to the expiry of the Access Rights as may be agreed by Aurizon Network).
- (e) Aurizon Network may refuse to negotiate, or to enter into, an Access Agreement with a Renewing Access Seeker for a Renewal more than three years prior to the expiry of the Access Rights.
  - (f) If a Renewing Access Seeker is seeking a Renewal at least 12 months (but no more than 36 months or such earlier date as agreed by Aurizon Network) 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 10 years and the remaining life of the relevant mine (as evidenced to Aurizon Network's satisfaction by the Renewing Access Seeker); or
      - (B) for other Train Services, the lesser of 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**:
    - (i) 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**; or
    - (ii) oblige Aurizon Network to 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.
  - (h) 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(b)**; 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(c)**.

## **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, then despite any other provision in this Undertaking:
  - (i) subject to **clause 7.4.2(a)(ii)**, Aurizon Network will negotiate exclusively with the Transferee in relation to the grant of the Transferred Access Rights and, if applicable, Ancillary Access Rights;
  - (ii) that exclusivity of negotiation does not:
    - (A) apply to any other Access Rights, if any, sought by the Access Seeker (for example, Access Rights that require an Expansion or Customer Specific Branch Line); or
    - (B) affect Aurizon Network's negotiations with another Access Seeker where **clause 7.4.2(a)(iv)** applies;
  - (iii) nothing in this **clause 7.4.2(a)** obliges Aurizon Network to execute an Access Agreement with the Transferee; and
  - (iv) where:
    - (A) an Access Application by a Transferee is for Transferred Access Rights and Ancillary Access Rights;
    - (B) Aurizon Network and another Access Seeker are already in the process of negotiating an Access

Agreement and that other Access Seeker has demonstrated to Aurizon Network's reasonable satisfaction that the Access Seeker can fully utilise its requested Access Rights having regard to the matters listed in **clause 4.12(c)** and in particular, that it holds Supply Chain Rights in respect of its requested Access Rights; and

- (C) the Transferee's Access Application and that other Access Seeker's Access Application are Mutually Exclusive Access Applications,

**clause 7.5** will apply to those Access Applications and will not otherwise apply to that Transferee's Access Application in respect of any other Access Seekers.

- (b) A Transferee must complete and submit an Access Application for the Transferred Access Rights and, if applicable, Ancillary Access Rights and subject to this **Part 7** (which shall prevail to the extent of any inconsistency), the negotiation for those Transferred Access Rights and, if applicable, Ancillary Access Rights will be conducted in accordance with **Part 4**.

- (c) This **clause 7.4.2** ceases to apply in respect of a Transfer if the Access Holder for that Transfer fails to comply with the provisions of the Access Holder's Access Agreement relevant to that Transfer. Aurizon Network may:

- (i) require provisions in an Access Agreement with a Transferee making that Access Agreement subject to; or
- (ii) delay execution of an Access Agreement with the Transferee until,

the Access Holder's full and proper compliance with the provisions of the Access Holder's Access Agreement relevant to that Transfer. For example, Aurizon Network may include provisions providing for the termination of the Transferee's Access Agreement where the Access Holder does not fully comply.

- (d) For clarity, a change in the nomination of a Train Operator by an End User does not constitute a Transfer.

## **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 practical 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 Capacity allocation for Mutually Exclusive Access Applications**

- (a) This **clause 7.5.2** 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 arising from a reallocation under **Part 8**– for example, under **clauses 8.5(t)** and **(w)**);
    - (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, Commercial Terms or User Funding Agreement relating to corresponding Access Rights.
- (b) Without limitation to **clause 7.5.2(a)**, where a circumstance under **clause 7.5.2(a)(ii)(A), (B)** or **(C)** exists the relevant Available Capacity will not be available for allocation under this **Part 7** and, for clarity, a reference to “Available Capacity” in this **Part 7** does not include that relevant Available Capacity.
- (c) 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 Connection Agreement) for the Available Capacity for those Access Applications that meet the following criteria prior to considering any of the other Access Applications:
  - (i) where Aurizon Network is obliged to allocate the Available Capacity in accordance with a Law (other than the Act or this Undertaking) such as in accordance with Passenger Priority Obligations or Preserved Train Path Obligations, the allocation in relation to the Access Application is necessary for Aurizon Network to comply with that obligation; or
  - (ii) to the extent that **clause 7.5.2(c)(i)** does not apply:

- (A) the Access Application is for coal carrying Train Services;
  - (B) the Access Seeker has satisfied Aurizon Network (acting reasonably) that the Access Seeker will be able to use the Access Rights at the level sought giving consideration to the factors in **clause 4.12(c)**;
  - (C) the grant of the Access Rights is not subject to any Expansion or Customer Specific Branch Line or to any other works or expenditure by Aurizon Network to increase or otherwise enhance Capacity;
  - (D) the Access Rights requested could be used without adversely affecting the ability of existing Access Holders to use their Access Rights;
  - (E) the Access Agreement's proposed term is at least 10 years or the remaining life of the relevant mine (as evidenced by the relevant Access Seeker to Aurizon Network's satisfaction, acting reasonably); and
  - (F) where the grant of Access Rights requires Existing Capacity that will become Available Capacity, Aurizon Network is satisfied (acting reasonably) that the Access Seeker will be able to use that Existing Capacity on the date when it becomes Available Capacity.
- (d) Subject to **clauses 7.5.2(e)** and **(f)** if Aurizon Network has received Mutually Exclusive Access Applications for Available Capacity and:
- (i) after applying **clause 7.5.2(c)** there are remaining Mutually Exclusive Access Applications and remaining Available Capacity; or
  - (ii) none of the relevant Mutually Exclusive Access Applications satisfy the criteria under **clause 7.5.2(c)**,
- then Aurizon Network will (acting reasonably and in good faith) enter into negotiations for Access Agreements (including any agreements to allow Access Rights to be exercised or created – for example, Rail Connection Agreement) with those Access Seekers whose requested Access Rights are considered by Aurizon Network to best meet the following objectives:
- (iii) to ensure Aurizon Network's revenue adequacy (as described in **clause 6.4.2**);
  - (iv) satisfies community amenity concerns or requirements;



- (v) complies with and addresses environment, health or safety related matters, standards or requirements (whether or not greater than the minimum environment, health or safety requirements under any environment, health or safety related Law);
- (vi) provides commercial certainty for Aurizon Network having regard to the length of term for which Access Rights are sought; and
- (vii) to promote efficient investment in and use of the Rail Infrastructure having regard to:
  - (A) the expected duration of the facility or business whose inputs or outputs will be transported on the Rail Infrastructure (for example, the mine production life);
  - (B) the quality and saleability of the product proposed to be transported on the Rail Infrastructure;
  - (C) the capital efficiency of rail infrastructure and the density of network utilisation;
  - (D) the contribution of the Access Rights sought to the long-term demand for Access; and
  - (E) the current and future competitiveness of the relevant supply chain.
- (e) Subject to **clause 7.5.2(c)** but despite **clause 7.5.2(d)**, unless Aurizon Network decides otherwise, Aurizon Network may prioritise a proposed Access Agreement for a coal carrying Train Service ahead of a proposed Access Agreement for a non-coal carrying Train Service.
- (f) In making a decision under **clause 7.5.2(d)**, Aurizon Network must have no regard to whether an Access Seeker is a Related Operator.
- (g) If:
  - (i) in Aurizon Network's opinion it is not practical to determine, as between two or more Access Seekers with Mutually Exclusive Access Applications, which of those Access Seekers to enter into an Access Agreement with under **clause 7.5.2(d)**; and
  - (ii) Aurizon Network and each of those Access Seekers have negotiated the terms of an Access Agreement (including all agreements to allow Access Rights to be exercised or created – for example, a Rail Connection Agreement) which the parties are willing to execute,

then Aurizon Network may elect to prioritise the execution of Access Agreements with those Access Seekers in accordance with the following principles:

- (iii) Access Seekers in respect of which negotiations are currently suspended in accordance with this Undertaking will be prioritised after other Access Seekers; and
  - (iv) subject to **clause 7.5.2(g)(iii)**, the Access Seekers will be prioritised in date order based on the date on which each Access Seeker was issued an Acknowledgement Notice for its Access Application, under **clause 4.4**.
- (h) 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 Network Management Principles**

### **7.6.1 Compliance with Network Management Principles**

- (a) Aurizon Network will:
  - (i) perform scheduling, Network Control and associated services; and
  - (ii) provide capacity related information to Access Holders and an End User's Train Operator,in accordance with the Network Management Principles.
- (b) Any dispute between an Access Holder and Aurizon Network in relation to compliance with the Network Management Principles will be dealt with in accordance with the dispute resolution process set out in the relevant Access Agreement.

### **7.6.2 Nature of the System Rules**

- (a) The System Rules specify in greater detail the way in which Aurizon Network will 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 will be published on the Website.

### **7.6.3 Making the initial System Rules for a Coal System**

- (a) Where:
  - (i) System Rules do not already exist for a Coal System (whether individually or together with other Coal Systems); and
  - (ii) where the Access Holders for at least 60% of the affected Train Paths in relation to the relevant Coal System (as

determined in accordance with **clause 7.6.5**) notify Aurizon Network that they wish to have System Rules for that Coal System,

Aurizon Network will:

- (iii) develop the initial System Rules for that Coal System including, where Aurizon Network elects to do so:
    - (A) together with one or more other Coal Systems; or
    - (B) by way of amending existing System Rules to apply in relation to that Coal System; and
  - (iv) 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) After consulting under **clause 7.6.3(a)**, Aurizon Network will:
- (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.
- (c) Where Aurizon Network has submitted Draft System Rules to the QCA, the QCA must consider the Draft System Rules and notify Aurizon Network that it either approves or refuses to approve the Draft System Rules. The QCA may decide, at its own discretion, to request and consider public submissions on the Draft System Rules.
- (d) The QCA will accept the Draft System Rules unless the QCA determines that those Draft System Rules:
- (i) 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
  - (ii) are inconsistent with this Undertaking (including the Network Management Principles).
- (e) If the QCA refuses to approve the Draft System Rules, then:

- (i) the QCA will set out its reasons for doing so in relation to the matters under **clause 7.6.3(d)(i)** or **(ii)** in any notice to Aurizon Network of that decision; and
  - (ii) Aurizon Network will resubmit the Draft System Rules either amended, or with additional information, to address the matters in QCA's reasons in relation to the matters under **clause 7.6.3(d)(i)** or **(ii)** without having to further consult under **clause 7.6.3(a)**.
- (f) **Clauses 7.6.3(c) to (e)** will:
- (i) apply to any Draft System Rules resubmitted to the QCA under **clause 7.6.3(e)(ii)**;
  - (ii) apply to any additional information submitted to the QCA under **clause 7.6.3(e)(ii)**, including where the Draft System Rules are not amended as though Aurizon Network were resubmitting the same Draft System Rules but with the additional information; and
  - (iii) continue to apply until the QCA approves Draft System Rules for the relevant Coal System.
- (g) If the QCA approves the Draft System Rules, then 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.

#### **7.6.4 *Reviewing and amending the System Rules***

- (a) This **clause 7.6.4** does not apply to an amendment of System Rules referred to under **clause 7.6.3**.
- (b) Without limiting Aurizon Network's right to review any System Rules from time to time, Aurizon Network will review the System Rules:
  - (i) at least once per Year; and
  - (ii) where the Access Holders for at least 60% of the affected Train Paths in relation to the relevant Coal System (as determined in accordance with **clause 7.6.5**) notify Aurizon Network:
    - (A) that they wish to have a review of the System Rules for that Coal System; and
    - (B) of the matters in respect of which such a review is required.
- (c) If Aurizon Network has reviewed the System Rules and wishes to amend the System Rules, then Aurizon Network must:
  - (i) notify:
    - (A) Access Holders and Access Seekers whose Train Services will be affected by the amendments and

their Customers (but only to the extent that the Access Holder or Access Seeker has given Aurizon Network those Customer contact details) (**Affected Persons**);

- (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) the QCA,

of Aurizon Network's intention to amend the System Rules and provide a copy of the proposed amendments (**Proposed Amendments**) to those persons;

- (ii) consult with the persons notified under **clause 7.6.4(c)(i)(A)** to **(D)**;
  - (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; and
  - (iv) seek to ensure that the amendments do not conflict with the Network Management Principles or any provision of this Undertaking.
- (d) If an Affected Person considers (acting reasonably and in good faith) that the Proposed Amendments:
- (i) 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
  - (ii) are inconsistent with this Undertaking (including the Network Management Principles),
- then the Affected Person may provide a written submission to Aurizon Network, within 20 Business Days after being given a notice under **clause 7.6.4(c)(i)**, identifying why the Proposed Amendments would have any of the effects referred to in **paragraphs (i) to (ii)**.
- (e) If Aurizon Network does not receive any submissions from Affected Persons within the time period under **clause 7.6.4(d)**, then:
- (i) the Proposed Amendments are taken to have been made; and

- (ii) Aurizon Network will notify all of the persons mentioned in **clause 7.6.4(c)(i)** that the Proposed Amendments have been made.
- (f) If Aurizon Network receives any submissions from Affected Persons within the time period under **clause 7.6.4(d)**, then Aurizon Network will:
- (i) notify all of the persons mentioned in **clause 7.6.4(c)(i)** that the Proposed Amendments are being referred to the QCA for acceptance; and
  - (ii) in notifying the QCA:
    - (A) provide to the QCA:
      - (1) the Proposed Amendments for approval;
      - (2) all submissions from Affected Persons provided to Aurizon Network within the time period under **clause 7.6.4(d)**;
      - (3) an assessment of those submissions by Aurizon Network; and
      - (4) any variations to the Proposed Amendments that Aurizon Network proposes to make after taking into account the submissions (**Variations**); and
    - (B) request the QCA's approval of the Proposed Amendments (including the Variations, if any).
- (g) The QCA will consider:
- (i) the Proposed Amendments (including the Variations, if any);
  - (ii) the submissions from Affected Persons provided to Aurizon Network within the time period under **clause 7.6.4(d)**; and
  - (iii) any other matters that the QCA considers relevant,
- and will accept those Proposed Amendments and Variations unless the QCA determines that those Proposed Amendments and Variations:
- (iv) 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
  - (v) are inconsistent with this Undertaking (including the Network Management Principles).
- (h) If the QCA accepts the Proposed Amendments and Variations, then the relevant System Rules are taken to have been amended in accordance with the Proposed Amendments and Variations.

- (i) If the QCA refuses to accept the Proposed Amendments and Variations, then the relevant System Rules are not amended.
- (j) Nothing in **clauses 7.6.4(f) to (i)** prevents Aurizon Network from seeking subsequent amendments to any System Rules even if the QCA has previously refused to accept Proposed Amendments in relation to those System Rules.
- (k) For the purposes of this **clause 7.6**:
  - (i) the amending of System Rules includes replacing or removing System Rules; and
  - (ii) Proposed Amendments includes a proposed replacement of System Rules or a proposal to remove System Rules.

#### **7.6.5 Weighting of Access Holder requests**

Aurizon Network must determine affected Train Paths for the purpose of **clause 7.6.3(a)(ii)** or **7.6.4(b)(ii)** (as applicable) in a manner consistent with the following principles:

- (a) the affected Train Paths for an Access Holder are the Access Holder's Train Paths for the relevant Coal System where a Train Service using that Train Path would be subject to the System Rules if made or if reviewed and amended (as applicable);
- (b) the affected Train Paths must be calculated as at the date on which Aurizon Network receives a notice under **clause 7.6.3(a)(ii)** or **7.6.4(b)(ii)** (as applicable) (**Notice Date**);
- (c) the affected Train Paths must be determined (based on the Access Rights specified in the relevant Access Agreements) for a 12 month period starting on the Notice Date or if the relevant Access Agreement(s) is due to expire less than 12 months after the Notice Date, for that lesser period.

## Part 8: Network development and Expansions

### 8.1 Overview

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

- (a) **clause 8.2** sets out general principles regarding limitations on Aurizon Network's rights and obligations to fund, construct or permit the creation of new Rail Infrastructure;
- (b) **clause 8.3** sets out principles in relation to Aurizon Network's undertaking of Concept Studies;
- (c) **clauses 8.4** and **8.5** set out principles in relation to the way in which Pre-feasibility Studies and Feasibility Studies are to be funded;
- (d) **clause 8.8** sets out general principles in relation to the funding of Expansions;
- (e) **clause 8.9** describes how Users may fund all or part of an Expansion;
- (f) **clause 8.10** sets out provisions in relation to Capacity Shortfalls and Access Agreements being conditional on Expansions;
- (g) **clause 8.11** confirms that Aurizon Network will participate in supply chain coordination including processes in relation to the review of System Operating Parameters;
- (h) **clause 8.12** describes Aurizon Network's obligations in relation to its proposed Network Development Plan; and
- (i) **clause 8.13** sets out a voting process that Aurizon Network may apply in relation to certain matters concerning capital expenditure projects.

### 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), 8.8(c)** 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 without requiring Commercial Terms. Where Aurizon Network exercises its discretion to fund all or part of an Expansion without requiring Commercial Terms, it will provide written 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.

However where Aurizon Network has not, prior to the expiration of 10 Business Days after entry into a relevant Feasibility Study Agreement for that Expansion, provided written notice to the Access Seekers selected to utilise an Expansion in accordance with the terms of this **Part 8** that the Expansion is not technically or economically feasible, or is inconsistent with the safe and reliable operation of the Rail Infrastructure, the proposed Expansion will, subject to **clause 8.2.1(c)(iii)(A)** be deemed to have satisfied those requirements;

(ii) The deemed satisfaction of requirements under **clause 8.2.1(c)(i)** shall not apply where, since the date referred to in that clause there has been a material change in circumstances (such as, for example, a change in safety requirements) so that the proposed Expansion is no longer technically or economically feasible or consistent with the safe and reliable operation of the Rail Infrastructure. In such a case Aurizon Network will notify the relevant Access Seekers of the change in circumstances and the basis of its decision not to construct or permit the Expansion;

(iii) 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) Funding Users agree to fund the Expansion in accordance with a User Funding Agreement for the Expansion;

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

- (iv) Aurizon Network and all other relevant parties have entered into SUFA agreements, a Commercial Terms document and/or an Access Agreement (as the case may be) and such agreements are or have become unconditional in accordance with their terms; and
  - (v) 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) Notwithstanding any other provision of this **Part 8**, to the extent that Aurizon Network is obliged to undertake asset replacement works in order to meet its obligations under an Access Agreement, Aurizon Network will be responsible for the funding of Asset Replacement 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 Access Agreement).
- (e) Aurizon Network is not obliged to fund or construct a Customer Specific Branch Line (subject to its obligations in relation to Connecting Infrastructure). However, nothing in this Undertaking prevents Aurizon Network from doing so at its discretion by agreement with the Customer seeking to have the Customer Specific Branch Line constructed.
- (f) In this **Part 8**, Aurizon Network's "legitimate business interests" include, for example, the following matters:
- (i) community amenity concerns or requirements (for example, a grade separation requirement in response to community concerns);
  - (ii) environment, health or safety related matters, standards or requirements whether or not greater than the minimum environment, health or safety requirements under any environment, health or safety related Law;
  - (iii) the operational performance standards or requirements designed to ensure the Rail Infrastructure comprising or affected by the Expansion is robust and reliable;
  - (iv) the maintenance standards or requirements designed to ensure the Rail Infrastructure comprising or affected by the Expansion can be maintained and repaired efficiently and economically by Aurizon Network;

- (v) the requirements of any Law (including any Act of Parliament or regulation which has been enacted but has not yet commenced);
  - (vi) the operational and technical requirements necessary for the safe and reliable operation of the Rail Infrastructure;
  - (vii) the economically efficient operation of the Rail Infrastructure; and
  - (viii) any material adverse consequences an Expansion may have on the efficient operation of, or Access to, any Rail Infrastructure.
- (g) In making a determination of a dispute referred to the QCA under any of **clauses 8.4(i), 8.5(f), 8.5(o), 8.7(c), 8.9.2 and 8.10.1**, the QCA, in addition to having regard to the matters contained in any submissions made to it by parties to the dispute, will have regard to:
- (i) the object of part 5 of the Act;
  - (ii) Aurizon Network's legitimate business interests;
  - (iii) the legitimate business interests of the relevant Access Seekers; and
  - (iv) the public interest, including the benefit to the public in having competitive markets.
- (h) Where the QCA intends to appoint an expert to assist the QCA in making a determination of a dispute under any of **clauses 8.4(i), 8.5(f), 8.5(o), 8.7(c), 8.9.2 and 8.10.1**, it will provide the parties to that dispute with an opportunity to be consulted over the identity of the expert to be appointed.
- (i) 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**.
- (j) Aurizon Network will not unnecessarily and unreasonably delay any Expansion that it is obliged to construct in accordance with this Undertaking provided that after any relevant agreement with any Access Seeker, Access Holder, Customer or User Funder (as applicable) including any relevant User Funding Agreement is executed for that Expansion then Aurizon Network's obligations in relation to any delay are solely governed by that agreement.
- (k) Aurizon Network must, in accordance with **Part 5**, enter into Access Agreements with relevant Access Seekers for capacity to be created by an Expansion.
- (l) 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); and

- (ii) Aurizon Network may elect to fund and construct Customer Specific Branch Lines and otherwise invest in the Rail Infrastructure on its own account,

provided that any such agreement or election must not:

- (iii) 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
  - (iv) affect the priority of allocation of capacity between Access Seekers that would otherwise apply under **clause 8.5**.
- (m) To the extent that this Undertaking is inconsistent with a User Funding Agreement, Connection Agreement or a Studies Funding Agreement for a Pre-feasibility Study or a Feasibility Study, the User Funding Agreement, Connection Agreement or Studies Funding Agreement (as applicable) will prevail to the extent of that inconsistency (but only as between Aurizon Network and the other parties to those agreements, any relevant Access Seeker (if its Customer is one of those parties) and any relevant Customer (if its Access Seeker is one of those parties)).
  - (n) Subject to the requirements of this **Part 8**, the person responsible for the investigation and design of any Expansion that is necessary in order to provide any Access Rights requested by an Access Seeker must be Aurizon Network.
  - (o) In this **Part 8** where an Access Seeker has submitted two or more Access Applications which differ in respect of origins/destinations, quantum of capacity, commencement dates or other capacity requirements in relation to a particular Expansion, Aurizon Network will treat each Access Application as a separate Access Application and as if each were lodged by a separate Access Seeker.
  - (p) **Clause 8.2.1(b)** and **clauses 8.2.3 to 8.10** apply only to Expansions for the purpose of providing additional Access to coal carrying Train Services and do not govern the process by which Aurizon Network may fund, construct or permit an Expansion for the purpose of providing additional Access to non-coal carrying Train Services.
  - (q) Except where otherwise expressly provided 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-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.

- (r) In this **Part 8**, where the outcome of a dispute referred to the QCA or an expert is intended to bind more parties than the Access Seeker (or Customer) or proposed access seeker initially involved in the dispute:
- (i) Aurizon Network will use its best endeavours to promptly identify all other parties that should be bound by the outcome of the dispute and provide those parties with written notice of the existence of the dispute including an outline of the matters in dispute, the identity of the initial parties to the dispute and whether an expert or the QCA has been appointed to resolve the dispute;
  - (ii) the expert or the QCA, as applicable, will be provided with a list of the parties to whom notice of the dispute has been given under **clause 8.2.1(r)(i)**; and
  - (iii) the parties receiving notice of the dispute under **clause 8.2.1(r)(i)** may contact the expert or the QCA, as applicable, to seek to be heard on the dispute and will in any case be bound by the decision, rules and procedures determined by the expert or the QCA, as applicable, in relation to that request to be heard, in relation to the dispute resolution process and by the determination of the expert or QCA in relation to the dispute.

### **8.2.2 Interdependent and sequential nature of Expansions**

- (a) The following principles relate to the interdependent and sequential nature of Expansions:
- (i) for any Coal System there may be multiple Expansions that incrementally build on each other in sequence to increase the Capacity of that Coal System;
  - (ii) as the Expansions are sequential, Expansions later in the sequence will assume the satisfactory completion of, and delivery of outcomes for Expansions earlier in the sequence;
  - (iii) to the extent that events or circumstances affect an Expansion in the sequence (for example, by it being delayed, not progressing or not delivering the expected outcomes), then Expansions later in the sequence may also 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 8.2.2(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, Commercial Terms or User Funding Agreements, as applicable, (**Earlier Expansion Agreements**) in respect of that earlier Expansion; and
  - (B) such agreements are or have become unconditional,

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, Commercial Terms or User Funding Agreements, as applicable, (**Later Expansion Agreements**) in respect of that later Expansion except where conditional on the requirements **in clauses 8.2.2(a)(v)(A) and (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 for whom Capacity is proposed to be created by a proposed Expansion later in the sequence of Expansions and has advised Aurizon Network that it will have an Access Agreement, Commercial Terms or a User Funding Agreement which Aurizon Network assesses is likely to become unconditional at a date at least 90 days earlier than that date on which the proposed Access Agreement, Commercial Terms or User Funding Agreement, as applicable, of an Access Seeker allocated to a proposed Expansion earlier in the sequence is likely to become unconditional; or
  - (ii) there has been a delay in the expected date on which an Access Seeker allocated to a proposed Expansion earlier in the sequence can fully utilise the relevant Access Rights sought to be provided by that proposed Expansion (in accordance with the matters in **clauses 8.5(b)(ii)(A) to (D)**) and another Access Seeker for whom Capacity is proposed to be created by a proposed Expansion later in the sequence of Expansions is expected to be able to fully utilise those

Access Rights at a date at least 90 days earlier than the delayed Access Seeker,

Aurizon Network may, acting reasonably and in good faith, reallocate between those Access Seekers the Capacity proposed to be created by the sequential Expansions.

- (c) If Aurizon Network intends to reprioritise Access Seekers under **clause 8.2.2(b)**, it must give prior written notice to each Access Seeker affected by the reprioritisation, including the grounds for and all details of the intended reprioritisation.
- (d) Within 10 Business Days after receiving a written notice under **clause 8.2.2(c)**, an Access Seeker may refer (by written notice to the QCA and Aurizon Network) the proposed reprioritisation to the QCA for determination under **clause 11.1.5** and the QCA will determine whether Aurizon Network may proceed with the reprioritisation by:
  - (i) assessing whether the circumstances described in **clause 8.2.2(b)(i)** or **clause 8.2.2(b)(ii)** exist; and
  - (ii) if so, determining whether Aurizon Network has acted reasonably and in good faith in deciding to reprioritise the Access Seekers.

The determination of the QCA under this **clause 8.2.2(d)** will be binding on Aurizon Network and all of the Access Seekers affected by the reprioritisation.

- (e) Aurizon Network must not proceed with an intended reprioritisation under **clause 8.2.2(b)** until:
  - (i) the period under **clause 8.2.2(d)** for referring the reprioritisation to the QCA has expired and the reprioritisation has not been referred to the QCA; or
  - (ii) the QCA has determined that Aurizon Network may proceed with the reprioritisation.
- (f) 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 8.2.2(b)(i)** or **clause 8.2.2(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 8.2.2(f)**, Aurizon Network must reasonably consider whether a reprioritisation should be made under **clause 8.2.2(b)**.
- (g) If Aurizon Network decides not to undertake a reprioritisation after receiving written notice under **clause 8.2.2(f)**, the relevant Access Seekers may (by written notice to the QCA and Aurizon Network) refer the matter to the QCA for determination under **clause 11.1.5**

and the QCA will determine whether Aurizon Network should undertake a reprioritisation by:

- (i) assessing whether the circumstances described in **clause 8.2.2(b)(i)** or **clause 8.2.2(b)(ii)** exist; and
- (ii) if so, determining whether it is reasonable for the Access Seekers to be reprioritised.

The determination of the QCA under this **clause 8.2.2(g)** will be binding on Aurizon Network and all of the Access Seekers who will be affected by the reprioritisation.

### **8.2.3 Determination of sufficient demand for an Expansion**

- (a) Without limiting Aurizon Network's ability to conduct a Demand Assessment for an Expansion on its own volition, Aurizon Network will promptly (and in any case within 10 Business Days of the relevant event referred to in **paragraphs (i), (ii) or (iii)**) below) commence a Demand Assessment for an Expansion where:

- (i) the operator of an existing or proposed coal terminal formally advises 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
- (ii) 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; or
- (iii) an Access Seeker makes a written request to Aurizon Network for it to conduct a Demand Assessment,

provided that, where applicable, 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 **clause 8.6(b)**.

- (b) Where Aurizon Network undertakes a Demand Assessment for an Expansion it will 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) its own market intelligence;
- (iii) any Expression of Interest process conducted by Aurizon Network;



- (iv) liaison and consultation with participants in coal supply chains and Supply Chain Groups relating to the relevant Coal System; and
- (v) analysis or advice from relevantly experienced expert advisors.

Aurizon Network agrees not to seek information from Access Seekers or potential access seekers under this **clause 8.2.3(b)** which is not reasonably required for a prudent and sound Demand Assessment.

- (c) An Access Seeker may dispute whether Aurizon Network has acted reasonably in determining the means and information to be used for its Demand Assessment or the information sought under **clause 8.2.3(b)** or under **clause 8.2.3(f)**. Unless otherwise settled, disputes notified in accordance with this clause must be referred by Aurizon Network or a disputing party to the QCA for determination in accordance with the process in **clause 11.1.5**. The QCA will determine whether Aurizon Network has acted reasonably having regard to the matters listed in **clause 8.2.3(b)** and **clause 8.2.3(f)**. The QCA's determination will be binding on all of the Access Seekers the subject of the relevant Demand Assessment and Aurizon Network.
- (d) Subject to **clause 8.2.3(e)**, where a Demand Assessment is triggered by one of the circumstances referred to in **clauses 8.2.3(a)(i), (a)(ii) or (a)(iii)**, Aurizon Network will promptly conduct, complete and prepare a detailed report of the results of its Demand Assessment:
  - (i) if the Demand Assessment is carried out by means of an Expression of Interest process, within 40 Business Days of the commencement of the assessment study; or
  - (ii) in all other cases, within 20 Business Days of the commencement of the assessment study,

provided that where the Demand Assessment is the subject of a dispute under **clause 8.2.3(c)**, the relevant period will be 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. The QCA and each Access Seeker that was the subject of the Demand Assessment will be provided with a copy of the completed Demand Assessment report.
- (e) The Demand Assessment report will not identify individual Access Seekers or potential access seekers by name or, to the extent practicable, precise origins or destinations for trains utilising the potential Expansion.
- (f) In order to carry out a Demand Assessment Aurizon Network may (acting reasonably) request the following information from Access

Seekers and potential access seekers identified by Aurizon Network as potential users of the potential Expansion:

- (i) status of coal reserves or of coal resources, as is appropriate having regard to the status and level of development of the mine (including the status and the quantity of such reserves or resources, as applicable);
- (ii) status of project development and anticipated commencement of coal production;
- (iii) current project development program;
- (iv) status of mining tenure and key approvals; and
- (v) status of out-loading capacity assets or rights.

Aurizon Network agrees not to seek information from Access Seekers or potential access seekers under this **clause 8.2.3(f)** which is not reasonably required for a prudent and sound Demand Assessment.

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

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

- (i) Each Access Seeker that was the subject of the Demand Assessment will be notified promptly by Aurizon Network if a dispute has been referred to an expert under **clause 8.2.3(h)**. Each Access Seeker wishing to make a written submission to the expert on its view as to how the dispute should be resolved will have 10 Business Days from

the date of notification to do so. The costs of engaging the expert will be borne by such party or parties as determined by the expert.

#### **8.2.4 Participation of Customers**

- (a) Without limitation to **clauses 8.4 to 8.9**, if a Customer wishes to fund the cost of:
- (i) a Pre-feasibility Study, as a Pre-feasibility Funder under **clause 8.4**;
  - (ii) a Feasibility Study, as a Feasibility Funder under **clause 8.5**;  
or
  - (iii) an Expansion, as a User under **clause 8.9**,
- as applicable, then the Customer must give a notice to Aurizon Network that it wishes to do so and agrees to be bound by the provisions of this Undertaking in relation to such matters. Nothing in this **clause 8.2.4(a)** obliges a Customer to give a funding notice earlier than the time required under the relevant part of this **Part 8**.
- (b) Where Aurizon Network does not receive a notice from a Customer under **clause 8.2.4(a)** in respect of a proposed Pre-feasibility Study, Feasibility Study or Expansion (as applicable), then Aurizon Network may refuse to negotiate agreements in relation to such matters with that Customer or to otherwise treat that Customer as a proposed Pre-feasibility Funder or Feasibility Funder.
- (c) Where Aurizon Network considers, acting reasonably, that a Customer has materially failed to comply with any provision of this Undertaking relating to the funding of the cost of a Pre-feasibility Study, Feasibility Study or an Expansion (as applicable), then Aurizon Network may, without prejudice to any other rights it may have, do either or both of the following:
- (i) give a written Negotiation Cessation Notice to the Customer or its Access Seeker (as applicable) under **clause 4.12**; and
  - (ii) cease any other relevant negotiations with that Customer in relation to the funding of the cost of the Pre-feasibility Study, Feasibility Study or an Expansion (as applicable) by giving written notice to that Customer.
- (d) Where Aurizon Network is to conduct a Demand Assessment or any other process in relation to an Expansion or proposed Expansion, and in doing so Aurizon Network is seeking further information, it must invite all relevant Customers, that Aurizon Network is aware of or ought reasonably to be aware of, to provide the information being sought. It is acknowledged that for the purpose of determining the relevant Customers where the Demand Assessment relates to a terminal Expansion, relevant Customers are the relevant participants in the terminal Expansion (to the extent known to Aurizon Network).

### 8.2.5 **Compliance with obligations**

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

### 8.3 **Concept Studies**

- (a) Aurizon Network must promptly undertake a Concept Study (whether in connection with the Network Development Plan or otherwise) for capacity that is consistent with the capacity identified in the relevant Demand Assessment report finalised under **clause 8.2.3** following completion of the final Demand Assessment. However, this obligation will not apply where a further Concept Study is not required because a sufficient Concept Study for the relevant Expansion is already underway or completed.
- (b) Aurizon Network will publish to relevant Access Seekers (and, where applicable, their Customers) 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 and the preliminary scope, cost and program details of those alternatives.

regardless of whether or not the Concept Study is funded by Aurizon Network or an Access Seeker (or, as applicable, Customer).

- (c) Aurizon Network must fund all Concept Studies except where an Access Seeker (or, as applicable, Customer) agrees to fund the Concept Study at its absolute discretion. As a result of that agreement Aurizon Network must not afford the funding Access Seeker (or, as applicable, Customer) any rights that Access Seeker (or, as applicable, Customer) would not otherwise be entitled to had they not funded the Concept Study. For the avoidance of doubt, 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).
- (d) Where an Access Seeker wishes to fund a Concept Study, 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.

### 8.4 **Pre-feasibility Studies**

- (a) Following a Concept Study, Aurizon Network must promptly undertake and complete scoping, planning, an evaluation of alternatives or other preliminary studies or assessments for that Expansion (**Pre-feasibility Study**), if:

- (i) one or more Potential Pre-feasibility Funders choose to fund the Pre-feasibility Study by requiring Aurizon Network to enter into a Studies Funding Agreement (on the terms of the Standard Studies Funding Agreement or such other terms as are agreed);
- (ii) subject to **clause 8.4(c)**, the Potential Pre-feasibility Funders and Aurizon Network agree that Aurizon Network should fund the Pre-feasibility Study; or
- (iii) subject to **clause 8.4(c)**, 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 8.4(a)(i)**:
  - (A) within 40 Business Days after the date of a communication referred to in **clause 8.4(d)(ii)** if no dispute has been commenced under **clause 8.4(e)**; or
  - (B) where a dispute has been commenced under **clause 8.4(e)**, within 15 Business Days after the expert determination.

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

- (b) Subject to **clause 8.4(c)**, if all of the relevant Studies Funding Agreements for a Pre-feasibility Study terminate prior to completion of the Pre-feasibility Study, then Aurizon Network may (in its discretion) elect to continue to undertake and complete the Pre-feasibility Study.  
 If Aurizon Network funds the Pre-feasibility Study in accordance with **clause 8.4(a)(ii)** or **8.4(a)(iii)**, or elects to continue to undertake and complete a Pre-feasibility Study under **clause 8.4(b)**, 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.
- (c) The Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Pre-feasibility Study under **clause 8.4(a)(i)** for an Expansion, as proposed Pre-feasibility Funders, will be:
  - (i) where Aurizon Network knows that a Capacity Shortfall exists and the proposed Expansion could create Capacity that would reduce or remove the Capacity Shortfall, Access Seekers with Capacity Shortfall Access Applications to which that Capacity Shortfall relates (or, as applicable, their Customers); and

- (ii) 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;
    - (3) is diligently developing its mine or mine expansion in accordance with the development program referred to in **paragraph (2)**;
  - (C) where the relevant Access Seeker (or, as applicable, their Customer) is not a producer of coal but 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 a source of fuel (e.g. 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 (2)**; and

- (D) where applicable, has the ability to meet the funding obligation under the terms of the relevant Studies Funding Agreement,

provided that where the relevant Access Seeker intends to utilise any Access Rights sought to be provided by a proposed Expansion for the benefit of a Customer, it must be acting on behalf of a Customer or Customers identified to Aurizon Network for all of the Access Rights sought by the relevant Access Seeker. Aurizon Network must make reasonable inquiries as to the identity of that Customer in accordance with **clause 8.6(b)**.

- (d) Following a decision under **clause 8.4(c)**, Aurizon Network will advise:
- (i) each Access Seeker (or, as applicable, Customer) who was not selected to fund the Pre-feasibility Study of that fact; and
  - (ii) each Access Seeker (or, as applicable, Customer) who was selected to fund the Pre-feasibility Study of that fact and of the Access Rights for which it has been selected to participate in the funding of the Pre-feasibility Study.
- (e) Any Access Seeker (or, as applicable, Customer) that disagrees with the outcome of Aurizon Network's selection process as communicated to it under **clause 8.4(d)** may, within 10 Business Days of that communication require Aurizon Network to refer the matter to the QCA for dispute resolution in accordance with **clause 11.1.5**. The QCA will either confirm Aurizon Network's original decision or substitute its own decision by determining the Access Seekers (or, as applicable, Customers) who best meet the criteria set out under **clause 8.4(c)**. The QCA's decision will be binding on all potential Pre-feasibility Funders (and their Customers) and Aurizon Network as to the issues in dispute.
- (f) Each Access Seeker (or where applicable, Customer) that was given an opportunity to fund the relevant Pre-Feasibility Study will be notified promptly by Aurizon Network if a dispute has been referred to the QCA under **clause 8.4(e)**. Each Access Seeker (or, as applicable, its Customer) wishing to make a written submission to the QCA on its view as to how the dispute should be resolved will have 10 Business Days from the date of notification to do so.
- (g) Unless otherwise agreed by Aurizon Network and relevant proposed Pre-feasibility Funder, a Studies Funding Agreement for a Pre-feasibility Study will be in the form of the Standard Studies Funding Agreement. An Access Seeker (or, as applicable, Customer) given an opportunity to fund a Pre-feasibility Study may require that such

funding be provided in accordance with the Standard Studies Funding Agreement.

- (h) Aurizon Network must consult with the relevant proposed Pre-feasibility Funders in relation to the scope of the Pre-feasibility Study and reasonably consider the Pre-feasibility Funders' comments. Aurizon Network will provide the Pre-feasibility Funders with written reasons where it rejects a suggestion of the Pre-feasibility Funder.
- (i) If Aurizon Network and the relevant proposed Pre-feasibility Funders do not reach agreement on:
  - (i) the scope of the Pre-feasibility Study; or
  - (ii) the completion of schedules in a Studies Funding Agreement in the form of the Standard Studies Funding Agreement,within:
  - (iii) 20 Business Days of a communication referred to in **clause 8.4(d)(ii)**; or
  - (iv) if a decision communicated in accordance with **clause 8.4(d)** is referred for dispute resolution as contemplated by **clause 8.4(e)**, within 5 Business Days following the QCA's decision,then, any of those persons may , within 10 Business Days after the expiration of the relevant period referred to in **clause 8.4(i)(iii)** or **clause 8.4(i)(iv)**, as applicable, require Aurizon Network to refer the issue of scope and/or the schedules to the QCA as a dispute for resolution under **clause 11.1.5**. The QCA shall determine the scope or the information in the schedules to the Pre-feasibility Funding Agreement (as applicable) to be included.
- (j) In the absence of a manifest error, the determination of a dispute under **clause 8.4(i)** will be binding on all proposed Pre-feasibility Funders and Aurizon Network. Aurizon Network does not breach this Undertaking in doing anything necessary to comply with that determination.
- (k) If the Pre-feasibility Study for an Expansion is funded under one or more Studies Funding Agreements (**Pre-feasibility SFA**), then:
  - (i) as a condition of any Studies Funding Agreements for a Feasibility Study (**Feasibility SFA**) in relation to that Expansion, the relevant Feasibility Funders will be required to include in the funding provided to Aurizon Network under their Feasibility SFAs amounts that in aggregate equal the amount to be repaid or reimbursed by Aurizon Network under **clause 8.4(k)(ii)**; and
  - (ii) after those Feasibility SFAs become unconditional, Aurizon Network will, in accordance with each relevant Pre-feasibility SFA, repay or reimburse (as applicable) the funding



provided by the Pre-feasibility Funder under that Pre-feasibility SFA.

- (l) The capital expenditure for an Expansion includes the cost of a Pre-feasibility Study relating to that Expansion. However, any amounts that are not repaid or reimbursed (as applicable) under **clause 8.4(k)** will not be treated as capital expenditure and will not be included in the Regulatory Asset Base.
- (m) Without limiting any provision of this Undertaking, Aurizon Network is not obliged to construct, fund or permit an Expansion or to undertake a Feasibility Study, merely because Aurizon Network undertakes or funds any Pre-feasibility Study relating to that Expansion.
- (n) Aurizon Network will publish to relevant Access Seekers (and, where applicable, their Customers) general details of each multi-user Pre-feasibility Study it is undertaking promptly after commencement of work on the Pre-feasibility Study. The publication will not identify individual Access Seekers by name, precise details of origins and destinations (to the extent possible) or any other confidential information.

## **8.5 Feasibility Studies**

- (a) Following a Pre-Feasibility Study, Aurizon Network must promptly undertake and complete the detailed scoping, design and definition of the preferred scheme selected in the relevant Pre-feasibility Study for that Expansion, including planning and preparation for procurement and construction (**Feasibility Study**), if one or more of the Potential Feasibility Funders agree with Aurizon Network to fund the Feasibility Study by entering into a Studies Funding Agreement (on the terms of the Standard Studies Funding Agreement or such other terms as are agreed).
- (b) Subject to **clauses 8.5(c)** and **(h)**, the Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Feasibility Study under **clause 8.5(a)** for an Expansion, as proposed Feasibility Funders, will be:
  - (i) firstly, where Aurizon Network knows that a Capacity Shortfall exists and the proposed Expansion could create Capacity that would reduce or remove the Capacity Shortfall, Access Seekers with Capacity Shortfall Access Applications to which that Capacity Shortfall relates (or, as applicable, their Customers) other than any of them who (or whose Customer) were offered an opportunity to fund the Pre-feasibility Study for the Expansion but did not become a Pre-feasibility Funder for that Pre-feasibility Study; and
  - (ii) secondly, subject to **clause 8.5(d)**, those Access Seekers (or, as applicable, their Customers) whom Aurizon Network decides (acting reasonably) satisfy all of the following

requirements, namely an Access Seeker (or, as applicable, their Customer) who:

- (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 a Mineral Development Licence 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;
  - (3) is diligently developing its mine or mine expansion in accordance with the development program referred to in **paragraph (2)**;
  - (4) has Marketable Coal Reserves (as defined by the JORC Code) equal to at least 10 times the annual capacity for which Access is required (as determined by reference to the Access Seeker's Access Application), following ramp up;
- (C) where the relevant Access Seeker (or, as applicable, their Customer) is not a producer of coal but 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;
  - (2) has a credible program for the development of any infrastructure or other facilities and has or is likely to secure a source of fuel (e.g. coal) necessary for that business or activity;

- (3) is diligently developing any infrastructure or other facilities in accordance with the development program referred to in **paragraph (2)**; and
- (4) 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; and
- (D) where applicable, has the ability to meet the funding obligation under the terms of the proposed Studies Funding Agreement,

provided that where the relevant Access Seeker intends to utilise any Access Rights sought to be provided by a proposed Expansion for the benefit of a Customer, it must be acting on behalf of a Customer or Customers identified to Aurizon Network for all of the Access Rights sought by the relevant Access Seeker. Aurizon Network must make reasonable inquiries as to the identity of that Customer in accordance with **clause 8.6(b)**.

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

- (i) where the Access Seeker has a Customer (the identity and details of which has been notified to Aurizon Network by the Access Seeker):
  - (A) Aurizon Network will notify the Customer that it is identifying Potential Feasibility Funders for the relevant Feasibility Study; and
  - (B) the Customer must notify Aurizon Network within 10 Business Days after receiving that notice:
    - (1) that the Customer should be considered for an opportunity to fund the Feasibility Study (rather than the Access Seeker) (**Customer Nomination**); or
    - (2) that the Access Seeker (and, where there are two or more Access Seekers seeking the same Access Rights, which of the Access Seekers) should be considered for an opportunity to fund the Feasibility Study (rather than the Customer or any other of those Access Seekers) (**Access Seeker Nomination**);
- (ii) where Aurizon Network is given:

- (A) a Customer Nomination under **clause 8.5(c)(i)(B)(1)**, only the Customer can be eligible for an opportunity to fund the relevant Feasibility Study (and not the Access Seeker(s) for the Customer); or
  - (B) an Access Seeker Nomination under **clause 8.5(c)(i)(B)(2)**, only the nominated Access Seeker can be eligible for an opportunity to fund the relevant Feasibility Study (and not the Customer or any other relevant Access Seeker for the Customer); and
- (iii) where the Customer does not give Aurizon Network a Customer Nomination or an Access Seeker Nomination under **clause 8.5(c)(i)(B)**, neither that Customer nor that Customer's Access Seeker(s) can be eligible for an opportunity to fund the relevant Feasibility Study.
- (d) Aurizon Network will (acting reasonably and in good faith) determine the target amount of Capacity for the proposed Expansion (**Target Capacity**) having regard to:
- (i) the total indicative demand for Capacity from all the relevant Access Seekers that satisfy the requirements under **clause 8.5(b)(ii)**;
  - (ii) the potential scope of the proposed Expansion;
  - (iii) the capacity of the port or other unloading facility relevant to the use of the proposed Expansion; and
  - (iv) any potential staging of Expansions.
- (e) Aurizon Network will notify all the relevant Access Seekers of:
- (i) the Target Capacity for the potential Expansion determined under **clause 8.5(d)**;
  - (ii) the total indicative demand for Capacity from all the relevant Access Seekers that satisfy the requirements under **clause 8.5(b)(ii)**; and
  - (iii) if the total demand under **clause 8.5(e)(ii)** is more than the Target Capacity under **clause 8.5(e)(i)**, the reasons why a higher Target Capacity has not been proposed.
- (f) Within 10 Business Days after being given a notice under **clause 8.5(e)**, an Access Seeker may dispute Aurizon Network's determination of the Target Capacity by referring the matter to the QCA for dispute resolution in accordance with **clause 11.1.5**. The QCA will determine the Target Capacity having regard to the matters listed in **clause 8.5(d)**.

Any determination by the QCA will be binding on Aurizon Network and all Access Seekers notified under **clause 8.5(e)**.

- (g) Aurizon Network must not make a decision under **clause 8.5(h)** until:
  - (i) if Aurizon Network's decision has not been referred to an expert under **clause 8.5(f)**, the period specified under that **clause 8.5(f)** has expired; or
  - (ii) if Aurizon Network's decision has been referred to the QCA under **clause 8.5(f)**, the QCA has made its determination.
- (h) Subject to **clause 8.5(g)**, if the Target Capacity to be created by the proposed Expansion as determined under **clause 8.5(d)** by Aurizon Network, or (if applicable) as determined by the QCA under **clause 8.5(g)(ii)**, is expected to be insufficient Capacity for all the relevant Access Seekers that satisfy the requirements under **clause 8.5(b)(ii)**, then Aurizon Network will decide (acting reasonably and in good faith) as between those particular Access Seekers (or, as applicable, their Customers) which will be given an opportunity to fund the particular Feasibility Study by Aurizon Network having regard to the following criteria:
  - (i) those Access Seekers who meet the requirements set out in **clause 8.5(b)(ii)** to a greater extent than other Access Seekers;
  - (ii) the Access Seekers who funded the Pre-feasibility Study;
  - (iii) maximisation of the allocation of capacity; and
  - (iv) maximisation of the duration of the expected Access having regard to:
    - (A) the ratio of coal reserves to the Access capacity sought; and
    - (B) the likelihood of continuing to extract such coal reserves over time.

For clarity, the assessment under this **clause 8.5(h)** 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.

- (i) Following a decision under **clause 8.5(b)**, Aurizon Network will notify:
  - (i) each Access Seeker (or, as applicable, Customer) who was not selected to fund the Feasibility Study of that fact; and
  - (ii) each Access Seeker (or, as applicable, Customer) who was selected to fund the Feasibility Study 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, Commercial Terms or a User Funding Agreement, as applicable, in respect of the funding and construction of the Expansion the subject of the Feasibility Study would become unconditional.
- (j) Any Access Seeker (or, as applicable, its Customer) that disagrees with the outcome of Aurizon Network's selection process as communicated to it under **clause 8.5(i)** may, within 10 Business Days of that communication require Aurizon Network to refer the matter to the QCA for dispute resolution in accordance with **clause 11.1.5**. The QCA will either confirm Aurizon Network's original decision or substitute its own decision by determining the Access Seekers (or, as applicable, Customers) who best meet the criteria set out under **clause 8.5(b)** and, if applicable, **clause 8.5(h)**. The QCA's decision will be binding on all potential Feasibility Funders (and their Customers) and Aurizon Network as to the issues in dispute.
  - (k) Each Access Seeker (or where applicable, Customer) that was given an opportunity to fund the relevant Feasibility Study will be notified promptly by Aurizon Network if a dispute has been referred to the QCA under **clause 8.5(j)** and, if the Access Seeker (or, as applicable, its Customer) wishes to do so, has 10 Business Days from the date of notification to make a written submission to the QCA on its view as to how the dispute should be resolved.
  - (l) 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 8.5(b)(ii)**.
  - (m) Subject to **clause 8.4(k)(i)**, unless otherwise agreed by Aurizon Network and the relevant proposed Feasibility Funder a Studies Funding Agreement for a Feasibility Study will be in the form of the Standard Studies Funding Agreement. Each Access Seeker (or, as applicable, Customer) given an opportunity to fund a Feasibility Study may require that such funding be provided in accordance with the Standard Studies Funding Agreement.
  - (n) Aurizon Network must consult with the relevant proposed Feasibility Funders in relation to the scope of the Feasibility Study and reasonably consider the Feasibility Funders' comments. Aurizon Network will provide the Feasibility Funders with written reasons where it rejects a suggestion of a Feasibility Funder.

(o) If Aurizon Network and the relevant proposed Feasibility Funders do not reach agreement on:

- (i) the scope of the Feasibility Study; or
- (ii) the completion of schedules in the Studies Funding Agreements in the form of the Standard Studies Funding Agreement,

within:

- (iii) 20 Business Days of the communication referred to in **clause 8.5(i)(ii)**; or
- (iv) if the decision communicated in accordance with **clause 8.5(i)** is referred for dispute resolution as contemplated by **clause 8.5(j)**, within 5 Business Days following the QCA's decision,

then any of those persons may, within 10 Business Days after the expiration of the relevant period referred to in **clause 8.5(o)(ii)** or **clause 8.5(o)(iv)**, as applicable, require Aurizon Network to refer the matter to the QCA as a dispute for resolution under **clause 11.1.5**. The QCA shall determine the scope or the information in the schedules to the Feasibility Funding Agreement (as applicable) to be included.

(p) In the absence of manifest error, the determination of a dispute under **clause 8.5(o)** will be binding on all proposed Feasibility Funders and Aurizon Network. Aurizon Network does not breach this Undertaking in doing anything necessary to comply with that determination.

(q) Where the scope of a Feasibility Study and the Schedules of the Studies Funding Agreement for that Study have been:

- (i) agreed by Aurizon Network with all of the proposed Feasibility Funders of the Study; or
- (ii) the subject of a QCA determination as contemplated by **clause 8.5(o)**,

Aurizon Network will, within 5 Business Days of that agreement being reached or publication to Aurizon Network of the expert 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.

(r) Within 20 Business Days after a Studies Funding Agreement for a Feasibility Study becoming unconditional, Aurizon Network will:

- (i) issue an IAP (or if one has previously been provided, a revised IAP) to the relevant Access Seeker who is, or whose Customer is, funding the Feasibility Study; and

- (ii) subject to **clauses 8.5(s)** and **8.5(t)**, grant that Access Seeker a provisional allocation of the capacity detailed in the Train Service Description included in the Studies Funding Agreement (**Provisional Capacity Allocation**).
- (s) 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(r)(i)**, that Access Seeker must notify Aurizon Network of that intention in writing within 20 Business Days after Aurizon Network gives a relevant notice under **clause 8.8(c)**.
- (t) Subject to **clause 8.5(u)**, all or part of a Provisional Capacity Allocation may be withdrawn by Aurizon Network acting reasonably, where:
  - (i) the relevant Access Seeker's circumstances change in a substantial way so that the Access Seeker ceases to satisfy all of the requirements in **clause 8.5(b)(ii)** or meets one or more of those requirements to a substantially lesser extent than when the assessment was originally made by Aurizon Network under that clause;
  - (ii) (other than due to any default or negligent act or omission of Aurizon Network) the relevant mine or out-loading facility (including an expansion of a mine or out-loading facility) will be delayed by 12 months or more as compared to the timeframe that was proposed when Aurizon Network made the original assessment;
  - (iii) Aurizon Network 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 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 under **clause 8.9.2** or a dispute concerning the negotiation of an Access Agreement or User Funding Agreement, then the time from when that dispute is notified for the purpose of **clause 11.1.4** or **clause 11.1.5** (as applicable), to the determination of that dispute by the expert or the QCA (as applicable), is excluded from that period).

For clarity, where a Provisional Capacity Allocation is withdrawn under this **clause 8.5(t)**, Aurizon Network must seek to reallocate that Provisional Capacity Allocation in accordance with **clause 8.5(w)**.



- (u) If Aurizon Network intends exercising its rights under **clause 8.5(t)** to withdraw all or a part of a Provisional Capacity Allocation, it must give the relevant Feasibility Funder written notice and a reasonable opportunity (for a period of at least 10 Business Days) to explain why Aurizon Network should not exercise its rights in the way proposed. If having considered any explanation provided by the Access Seeker Aurizon Network (acting reasonably) withdraws all or part of the Provisional Capacity Allocation it must give the relevant Access Seeker written notice, including reasons for its decision.
- (v) An affected Feasibility Funder may within 10 Business Days of receiving notice of Aurizon Network's decision to withdraw Provisional Capacity Allocation under **clause 8.5(t)** refer the matter to the QCA as a dispute for resolution under **clause 11.1.5**. The QCA will determine whether the Provisional Capacity Allocation should be withdrawn having regard to the matters listed in **clause 8.5(t)**.  
The QCA's determination will, subject to **clause 11.1.5**, be binding on the parties to the dispute.
- (w) Subject to the terms of the relevant Studies Funding Agreements, where a Provisional Capacity Allocation is withdrawn under **clause 8.5(t)**, 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 8.5(b)** and subject to **clause 8.5(d)**; and
  - (ii) is willing to enter into a Studies Funding Agreement as a Feasibility Funder for the relevant Feasibility Study,
 subject to that Replacement and the other relevant Feasibility Funders agreeing with Aurizon Network any relevant amendments relating to scope, timing and cost of the Feasibility Study in respect of the Studies Funding Agreement for that Feasibility Study.  
For clarity, if a proposed replacement Feasibility Funder enters into a Studies Funding Agreement in respect of the relevant Feasibility Study, then **clauses 8.5(r) to 8.5(v)** apply to that replacement Feasibility Funder.
- (x) A Provisional Capacity Allocation will automatically cease to apply upon the Access Seeker to which that Provisional Access Allocation applies signing an Access Agreement, Commercial Terms or User Funding Agreement relating to corresponding Access Rights.
- (y) If the Feasibility Study for an Expansion is funded under one or more Studies Funding Agreements (**Feasibility SFA**), then:
  - (i) where there will be a User Funding Agreement for that Expansion, as a condition of that User Funding Agreement

the relevant Funding Users will be required to include in the funding provided to Aurizon Network under their User Funding Agreement amounts that in aggregate equal the amount to be repaid or reimbursed by Aurizon Network under **clause 8.5(y)(ii)**; and

(ii) where:

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

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

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

(z) The capital expenditure for an Expansion includes the cost of Feasibility Studies relating to that Expansion. However, any amounts that are not repaid or reimbursed (as applicable) under **clause 8.5(y)** will not be treated as capital expenditure and will not be included in the Regulatory Asset Base.

(aa) Without limiting any provision of this Undertaking, Aurizon Network is not obliged to construct, fund or permit an Expansion merely because Aurizon Network undertakes or funds any Feasibility Study relating to that Expansion.

(bb) Aurizon Network will publish general details of each Feasibility Study it is undertaking promptly to relevant Access Seekers (and, where applicable, their Customers) after commencement of work on the Feasibility Study. The publication will not identify individual Access Seekers by name or, to the extent possible, precise details of origins and destinations.

## **8.6 Funding of Studies**

(a) Feasibility Studies must be funded by Access Seekers and/or, as applicable, Customers and must not be funded by:

(i) Aurizon Network; 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 8.5(c)(i)(B)(2)** in favour of that Railway Operator.

- (b) 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.

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

- (a) If:
  - (i) either:
    - (A) Aurizon Network:
      - (1) fails to enter into a Studies Funding Agreement in accordance with this Undertaking or unreasonably delays doing so, after all relevant Access Seekers (or, if applicable, their Customers) have done so; or
      - (2) fails to forward to all relevant Access Seeker an executable form of the Studies Funding Agreement containing the provisions previously agreed with those Access Seekers or in a form consistent with the terms of a final, binding determination made in accordance with the terms of this Undertaking, within 10 Business Days after that agreement being reached or that determination becoming final and binding; or
    - (B) 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 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 written notice to Aurizon Network's Chief Executive Officer:

- (A) identifying the alleged failure, unreasonable delay or Performance Delay; and
  - (B) in the case of the circumstance referred to in **clause 8.7(a)(i)(A)(2)**, (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 8.7(a)(i)(A)(1)**, Aurizon Network fails to enter into the Studies Funding Agreement within 10 Business Days after receiving the relevant notice under **clause 8.7(a)(ii)**; and
  - (iv) where there is an alleged Performance Delay referred to in **clause 8.7(a)(i)(B)**, Aurizon Network:
    - (A) fails to prepare and provide to the relevant affected Access Seeker (or, as applicable, Customer), within 20 Business Days after receiving the relevant notice under **clause 8.7(a)(ii)**, a response confirming that Aurizon Network will complete the study by the Completion Date 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,

a relevant affected Access Seeker (or, as applicable, Customer) may refer the matter to resolution as a dispute under **clause 11.1.4**. If the QCA determines that Aurizon Network:
  - (v) is obliged to enter into a Studies Funding Agreement and, subject to **clause 8.7(a)(iii)**, has failed unreasonably to do so or unreasonably delayed doing so; or
  - (vi) has failed to forward the executable form of Studies Funding Agreement within the time limit specified by **clause 8.7(a)(i)(A)(2)**;
  - (vii) has:

- (A) been the cause of a Performance Delay (as described in **clause 8.7(a)(i)(B)**); and
- (B) either:
  - (1) failed to provide a response within the time specified in **clause 8.7(a)(iv)(A)**; or
  - (2) has failed to comply with the steps detailed in the response provided under **clause 8.7(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.

- (b) 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) Aurizon Network must provide the nominee with all information that can be lawfully provided by Aurizon Network<sup>3</sup> which is reasonably required by the nominee to undertake the applicable study (provided however that the nominee must only use such information in connection with the performance of the study); and
  - (iii) Aurizon Network must use the relevant study output for the purposes for which it was provided.
- (c) If a study is undertaken by a nominee of all relevant Customers as contemplated by **clause 8.7(b)** Aurizon Network will 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. Aurizon Network:
  - (i) may refer the matter for QCA determination in accordance with **clause 11.1.5** within 20 Business Days following publication to Aurizon Network of the study by the nominee;
  - (ii) will provide written notice of its dispute to the relevant Access Seekers, each of whom shall have a right to make submissions to the QCA in respect of the dispute; and
  - (iii) will provide written submissions to the QCA, with copies to each of the relevant Access Seekers, detailing why, in

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<sup>3</sup> For example, Aurizon Network's confidentiality or ringfencing obligations under this Undertaking, at law or under any agreements may limit or prevent the provision of information.

Aurizon Network's view, the scope decided by the nominee is not appropriate and how it should be amended.

The QCA shall determine what the appropriate scope should be.

- (d) In the absence of manifest error, the determination of a dispute under **clause 8.7(c)** will be binding on all relevant Access Seekers and Aurizon Network. Aurizon Network does not breach this Undertaking in doing anything necessary to comply with that determination and will, subject to the terms of this **Part 8**, implement the output of the study for completion of the applicable Feasibility Study, User Funding Agreement or Access Agreement.

## **8.8 Funding an Expansion - general**

- (a) Subject to this **clause 8.8** and **clause 8.9**, an Access Seeker may fund its relevant portion of the cost of an Expansion that is necessary to create additional Capacity so that Access Rights may be granted to Access Seekers but only if Aurizon Network:
- (i) is not obliged under this Undertaking to do so; and
  - (ii) either:
    - (A) is not willing to do so (as notified or deemed notified under **clause 8.8(c)**); or
    - (B) is only willing to do so subject to Commercial Terms that are unacceptable to the Access Seeker,
- provided that where the relevant Access Seeker intends to utilise any Access Rights sought to be provided by the proposed Expansion for the benefit of a Customer, it may only fund the cost of an Expansion if it is acting on behalf of a Customer or Customers identified to Aurizon Network for all of the Access Rights sought by the relevant Access Seeker. Aurizon Network must make reasonable inquiries as to the identity of that Customer in accordance with **clause 8.6(b)**.
- (b) For clarity, any obligation on Aurizon Network to construct or permit an Expansion is subject to **clauses 8.2.1(c)** and **(f)**.
- (c) Aurizon Network will notify the Feasibility Funders within 40 Business Days after the relevant Studies Funding Agreements become unconditional whether:
- (i) Aurizon Network is not willing to fund the Expansion;
  - (ii) Aurizon Network requires Commercial Terms to be agreed in relation to the funding of the Expansion (and, if so, the details of the conditions that will comprise Commercial Terms).
- (d) If Aurizon Network has not given a notice under **clause 8.8(c)** or **clause 8.2.1(b)**, then (for the purpose of Access Seekers

commencing the processes under **clause 8.9.1(a)**) Aurizon Network is taken to not be willing to fund the Expansion.

- (e) If Aurizon Network has given a notice under **clause 8.8(c)(ii)** and the relevant Access Seeker is willing to negotiate, then Aurizon Network and the relevant Access Seeker will negotiate in good faith the proposed Commercial Terms on which Aurizon Network will be willing to fund the Expansion.
- (f) Where Aurizon Network has given a notice under **clause 8.8(c)(ii)** that it requires Commercial Terms an Access Seeker may require Aurizon Network to negotiate a User Funding Agreement for all or part of an Expansion in parallel to negotiations in relation to the Commercial Terms.
- (g) **Clause 8.8(c)** does not prevent Aurizon Network from subsequently notifying relevant parties of whether Aurizon Network is willing to fund the Expansion with or without Commercial Terms. Any notice under this **clause 8.8(g)** does not prevent Access Seekers from pursuing User Funding in preference to the proposal from Aurizon Network for it to fund the Expansion (even if Aurizon Network's proposal is to fund without Commercial Terms).
- (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 an Expansion may be funded partly by Funding Users and partly by Aurizon Network.
- (j) Where Aurizon Network is:
  - (i) granting a Provisional Capacity Allocation under **clause 8.5(r)**; or
  - (ii) negotiating or entering into an Access Agreement,Aurizon Network will not have regard to whether any relevant Expansion is or may be a User Funded Expansion or is or may be funded by Aurizon Network.

## **8.9 User Funded Expansions**

### **8.9.1 *Process where Users intend to fund an Expansion***

- (a) If an Access Seeker intends to fund its relevant portion of the cost of an Expansion under **clause 8.8(a)**:
  - (i) each proposed Funding User must give written notice to Aurizon Network of its bona fide intention to negotiate a User Funding Agreement for its relevant portion of the cost of the Expansion;

- (ii) after receiving such written notice, Aurizon Network and the proposed Funding Users will negotiate in good faith a User Funding Agreement;
  - (iii) upon the User Funding Agreement being agreed by Aurizon Network and the Funding Users, or its terms being determined through dispute resolution, in accordance with this Undertaking:
    - (A) Aurizon Network will issue the proposed User Funding Agreement to the proposed Funding Users and other relevant parties (for example, the State – if applicable), as applicable; and
    - (B) subject to the proposed Funding Users and other relevant parties (for example, the State, if applicable) first executing that User Funding Agreement, Aurizon Network will execute the User Funding Agreement; and
  - (iv) the User Funding Agreement must be in the form of the Standard User Funding Agreement unless otherwise agreed by Aurizon Network and the proposed Funding Users.
- (b) Where **clause 8.9.1(a)(iii)** applies, Aurizon Network will use reasonable endeavours to procure the State to enter into a User Funding Agreement.

### **8.9.2 Disputes about completion of SUFA schedules**

- (a) If Aurizon Network and any User do not reach agreement on the completion of schedules to a User Funding Agreement that is in the form of the Standard User Funding Agreement, then any of those persons may at any time refer the matter to the QCA for determination under **clause 11.1.5**.
- (b) The determination of a dispute under **clause 8.9.2(a)** will be binding on all proposed Funding Users and Aurizon Network. Aurizon Network does not breach this Undertaking in doing anything necessary to comply with that determination.
- (c) Where **clause 8.9.2(a)** applies, **clause 11.1** will be applied in respect of a User who is a Customer as though a reference to:
  - (i) an Access Seeker includes a reference to that Customer; and
  - (ii) a Related Party for a Customer includes the Access Seeker for that Customer.

### **8.9.3 Operation of a User Funded Expansion and Capital Indicator allocation**

- (a) A User Funded Expansion 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 in accordance with the provisions of the



relevant User Funding Agreement and must constitute part of the Rail Infrastructure.

- (b) If Aurizon Network nominates a Capital Indicator to the QCA for approval which includes any allowance for the expected capital expenditure in relation to a User Funded Expansion, Aurizon Network must identify the proportion of the relevant nominated Capital Indicator which reflects the expected capital expenditure in relation to the User Funding Agreement(s) for that User Funded Expansion.

#### **8.9.4 Capacity Shortfalls for User Funded Expansions**

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

#### **8.9.5 Inconsistency with a User Funding Agreement**

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

#### **8.9.6 Regulatory pre-approval of scope**

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

- (a) a vote by Interested Participants under **clause 8.13** to accept; or
- (b) approval from the QCA for,

the scope and standard of work for the relevant Expansion.

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

- (a) The Regulated Asset Base will include User Funded Expansions (subject to approval by the QCA), notwithstanding that the cost of such Expansions are not paid for by Aurizon Network.
- (b) As soon as is reasonably practicable, Aurizon Network will apply to the QCA to have all of the costs of a User Funded Expansion included in the Regulatory Asset Base. The application will identify that it is made at the request of the Funding Users in accordance with this **clause 8.9.7**.
- (c) In addition to any application, submission or communication made in accordance with **clause 8.9.7(b)** Aurizon Network and the Funding Users may each choose to make their own independent submissions to the QCA in relation to any application made under **clause 8.9.7(b)**. Aurizon Network is not obliged to make supportive submission.

### **8.9.8 Tax rulings**

SUFA documentation will govern Aurizon Network's obligation to seek a tax ruling on relevant aspects of executed SUFA documentation.

### **8.9.9 Review of the SUFA**

Promptly after executing the first User Funding Agreement in the form of the SUFA (or in the event that Aurizon Network and the Funding Users are unable to agree on any User Funding Agreement for execution after at least 60 Business Days of good faith negotiations), Aurizon Network will:

- (a) review the SUFA including having regard to the principles developed by Aurizon Network in consultation with industry participants; and
- (b) consult with the Funding Users and Access Seekers about the workability of the SUFA for User Funding,

and, after doing so:

- (c) submit to the QCA any amendments that Aurizon Network (acting reasonably) considers will improve the workability of the SUFA in the form of a draft amending access undertaking under the Act; or
- (d) if Aurizon Network (acting reasonably) considers no amendments are required, Aurizon Network must make a submission to the QCA giving detailed written reasons for that belief.

## **8.10 Contracting for Capacity**

### **8.10.1 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 for the Expansion; and
- (c) either:
  - (i) the Access Seeker and Aurizon Network have agreed the scope of work the subject of the Expansion; or
  - (ii) where the Expansion is not (or will not be) an Expansion to be funded on Commercial Terms, in the absence of agreement on the scope of works the subject of the Expansion, the scope has been determined by the QCA.

Where an Access Seeker and Aurizon Network do not reach agreement on the scope of work (including standard of work) for an Expansion (other than an Expansion to be funded on Commercial Terms), either party may at any time

refer the matter to the QCA for dispute resolution under **clause 11.1.5**. In such circumstances involving a User Funded Expansion **clause 8.9.2** will apply.

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

#### **8.10.2 Optimisation risk and Capacity Shortfalls**

- (a) This **clause 8.10.2** applies where Aurizon Network is funding all or part of the cost of an Expansion at the regulated rate of return specified by this Undertaking.
- (b) Where the scope of works (including the standard of work) for an Expansion is determined by the QCA as contemplated by this **Part 8** or by a nominee under **clause 8.7**, Aurizon Network will promptly apply to the QCA following that determination of scope for pre-approval of the:
  - (i) prudence of scope of the Expansion;
  - (ii) prudence standard of works for the Expansion; and
  - (iii) prudence of the proposed cost of the Expansion,in accordance with the process in **schedule E**.
- (c) Where the QCA provides pre-approval of each of the matters in **clause 8.10.2(b)** the actual cost of the Expansion up to the total of the pre-approved proposed cost under **clause 8.10.2(b)** will be automatically included into the Regulatory Asset Base in accordance with the process in **schedule E**. The amount of any actual cost above the pre-approved proposed cost will need to be approved by the QCA for it to be included into the Regulatory Asset Base.
- (d) Where the QCA does not pre-approve the proposed cost of the Expansion as contemplated by **clause 8.10.2(b)**, Aurizon Network will not be obliged to fund the cost of that Expansion and has no obligation to construct that Expansion in the absence of User Funding.
- (e) Where the scope of works (including the standard of work) for an Expansion is determined by the QCA as contemplated by this **Part 8** and:
  - (i) the Expansion is constructed in accordance with that scope and standard; and
  - (ii) the Expansion results in a Capacity Shortfall (determined in accordance with the process in **clause 8.10.3**),then:
  - (iii) Aurizon Network will (acting reasonably) 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, which

- calculation may (pursuant to **Part 11**) be disputed by Affected Access Holders (**AN Shortfall**);
- (iv) If the AN Shortfall is less than the Capacity Shortfall calculated under **clause 8.10.2(e)(ii)**, the Affected Access Holders may:
    - (A) elect to have their rights of Access remain compressed in relation to that Expansion as a result of the Capacity Shortfall (in accordance with the process for compression in this Undertaking); or
    - (B) 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 will fund an Expansion to address the AN Shortfall;
  - (v) where the affected Access Holders elect to seek to fund an Expansion under **clause 8.10.2(e)(iv)(B)** they can be given 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 without Aurizon Network offending this **Part 8**;
  - (vi) If the AN Shortfall is equal to or greater than the Capacity Shortfall calculated under **clause 8.10.2(e)(ii)**, Aurizon Network will fund the Shortfall Expansion needed to address the Capacity Shortfall in accordance with and subject to the provisions of **clause 8.10.3(f)**; and
  - (vii) Unless otherwise agreed in writing by Aurizon Network and Affected Access Holders, Aurizon Network's obligations in relation to a Capacity Shortfall arising in the context of an Expansion where the scope of the Expansion has been determined by the QCA will be governed solely by this **clause 8.10.2(e)**.

### **8.10.3 Capacity Shortfalls**

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

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

- (b) Aurizon Network may by written notice to all relevant Conditional Access Holders defer an assessment for the purposes of **clause 8.10.3(a)** until such time as Aurizon Network reasonably considers that the relevant Expansion is fully operational and the demand conditions are such that a reasonable assessment can be undertaken.
- (c) If a Conditional Access Holder disputes an assessment by Aurizon Network under **clause 8.10.3(a)**, the Conditional Access Holder may refer that dispute to an expert in accordance with **clause 11.1.4**. The determination of the expert will be binding. The expert will determine which party or parties should bear the costs of the expert.
- (d) If Aurizon Network's assessment under **clause 8.10.3(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 reduced in accordance with its Access Agreement; and
  - (ii) subject to **clause 8.10.3(e)**, where those Conditional Access Rights are reduced, each Conditional Access Holder will be taken to have lodged an Access Application with Aurizon Network for Access Rights equivalent to that reduction if they notify Aurizon Network within 20 Business Days after the reduction occurs that they wish to seek Access Rights equal to that reduction (unless their Access Agreement provides to the contrary).
- (e) For the purpose of a Conditional Access Holder's Access Application under **clause 8.10.3(d)**:
  - (i) the Access Application is taken to be on the same terms as the previous Access Application made by that Conditional Access Holder for those Conditional Access Rights but only to the extent that its Conditional Access Rights have been reduced in accordance with its Access Agreement as a result of the Capacity Shortfall;
  - (ii) Aurizon Network and the Conditional Access Holder are taken to have complied with **clauses 4.2 to 4.4(b)**; and
  - (iii) **clause 4.4(c)** applies to the Access Application.
- (f) Subject to **clause 8.10.2**, and subject to any agreement with the relevant Conditional Access Holders, where an Expansion (**Shortfall Expansion**) is required as a result of a Capacity Shortfall arising in

respect of an earlier Expansion (**Earlier Expansion**) and that Shortfall Expansion is technically and economically feasible:

- (i) subject to **clause 8.10.3(f)(ii)**, if the Earlier Expansion:
  - (A) was funded by Aurizon Network, Aurizon Network will bear the cost of the Shortfall Expansion;
  - (B) was partly funded by Aurizon Network:
    - (1) Aurizon Network will bear the proportion of the cost of the Shortfall Expansion that represents the proportion of the Earlier Expansion that was funded by Aurizon Network; and
    - (2) the Conditional Access Holder(s) who (or whose Customers) provided funding in respect of the Earlier Expansion will bear the remainder of the cost of the Shortfall Expansion if they require it (in which case Aurizon Network and the Conditional Access Holder(s) (or their Customers) will promptly enter into User Funding Agreements on the same terms); or
  - (C) was not funded (in whole or part) by Aurizon Network, a Conditional Access Holder will bear the cost of the Shortfall Expansion if they require it; and
- (ii) if the Capacity Shortfall was caused by a default by, or the negligent acts or omissions of, Aurizon Network, Aurizon Network will bear the cost of the Shortfall Expansion.
- (g) Unless agreed otherwise by the relevant Conditional Access Holders, any Shortfall Expansion must be addressed in accordance with the provisions of this Undertaking relating to Expansions.
- (h) Nothing in this **clause 8.10** 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.

## **8.11 Coal supply chain coordination**

### **8.11.1 Supply chain coordination**

- (a) Aurizon Network will use reasonable endeavours to participate:
  - (i) in a Supply Chain Group in relation to:
    - (A) the coordination and effective performance of a relevant coal supply chain; and
    - (B) if applicable, the development of a Supply Chain Master Plan; and

- (ii) in discussions with other service providers and participants in the coal supply chain, on request, with a view to the coordination of maintenance activities in the relevant supply chain.
- (b) Subject to the terms of this Undertaking, Aurizon Network will seek to act in a way that facilitates an appropriate balance between cooperation between all elements of coal supply chains (in respect of which Access forms a part) to seek to maximise the performance of those supply chains and the other matters set out in **clause 2.2(g)**.
- (c) Aurizon Network will not be obliged to make any binding commitment or to take any action as a result of its participation and discussions referred to in **clause 8.11.1(a)**.

### **8.11.2 System Operating Parameters**

- (a) In reviewing the System Operating Parameters for a Coal System, Aurizon Network will:
  - (i) notify the applicable Access Holders and Supply Chain Group (if any) and the QCA of the relevant System Operating Parameters and the time in which to make submissions;
  - (ii) consider any submissions from those Access Holders and the Supply Chain Group in respect of the proposed System Operating Parameters or whether any variation of the System Operating Parameters is required (as applicable); and
  - (iii) respond to any such submissions as soon as reasonably practicable including whether and, if so, how Aurizon Network has varied the proposed or existing System Operating Parameters (as applicable) in response to those submissions.
- (b) Without limitation to **clause 8.11.2(a)**, Aurizon Network will review the System Operating Parameters for a Coal System as soon as practical after Aurizon Network becomes aware that any permanent change has occurred, or will occur, to that Coal System that materially adversely affects the System Operating Parameters.
- (c) Nothing in this **clause 8.11.2** obliges Aurizon Network to vary the System Operating Parameters.
- (d) Aurizon Network will keep its most current System Operating Parameters available on the Website (including with the redaction of any information that is confidential or which, if so published, would give rise to a breach by Aurizon Network of a confidentiality obligation).

- (e) Aurizon Network will ensure that the System Operating Parameters are consistent with Good Engineering Practices.
- (f) On, or as soon as reasonably practicable after, the Approval Date, Aurizon Network will make available to each Access Holder the System Operating Parameters (as at the Approval Date) relevant to that Access Holder.

### **8.11.3 Capacity Assessment**

- (a) Aurizon Network will undertake a Capacity assessment for a Coal System if the System Operating Parameters are varied as a result of a review under **clause 8.11.2(b)** or are otherwise varied in a way that materially decreases the Existing Capacity in that Coal System.
- (b) Without limitation to **clause 8.11.3(a)**, Aurizon Network will undertake a Capacity assessment for a Coal System at intervals of no more than 12 months.
- (c) A Capacity assessment for a Coal System under this **clause 8.11.3 (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; and
  - (ii) 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.
- (d) Aurizon Network will make the outcomes of a Capacity Assessment available to Access Holders, Access Seekers and, if applicable, their Customers.
- (e) If, within 20 Business Days after Aurizon Network makes the outcomes of a Capacity Assessment available in accordance with **clause 8.11.3(d)**, the Access Holders for at least 60% of the Train Paths in relation to a Coal System (as determined in accordance with **clause 8.11.3(g)**) notify Aurizon Network that they wish to have a Capacity Assessment in relation to that Coal System reviewed by an independent expert, then:
  - (i) Aurizon Network will (acting reasonably) engage an appropriately qualified and experienced expert to review the Capacity Assessment;
  - (ii) the expert must act independently;



- (iii) without limitation to **clause 8.11.3(e)(ii)**, the expert must not be an employee of Aurizon Network or a Related Party of Aurizon Network; and
  - (iv) Aurizon Network will promptly provide the expert's report to the relevant Access Holders after receiving the expert's report.
- (f) If a Capacity Assessment reveals that there is a deficit in the Capacity for a Coal System at a particular point in time (**Deficit**), then Aurizon Network will have regard to that Deficit prior to executing an Access Agreement that would increase the size of that Deficit and prior to constructing any relevant Expansion for that Coal System.
- (g) For the purpose of **clause 8.11.3(e)**, 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 8.11.3(e)** (**Notice Date**);
  - (iii) subject to **clause 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 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 12 month period starting on the Notice Date.
- (h) Any obligation on Aurizon Network to provide or make available any information in accordance with this **clause 8.11.3** is subject to:
- (i) Aurizon Network being reasonably able to do so without causing or contributing to a breach of Aurizon Network's obligations under **Part 3**, an Access Agreement or any relevant confidentiality agreement; and
  - (ii) if it is possible to do so, for the purpose of avoiding a breach of the type referred to in **clause 8.11.3(h)(i)**, Aurizon Network may redact any information that is confidential or which, if published, would give rise to such a breach or do or

refrain from doing anything else reasonably necessary to avoid a breach of the type referred to in **clause 8.11.3(h)(i)**.

## **8.12 Network Development Plan**

- (a) Aurizon Network will develop a Network Development Plan and keep its most current Network Development Plan available on the Website.
- (b) The Network Development Plan will contain the following information:
  - (i) a review of the Existing Capacity and Operational Constraints;
  - (ii) an overview of opportunities for increasing Existing Capacity;
  - (iii) a comparison of opportunities for increasing Existing Capacity for each Coal System; and
  - (iv) the studies and investigations that Aurizon Network 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 if circumstances change in a way that Aurizon Network expects will materially adversely affect the Network Development Plan.
- (d) In developing or reviewing the Network Development Plan, Aurizon Network:
  - (i) will from time to time, inform and otherwise consult with, and consider submissions from, Access Holders, Access Seekers and other interested parties identified by Aurizon Network in relation to the proposed Network Development Plan; and
  - (ii) will have regard to:
    - (A) forecast changes in demand for Queensland coal exports;
    - (B) any Expression of Interest submissions;
    - (C) any relevant Access Applications;
    - (D) any relevant port terminal developments;
    - (E) any previous or current studies undertaken by Aurizon Network;
    - (F) any supply chain master plan;
    - (G) relevant System Operating Parameters, System Rules and maintenance plans; and
    - (H) other developments or circumstances which in Aurizon Network's opinion are relevant to the Network Development Plan.

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

## **8.13 Acceptance of capital expenditure projects by Interested Participants**

### **8.13.1 Purpose**

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

### **8.13.2 Application**

- (a) This **clause 8.13** applies where Aurizon Network seeks acceptance of:
  - (i) the scope of a capital expenditure project; or
  - (ii) a change to the scope of a capital expenditure project where:
    - (A) Aurizon Network previously obtained the acceptance of Interested Participants for that scope; and
    - (B) that change is a material change, **(Voting Proposal)** by a vote of Interested Participants under this **clause 8.13**.
- (b) Aurizon Network must notify the QCA of the outcome of a vote under this **clause 8.13**.
- (c) Nothing in this **clause 8.13**:
  - (i) obliges Aurizon Network to seek acceptance of the scope of a capital expenditure project under this **clause 8.13**; or
  - (ii) prevents Aurizon Network from seeking the QCA's acceptance of the scope of a capital expenditure project,

even if a vote seeking the acceptance of the same under this **clause 8.13** has been unsuccessful.

- (d) Aurizon Network does not have an obligation to construct or fund a capital expenditure project as a result of seeking or obtaining any acceptance of the scope of a capital expenditure project under this **clause 8.13**.
- (e) This **clause 8.13** must be read in conjunction with **clauses 2.2(h)** and **(i)** of **schedule E** (as though those provisions were part of this **clause 8.13**) to the extent that those provisions refer to this **clause 8.13**.

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

- (a) For a vote called by Aurizon Network regarding the acceptance of the scope of that capital expenditure project, the persons eligible to participate in that vote (referred to as **Interested Participants** in respect of that vote) are Customers, and Access Holders and Access Seekers without Customers, where the Access Charges (or likely Access Charges) relevant to the person:
  - (i) are (or will be) determined by reference to a Reference Tariff; and
  - (ii) would be affected by including the amount of capital expenditure for a capital expenditure project into the Regulatory Asset Base.
- (b) A Customer who is an Interested Participant may notify Aurizon Network nominating its Access Seeker or Access Holder, as applicable, (**Nominee**) to vote on its behalf. If Aurizon Network receives such a nomination, then:
  - (i) the Nominee is taken to be the Customer's agent for the purposes of the vote; and
  - (ii) where the Customer requests it, Aurizon Network will provide the Customer with a copy of notices given to the Nominee under this **clause 8.13** contemporaneously with the giving of that notice to the Nominee.
- (c) Despite **clause 8.13.3(a)**:
  - (i) Aurizon Network will not identify any person as an Interested Participant if that would result in any 'double counting' of votes – for example, where two Access Seekers are competing to provide rail haulage services to a prospective Customer that Customer will not be treated as a Customer for each Access Seeker thereby effectively doubling its Affected Train Paths and consequential voting power; and
  - (ii) if:

- (A) a person has not been invited to participate as an Interested Participant; and
- (B) that person believes that it is entitled to participate, then:
- (C) that person may request to be allowed to participate by notifying Aurizon Network including setting out reasons why it should be allowed to do so; and
- (D) Aurizon Network will use its reasonable endeavours to accommodate that request if it is appropriate to do so.

#### 8.13.4 *Voting rights*

- (a) In this **clause 8.13.4, Affected Train Path** means a Train Path where the applicable Reference Tariff for a Train Service using that Train Path would be affected by including the amount of capital expenditure for the relevant capital expenditure project into the Regulatory Asset Base.
- (b) Each Interested Participant's vote will be weighted by multiplying its vote by the number of Affected Train Paths for that Interested Participant as determined by Aurizon Network based on the relevant Access Rights (whether under an Access Agreement or the subject of an Access Application) in accordance with the principles under **clause 8.13.4(c)**.
- (c) Aurizon Network must determine Affected Train Paths for the purpose of **clause 8.13.4(b)** in a manner consistent with the following principles:
  - (i) where the Access Agreement in relation to that Interested Participant:
    - (A) will be in force at the time that is five years after acceptance is sought under this **clause 8.13**; or
    - (B) is subject to a legally binding commitment (even if conditional on the completion of an Expansion or Customer Specific Branch Line or other conditions which are Aurizon Network's responsibility to satisfy or can be waived by Aurizon Network),

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

- (A) the Access Agreement is due to expire within five years after acceptance is sought under this **clause 8.13**; and
  - (B) Aurizon Network reasonably expects that a Renewal will occur in relation to the relevant Access Rights under that Access Agreement, the Affected Train Paths must be determined based on the Access Rights specified in that Access Agreement for the last period of 12 months of that Access Agreement;
- (iii) to the extent that the Interested Participant is (or is also) an Access Seeker or an Access Seeker's Customer:
- (A) where the Available Capacity, plus the Capacity expected to be created by the capital expenditure project, that may potentially be used for Affected Train Paths (**Total Available Capacity**) is less than that needed by Aurizon Network to provide all of the Access Rights sought by Access Seekers (who, or whose Customers, are Interested Participants) for Affected Train Paths (**Requested Capacity**), the Affected Train Paths must be calculated as the Access Seeker's proportion of the Total Available Capacity calculated on a pro rated basis by reference the Access Seeker's proportion of the Requested Capacity; or
  - (B) where the Total Available Capacity is greater than the Requested Capacity, the Affected Train Paths sought by the Access Seeker,
- in either case, for a 12 month period starting five years after the first day of the month in which acceptance is sought under this **clause 8.13**; and
- (iv) if more than one of **clauses 8.13.4(c)(i) to (iii)** apply in respect of an Interested Participant, then the Affected Train Paths calculated under those clauses will be aggregated for that Interested Participant.

#### **8.13.5 Acceptance process**

- (a) If Aurizon Network seeks a vote from Interested Participants on a Voting Proposal, then Aurizon Network will:
  - (i) identify the Interested Participants and notify each identified Interested Participant of the vote; and
  - (ii) make available information relevant to the Voting Proposal and the voting process to those Interested Participants.
- (b) The period within which the vote will occur (**Voting Period**) will be:

- (i) the period specified in the notice under **clause 8.13.5(a)(i)**, being at least six weeks after the notice is given; or
  - (ii) where the Interested Participants for at least 60% of the aggregated Affected Train Paths for all Interested Participants notify Aurizon Network requesting a specified extension to the period specified in the notice under **clause 8.13.5(a)(i)**, the extended period as requested by those Interested Participants.
- (c) During the Voting Period:
- (i) Aurizon Network will use reasonable endeavours to provide information, forums and engage in discussions with Interested Participants in relation to the relevant Voting Proposal if it chooses to do so or if reasonably requested by any Interested Participants; and
  - (ii) Interested Participants are to notify Aurizon Network of whether they accept or do not accept the Voting Proposal by voting 'yes' or 'no'.
- (d) If an Interested Participant votes 'no' on the basis that the capital expenditure project:
- (i) is not technically and/or economically feasible or is inconsistent with the safe and reliable operation of the Rail Infrastructure;
  - (ii) would materially adversely affect the Interested Participant's access rights, providing evidence of how those rights would be affected; or
  - (iii) is inefficient, including having regard to the System Operating Parameters referred to by Aurizon Network,
- then that 'no' vote must be accompanied by detailed reasons in relation to those matters. For clarity, **clause 8.13.5(d)(i) to (iii)** do not prevent a 'no' vote from being made on a different basis – although, any such vote must still be accompanied by detailed reasons.
- (e) If an Interested Participant does not respond within the Voting Period or does not respond in a way that is a clear 'yes' or 'no' vote, then the Interested Participant is deemed to have accepted the relevant Voting Proposal – that is, voted 'yes'.
- (f) If an Interested Participant responds with a 'no' vote, but:
- (i) that vote does not comply with **clause 8.13.5(d)**; or
  - (ii) the reasons provided with that vote cannot reasonably be regarded as appropriate grounds for, or as relevant to, such a vote,
- then Aurizon Network may exclude that Interested Participant's vote.

- (g) When determining whether to exclude an Interested Participant's vote under **clause 8.13.5(f)** Aurizon Network may seek the QCA's approval to exclude any votes on the basis set out in **clause 8.13.5(f)**. The QCA will consult with the Interested Participant (including where **clause 8.13.3(b)** applies, both the relevant Nominee and Customer) in reaching a decision. The QCA will advise Aurizon Network and the Interested Participant of its decision within two weeks after receiving the request from Aurizon Network. If the QCA approves the exclusion of an Interested Participant's vote, then Aurizon Network is taken to have complied with **clause 8.13.5(f)** if it excludes that Interested Participant's vote.
- (h) The Interested Participants will be deemed to have accepted the relevant Voting Proposal if Interested Participants for at least 60% of the aggregated Affected Train Paths for all Interested Participants (other than those excluded under **clause 8.13.5(f)**) have, or are deemed to have, voted 'yes'.
- (i) Aurizon Network will notify each of those Interested Participants of the results of the vote within five Business Days after Aurizon Network has determined those results.

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

- (a) Aurizon Network will make available information, when it considers it relevant or necessary to do so, to participants in the coal supply chains relating to Coal Systems (as well as the QCA, Queensland Rail Limited and the DTMR) relating to proposed capital expenditure projects relevant to Coal Systems.
- (b) If a capital expenditure project, the scope of which is being voted on by Interested Participants under **clause 8.13.5**, is a General Expansion Capital Expenditure project, then Aurizon Network will use reasonable endeavours to cooperate with a consultant jointly appointed by, and at the cost of, those Interested Participants for a peer review of Aurizon Network's capacity planning inputs and processes and capacity model outputs in respect of the capital expenditure project. Aurizon Network will run a range of scenarios in that model, as requested by that consultant (acting reasonably). Aurizon Network's obligations under this **clause 8.13.6(b)** do not include any obligation to provide the consultant with access to the capacity analysis model, confidential information or any other information or thing in respect of which Aurizon Network has any intellectual property<sup>4</sup>.
- (c) Aurizon Network will make available to Interested Participants information on the capital expansion project where those Interested

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<sup>4</sup> Intellectual property includes any intellectual and industrial property rights conferred or recognised by any law anywhere throughout the world, including rights in relation to copyright, trade marks, trade secrets and patent rights (including the right to apply for registration of any such rights) and know-how that is confidential.



Participants have been asked to vote on the scope of that capital expenditure project, including a working paper the requirements for which are referred to in **clauses 8.13.6(d)**. For clarity, a working paper may relate to more than one capital expenditure project.

- (d) A working paper relating to a capital expenditure project's proposed scope as developed in the Feasibility Study will set out the following information in relation to that capital expenditure project:
  - (i) information on the following:
    - (A) the reason for the project including relevant capacity planning information;
    - (B) the project's scope and general standard of works;
    - (C) the additional capacity expected to be delivered by the project;
    - (D) the project's preliminary cost;
    - (E) the potential impact of project construction on Existing Capacity;
    - (F) the relevant System Operating Parameters;
    - (G) the aggregated contracted Train Paths for Train Services on the relevant Rail Infrastructure; and
    - (H) rationale for the choice of scope for the project with reference to the Pre-feasibility Study and the Network Development Plan (where relevant); and
  - (ii) where the project's scope has materially varied since a vote of Interested Participants accepting the scope:
    - (A) the scope variations and the reasons for them; and
    - (B) the relevant changes in the working paper compared to the working paper made available to Interested Participants for the previous vote.
- (e) Without limitation to **clause 8.13.6(a)**, Aurizon Network will also provide to Interested Participants information that is relevant to the capital expenditure project's scope being voted on and is reasonably available to Aurizon Network, as soon as reasonably practical after receiving a written request from an Interested Participant for that information. However, Aurizon Network is not obliged to provide that information if doing so would result in Aurizon Network failing to comply with this Undertaking or any contractual or other obligation to keep that information confidential.

### **8.13.7 Compliance**

- (a) Any person who is an Interested Participant, or is entitled to be an Interested Participant, in respect of a proposed vote to be conducted

under this **clause 8.13** who has any concerns about Aurizon Network's compliance with this **clause 8.13** in respect of the proposed vote may notify Aurizon Network of those concerns in writing including providing reasons or other information in support of those concerns prior to the end of the Voting Period.

- (b) Aurizon Network may take whatever action is reasonably required to address any concerns notified to it under **clause 8.13.7(a)** to achieve substantial compliance with this **clause 8.13**. Aurizon Network is not obliged to repeat a vote process where a valid concern is raised:
  - (i) if remedying the concern would not be expected to change the outcome of the vote; or
  - (ii) if it can remedy the concern in a way that achieves substantial compliance.<sup>5</sup>
- (c) An audit of Aurizon Network's compliance this **clause 8.13** in relation to a vote will be procured by Aurizon Network:
  - (i) prior to Aurizon Network relying on that vote for the purposes of the QCA's acceptance of prudence of scope of capital expenditure project; and
  - (ii) subject to **clauses 8.13.7(d) to (f)**, in accordance with **clauses 10.9(a) to (d)** and **10.9(g) to (j)**.
- (d) Where an audit is required under **clause 8.13.7(c)**:
  - (i) Aurizon Network must provide to the auditor copies of all concerns notified to it under **clause 8.13.7(a)** in relation to the relevant vote for the purpose of the audit certificate's preparation; and
  - (ii) the auditor will compile an audit report identifying:
    - (A) whether Aurizon Network has complied in all material respects with this **clause 8.13** and, if not, details as to the relevant non-compliance; and
    - (B) the process adopted for the conduct of the audit.
- (e) If, in preparing an audit certificate, the auditor identifies flaws in the calculation of the Access Train Paths, then:
  - (i) Aurizon Network may recalculate the Access Train Paths and recount the votes in a manner consistent with the auditor's findings;
  - (ii) the auditor will take that recalculation and recount into account in preparing the audit certificate; and

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<sup>5</sup> For example, if a person notifies Aurizon Network that it should be Interested Participant but the Voting Period has already commenced, then one remedy might be for Aurizon Network to provide all of the relevant notices, information and other material already provided to the other Interested Participants to that person and allow that person an extension of the Voting Period so that person can participate in the vote.

- (iii) to the extent that the Aurizon Network has already notified Interested Participants of the outcome of the vote, Aurizon Network will notify the Interested Participants as soon as reasonably practical of the recounted vote.
  - (f) If:
    - (i) in preparing an audit certificate, the auditor identifies a flaw in a vote of Interested Participants under this **clause 8.13**; and
    - (ii) either:
      - (A) Aurizon Network cannot remedy the flaw in a way that achieves substantial compliance with this **clause 8.13**; or
      - (B) the flaw would be expected to change the outcome of the vote,
- then Aurizon Network may, but is not obliged to, redo the voting process.
- (g) In this **clause 8.13.7** substantial compliance occurs where:
    - (i) Aurizon Network's acts or omissions in relation to a vote under this **clause 8.13** do not strictly comply with this **clause 8.13**; and
    - (ii) that non-compliance cannot reasonably be taken to have changed the outcome of the vote under **clause 8.13.5(h)** from that which would reasonably have been the case had there been strict compliance.

## Part 9: Connecting Private Infrastructure

### 9.1 Connecting Infrastructure

- (a) A person may propose 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 purpose of Access (**Private Infrastructure Owner**).
- (b) The Private Infrastructure Owner must give Aurizon Network a written proposal for the proposed connection to the Rail Infrastructure. The written proposal must provide sufficient details about the proposed connection to allow it to be properly assessed by Aurizon Network against the criteria in **clause 9.1(c)** and for development of a Rail Connection Agreement.
- (c) Aurizon Network will review the written proposal in a timely fashion and assess it to ensure that it meets the following criteria:
  - (i) Aurizon Network is satisfied, acting reasonably, that the proposed connection is for the purpose specified in **clause 9.1(a)**;
  - (ii) 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);
  - (iii) the proposed connection will not adversely impact on safety; and
  - (iv) the proposed connection will not, by virtue of its existence, reduce Capacity or supply chain capacity; and
- (d) 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.
- (e) Where Aurizon Network (acting reasonably) is satisfied that the criteria in **clause 9.1(c)** are satisfied and **clause 9.1(d)** will be complied with, it will permit the connection of the Private Infrastructure to the Rail Infrastructure subject to:
  - (i) Aurizon Network and the Private Infrastructure Owner entering into a Rail Connection Agreement which, unless otherwise agreed by Aurizon Network and the Private Infrastructure Owner, must be consistent with the Standard Rail Connection Agreement. (However, neither the Private Infrastructure nor any Connecting Infrastructure is required to be of a standard or to be of any condition which exceeds

- the standards and condition of any relevant Rail Infrastructure (including any planned or anticipated Expansion);
- (ii) Aurizon Network gaining access, on terms acceptable to Aurizon Network (acting reasonably), 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) If Aurizon Network:
- (i) considers the requirements in **clause 9.1(c)** have not been satisfied; and
  - (ii) refuses to enter into a Connection Agreement,
- then Aurizon Network will notify the Private Infrastructure Owner providing reasonable details of why it considers the requirements have not been satisfied.
- (g) Unless otherwise agreed with the Private Infrastructure Owner, Aurizon Network will be responsible for designing, constructing, project managing and commissioning the Connecting Infrastructure.

## Part 10: Reporting

### 10.1 Reports

#### 10.1.1 *Annual financial report*

- (a) Aurizon Network will produce financial statements for Aurizon Network in accordance with the Costing Manual.
- (b) The financial statements referred to in **clause 10.1.1(a)** shall be certified as accurate by Aurizon Network's Executive Officer.
- (c) Within six months after the end of each Year in the Term, or such longer time as agreed by the QCA, Aurizon Network will publish on the Website the financial statements relating to the relevant Year which have been prepared and certified under **clause 10.1.1(b)**.

#### 10.1.2 *Annual compliance report*

- (a) Within six months of the end of each Year in the Term, or such longer time as agreed by the QCA, Aurizon Network will publish on the Website an annual compliance report in relation to the subject Year containing the information set out in **clauses 10.1.2(d)** and **(e)** and which will be accompanied by an audit report prepared in accordance with **clause 10.8** in respect of Aurizon Network's compliance with its obligations under this **clause 10.1.2**.
- (b) Where an annual compliance report has been published under **clause 10.1.2(a)** and Aurizon Network has actual knowledge of a material error in the annual compliance report, Aurizon Network will, as soon as practicable but no later than three months after acquiring knowledge of the material error, publish on the Website either, at Aurizon Network's discretion, an erratum or a corrected annual compliance 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.

In addition, Aurizon Network shall 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.

- (c) Aurizon Network will, in conjunction with the publication on the Website of an annual compliance report in accordance with **clause 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:
  - (i) Third Party Access Holders (on an aggregated basis); and
  - (ii) Aurizon Party Access Holders (on an aggregated basis).
- (d) Information in relation to Aurizon Network's compliance with this Undertaking over the subject 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(g)(ii)**);
  - (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 4.5(d)** and **4.5(d)(ii)**, the average delay (in days) taken to provide the Indicative Access Proposals;
  - (vii) the number of instances where an issue has been referred to Dispute resolution in accordance with the process set out in **clause 11.1**;
  - (viii) the number of instances where an issue has been referred to Dispute resolution in accordance with the process set out in **clause 11.1** 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 employees receiving, in the course of performing their duties, Protected Information who have completed training in accordance with **clause 3.21(a)**;
- (xii) the number of instances where an Access Holder has made a written complaint to Aurizon Network about an incorrectly calculated bill, and where Aurizon Network's investigation into the complaint identifies that the bill 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 11** 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 10** 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.
- (e) Information in relation to the outcome of Aurizon Network's negotiations with Access Seekers over the subject Year as follows:
  - (i) the average length of the Negotiation Period (in days), where the Negotiation Period has commenced in accordance with this Undertaking and 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 has commenced in accordance with this Undertaking and has 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 commenced in accordance with this Undertaking 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,

with such information to be reported separately for Train Operations Agreements, End User Access Agreements and other Access Agreements.
- (f) 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.

### **10.1.3 Annual maintenance cost report**

- (a) Within six months after the end of each Year in the Term, or such longer time as agreed by the QCA, Aurizon Network will publish on the Website a maintenance cost report for the relevant Year containing the information set out in **clause 10.1.3(b)** for the geographic areas specified in **clause 10.1.3(c)**.
- (b) Aurizon Network will, in the maintenance cost report required by **clause 10.1.3(a)**:
  - (i) report its:
    - (A) actual maintenance costs in the subject Year compared to the forecast maintenance costs accepted by the QCA for the purpose of

- determining Reference Tariffs, and provide an explanation of significant variations between actual and forecast maintenance costs; and
- (B) actual scope of maintenance compared to the forecast scope of maintenance accepted by the QCA for the purpose of determining Reference Tariffs, for the following maintenance activities:
- (1) ballast undercutting;
  - (2) rail grinding (for mainline);
  - (3) resurfacing (for mainline); and
  - (4) General Track Maintenance,
- and provide an explanation of significant variations between actual and forecast scope of maintenance;
- (ii) report the actual MCI and the forecast MCI accepted by the QCA for the purposes of determining Reference Tariffs for the subject year (including the indices, if any, comprised in the MCI) and provide an explanation of how any significance differences have or will impact on Aurizon Network's maintenance costs;
- (iii) 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 10.1.3(b)(iv)**;
- (iv) report on the number of derailments where the cost to Aurizon Network of recovery from the derailment exceeded AUD\$100,000.
- (c) The actual and forecast maintenance costs will be separately reported for each Coal System, unless otherwise agreed by Aurizon Network and the QCA, 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. The actual and forecast scope of maintenance will be reported for the Coal Systems in aggregate.
- (d) Where a report has been published under **clause 10.1.3(a)** and Aurizon Network has actual knowledge of a material error in the report, Aurizon Network will, as soon as practicable but no later than three 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.

In addition, Aurizon Network shall notify the QCA of any errors that Aurizon Network has actual knowledge of in the report unless the QCA has otherwise been notified or is aware of the error.

#### **10.1.4 Annual maintenance cost report to the QCA**

- (a) Within six months after the end of each Year in the Term, unless otherwise agreed between Aurizon Network and the QCA, Aurizon Network will provide the QCA with a maintenance cost report for the relevant Year in the format agreed between Aurizon Network and the QCA. The format 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 will report Aurizon Network actual maintenance costs compared to the forecast maintenance cost accepted by the QCA for the purpose of determining Reference Tariffs and will include:
  - (i) a detailed description of its actual maintenance cost and scope of maintenance for mechanised maintenance separately for each Coal System and for the Coal Systems in aggregate; and
  - (ii) a detailed description of its actual maintenance costs, separately for each Coal System, for:
    - (A) General Track Maintenance;
    - (B) facilities maintenance;
    - (C) trackside systems maintenance;
  - (iii) an explanation of significant variations between the actual and forecast maintenance costs,

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.

Within one month after the submission of the Maintenance Cost report to the QCA, Aurizon Network will provide Access Holders, and where

the Access Holder is a Railway Operator, their Customers, with a briefing in the form of a presentation on the contents of the maintenance cost reports and on details of the scope of maintenance for the forthcoming Year.

#### **10.1.5 Quarterly Network Performance Report**

- (a) Unless otherwise agreed between Aurizon Network and the QCA, Aurizon Network will, within the later of:
- (i) twenty Business Days after the end of each Quarter in the Term; or
  - (ii) if the Ultimate Holding Company is obliged to give to ASX Limited under ASX Limited's Listing Rules a copy of the reports referred to in section 314(1) of the Corporations Act, that are to be, or have been, provided to the Ultimate Holding Company's security holders - thirty days after the provision of those reports to ASX Limited,

publish on the Website a report in relation to the relevant Quarter containing the information set out in **clauses 10.1.5(b) to 10.1.5(g)**, inclusive;

- (b) information on the number and reliability of Train Services that operated in the relevant Quarter, as follows:
- (A) the number and percentage of Train Services that reached their destination within the Allotted Time Threshold;
  - (B) the number and percentage of Train Services that did not reach their destination within the Allotted Time Threshold:
    - (1) due primarily to the acts or omissions of Aurizon Network;
    - (2) due primarily to delays attributed to a Railway Operator; and
    - (3) that are due primarily to other matters not identified in either **paragraph (1) or (2)**; and
  - (C) the total number of Train Services;
- (c) information on the average transit times of Train Services that operated in the relevant Quarter, as follows:
- (A) the average Above Rail Delay;
  - (B) the average Below Rail Delay; and
  - (C) the average Unallocated Delay, in minutes per 100 train kilometres, for all Train Services;

- (d) information on the availability of the network for Train Services in the relevant Quarter, as follows:
- (A) number and percentage of Train Services cancelled due to a reason that can be attributed directly to Aurizon Network as Railway Manager;
  - (B) number and percentage of Train Services cancelled due to a reason that can be attributed directly to a Railway Operator; and
  - (C) 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;
- (e) information for each Coal System on coal carrying Train Services that have operated in the relevant Quarter, being:
- (A) the aggregate gtk;
  - (B) the aggregate nt;
  - (C) the aggregate ntk;
  - (D) the aggregate egtk;
  - (E) the average actual Below Rail Transit Time Percentage;
  - (F) the aggregate Train Paths used by the relevant Train Services;
  - (G) the aggregate Train Paths contracted for relevant Train Services in accordance with the relevant Train Service Entitlements; and
  - (H) the aggregate number of Train Paths available for coal carrying Train Services; and
- (f) subject to **clause Error! Reference source not found.(h)**, information for each Coal System for the relevant Quarter in respect of:
- (A) the aggregate number of Train Paths scheduled;
  - (B) the aggregate number of Train Paths used for planned maintenance;
  - (C) the aggregate number of Train Paths used for unplanned maintenance; and
  - (D) the percentage of Train Paths available but not used.
- (g) Subject to **clause Error! Reference source not found.(h)**, for the purposes of **clauses Error! Reference source not found.(b) to (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.
- (h) Other than for **clause 10.1.5(e)**, the Goonyella to Abbot Point System is not subject to the reporting requirements in this **clause Error! Reference source not found.** For the purposes of reporting under **clauses 10.1.5(b) to 10.1.5(f)**, the Goonyella Newlands Connection is part of the Newlands System.
- (i) Aurizon Network will ensure that the information contained in a report under this **clause Error! Reference source not found.** is accurate.
- (j) A report published under **clause 10.1.5(a)** will include 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.
- (k) Where a report has been published under **clause 10.1.5(a)** and Aurizon Network has actual knowledge of a material error in that report, Aurizon Network will, as soon as practicable but no later than three 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.
- (l) Aurizon Network will, in conjunction with its public release of a report under this **clause Error! Reference source not found.**, 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.

#### **10.1.6 Annual Regulatory Asset Base roll-forward report**

- (a) To the extent that the capital expenditure in the report under **clause 1.4 of schedule E** has been accepted as prudent in cost, Aurizon Network will, within one month after that, publish on the Website a

report of changes to the Regulatory Asset Base for the relevant Year, containing the information set out in **clause 10.1.6(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.

## **10.2 Breach reports to the QCA**

- (a) Subject to **clause 10.2(d)**, Aurizon Network will 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 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) There is no obligation on Aurizon Network to make the report in **clause 10.2(a)** where, if that information was sought from Aurizon Network by the QCA under section 105, 126 or 150AA of the Act, Aurizon Network could lawfully refuse to provide it to the QCA.
- (c) If Aurizon Network is obliged to report a breach to the QCA in accordance with this **clause 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 will also provide the information reported to the QCA in respect of that breach to the relevant Access Seeker, Access Holder or Train Operator. Nothing in this clause requires Aurizon Network to provide an Access Seeker, Access Holder or Train Operator with information relating to a

breach consisting of a failure to meet a required timeframe affecting that Access Seeker, Access Holder or Train Operator.

- (d) Where Aurizon Network does not report a breach or a remedial action proposed or taken by Aurizon Network to the QCA on the basis of the exception in this **clause 10.2**, 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 whether that exception applies.

### **10.3 Information requested by the QCA**

#### **10.3.1 Disclosure of Access Agreements**

- (a) Upon request by the QCA, Aurizon Network will provide to the QCA signed Access Agreement (including details of Access Charges) to allow the QCA to satisfy itself that the Below Rail aspects of the Access Agreement do not offend against the provisions of this Undertaking or the Act.
- (b) 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 pursuant to this **clause 10.3.1** or otherwise.

#### **10.3.2 QCA requested information**

- (a) The QCA may, by written 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 pursuant to 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.

- (b) Aurizon Network will comply with a request by the QCA under **clause 10.3.2(a)** by the day stated in the notice unless Aurizon Network has a reasonable excuse for noncompliance.
- (c) Except for documents that are to be made public in accordance with the terms of this Undertaking, nothing in this **clause 10.3** permits the QCA to disclose any information (including the contents of a document) provided to it following a request under **clause 10.3.2(a)**.

### **10.4 Conditions Based Assessment**

- (a) Aurizon Network will procure a condition based assessment of the Rail Infrastructure in accordance with this **clause 10.4** no later than 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 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 will 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 practical) 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) 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 AT<sub>2-4</sub> components of Reference Tariffs.

## 10.5 Compliance

- (a) Aurizon Network will 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 the Undertaking by Aurizon Network and advising of any remedial action proposed or taken by Aurizon Network in respect of the breach.

## 10.6 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(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 employee of, contractor to, or secondee working in the business of, Aurizon Network 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 taken to be reasonable unless the contrary is proved.

## 10.7 Report auditing

- (a) An audit of Aurizon Network's compliance with all or a part of its reporting obligations under this **Part 10** will be conducted if required in writing by the QCA:
  - (i) no more than once each year; and
  - (ii) subject to this **clause 10.7**, in accordance with **clause 10.9**.
- (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 20 Business Days.

## 10.8 Compliance audit requested by the QCA

- (a) Despite any other provisions of this Undertaking that require the conduct of an audit, Aurizon Network must engage an auditor to undertake an audit, in accordance with **clause 10.9**, 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 10.9**.
- (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) Costs incurred by Aurizon Network in complying with this **clause 10.8** will be incorporated in the Adjusted Allowable Revenue in accordance with **clause 3.3** of **schedule F**.

## 10.9 Audit Process

An audit required under **clauses 3.23, 10.7 or 10.8** or **clause 6.2** of **schedule E** must be conducted in accordance with the following process:

- (a) Aurizon Network will appoint an Auditor 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) not be an employee of Aurizon Network or another Aurizon Party;
  - (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 where the previously approved Auditor:
    - (A) has been found to have been negligent in the performance of an audit in relation to this Undertaking;
    - (B) engaged in professional misconduct in respect of an audit in relation to this Undertaking; or
    - (C) to have a conflict of interest not known at the time of the Auditor's original appointment;
- (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 the audit the Auditor must agree 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 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 will 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 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;
- (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
- (j) Aurizon Network must use reasonable endeavours to implement any recommendations made by the auditor in the audit report or any other letters or reports provided undertaking **clause 10.9(i)** (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.

## Part 11: Dispute Resolution and Decision Making

### 11.1 Dispute Resolution

#### 11.1.1 Disputes

- (a) Any dispute (**Dispute**) arising:
- (i) as between Aurizon Network and an Access Seeker or a Train Operator in relation to:
    - (A) the negotiation or grant of Access;
    - (B) the negotiation of a Train Operations Agreement;  
or
    - (C) the operation of, or anything required to be done by Aurizon Network under, this Undertakingexcept to the extent that the relevant matter in dispute relates to Aurizon Network's compliance with any obligations under **Part 3**<sup>6</sup> or **Part 10**<sup>7</sup>; or
  - (ii) in respect of any matters expressly required by this Undertaking to be resolved in accordance with this **Part 11**, shall 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) Unless otherwise agreed by the parties in writing, Disputes in connection with an Access Agreement or a Train Operations Agreement shall be dealt with in accordance with the provisions of that Access Agreement or the Train Operations Agreement, as applicable, and are not to be dealt with under this Undertaking (even if the Dispute relates to provisions included in that Access Agreement or Train Operations Agreement that are similar to, required by, or inconsistent with this Undertaking).
- (c) For the purposes of this **clause 11.1**, where
- (i) a Dispute involves an Access Seeker who proposes to be an End User; 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 End User (where **paragraph (ii)** applies) with a copy of the Dispute Notice and any subsequent notices or correspondence given

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<sup>6</sup> **Part 3** has a separate complaint based process under **clause 3.23** for addressing non-compliance.

<sup>7</sup> Compliance with **Part 10** is subject to an independent audit if required by the QCA under **clause 10.7**.

by Aurizon Network to the Access Seeker or Train Operator, as applicable, in connection with the Dispute; and

- (iv) any such Train Operator or End User may elect, by giving written notice to Aurizon Network and the other parties to the Dispute within 5 Business Days after receiving the Dispute Notice under **clause 11.1.1(c)(iii)**, to become a party to the Dispute for the purposes of **clauses 11.1.2 to 11.1.6**.
- (d) 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.

### **11.1.2 Chief executive resolution**

- (a) Subject to **clause 11.1.4(a)** and unless otherwise agreed in writing by the parties to the relevant Dispute, any Dispute shall, within 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.

### **11.1.3 Mediation**

- (a) Subject to **clause 11.1.4(a)**, if the Dispute is not resolved within 10 Business Days after the referral under **clause 11.1.2**, then the parties may, by agreement, refer the relevant Dispute to mediation 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:
  - (i) the matter is not referred to mediation within 10 Business Days after the failure to resolve the Dispute through negotiation under **clause 11.1.2**; or



- (ii) the matter is referred to mediation under **clause 11.1.3(a)** and either:
  - (A) the mediator notifies the parties to the mediation that the mediator considers:
    - (1) the parties to the relevant mediation cannot achieve a mediated resolution of the Dispute; or
    - (2) a party to the relevant mediation has failed to participate in the mediation process in good faith; or
  - (B) mediation fails to resolve the Dispute within 4 months after referral to mediation under **clause 11.1.3(a)**,

then:

- (iii) where this Undertaking prescribes that the subject matter of the Dispute be resolved by expert determination, the Dispute will be referred to an expert for determination in accordance with **clause 11.1.4**; and
- (iv) in other cases:
  - (A) the parties may agree to refer the Dispute for resolution by an expert in accordance with **clause 11.1.4**; or
  - (B) failing such agreement within 5 Business Days, 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**

- (a) Where this Undertaking requires a Dispute to be determined by expert determination, the Dispute will be referred directly to expert determination without the Dispute being referred to mediation under **clause 11.1.3**, provided that, in all cases, the Dispute is first referred to chief executives under **clause 11.1.2**.
- (b) Where this Undertaking requires a Dispute to be referred to an expert for determination or where the parties to a Dispute agree to refer a matter to an expert for determination, the Dispute must be referred to the expert for determination in accordance with this **clause 11.1.4**.
- (c) 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 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):
  - (1) if the parties agree that the Dispute is purely of a financial or accounting nature, the President (for the time being) of The Institute of Chartered Accountants in Australia;
  - (2) if the parties agree that the Dispute is purely of a technical nature, the President (for the time being) of the Institute of Arbitrators and Mediators (IAMA); or
  - (3) in any other case, the President (for the time being) of the Queensland Law Society Incorporated;
- (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)(iii)(B)** 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) 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) 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 written notice to the parties before their appointment;
  - (C) not be, or have been in the last five 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 written 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 inconsistent with this Undertaking;
  - (G) 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;

- (H) 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
  - (I) 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.
- (d) 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 practical, all information and materials in their possession or control requested by the expert and attending any hearing convened by the expert.
  - (e) In the absence of manifest error, the decision of the expert shall be final and binding upon the parties.
  - (f) If a party believes that there has been a manifest error it may refer the matter to the QCA for a determination. If the QCA determines that there has been a manifest error, 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**.
  - (g) Unless otherwise agreed by the parties to the Dispute:
    - (i) the costs of the expert (and the costs of any advisers to the expert) shall be borne by the parties in equal shares; and
    - (ii) each party shall bear their own costs of participating in the expert determination process.

#### **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 only be referred to the QCA after:
  - (i) **clause 11.1.1** has been complied with in relation to that Dispute; and
  - (ii) a party to the Dispute has used reasonable endeavours to resolve the Dispute with the other parties to the Dispute:
    - (A) by referring it to each party's chief executive (or his or her nominee) for resolution in accordance with **clause 11.1.2**; and

- (B) by mediation in accordance with **clause 11.1.3**, where the parties have agreed that the Dispute be referred to mediation.
- (b) If a Dispute is referred to the QCA for determination by arbitration pursuant to this Undertaking, Subdivision 3 of Division 5 of Part 5 of the Act shall apply in relation to any determination by the QCA of that Dispute.
- (c) Any referral of a Dispute to the QCA must be accompanied by a written Dispute Notice setting out the information required by section 113 of the Act.
- (d) If a Dispute is referred to the QCA in accordance with this Undertaking the QCA will provide written notices of the Dispute to the parties specified in section 114 of the Act.
- (e) If a Dispute is referred to the QCA in accordance with this Undertaking, the QCA shall 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. The QCA shall not make any decision that is inconsistent with any advice it receives from the Safety Regulator to the extent that the advice relates to any aspect of safety. The QCA will provide to the parties a copy of any advice it receives from the Safety Regulator.
- (f) Any cost imposed by the Safety Regulator for the provision of its advice to the QCA shall be borne equally by the parties to the Dispute.
- (g) The QCA must give a draft determination for a Dispute to the parties to the Dispute (as required by section 117(5) of the Act) and give those parties a reasonable opportunity to make relevant submissions in relation to that draft determination. Without limiting the matters that the parties may make submissions on, submissions may include matters relating to whether compliance by Aurizon Network is reasonably possible without breaching Aurizon Network's land or Rail Infrastructure tenure or accreditation as a Rail Infrastructure Manager, any Law or this Access Undertaking (**Compliance Submission**).
- (h) The QCA must consider all submissions made under **clause 11.1.5(g)** in making a final determination.
- (i) Where:
- (i) Aurizon Network makes a Compliance Submission; and
- (ii) the QCA makes a determination that is inconsistent with the Compliance Submission, the QCA must, without limiting any of its obligations to provide reasons, give reasons to Aurizon Network for its decision in relation to the Compliance Submission.

- (j) The QCA may, as part of an arbitral determination, make a costs order as contemplated by section 208 of the Act.

#### **11.1.6 Procedure**

Where a Dispute is referred to either an expert or the QCA (**decision maker**) for determination:

- (a) 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;
- (b) 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;
- (c) 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:
  - (i) the submissions to the decision maker by the parties to the Dispute must address those matters; and
  - (ii) the decision maker must make its decision in relation to the Dispute having regard to those matters; and
- (d) the decision maker will:
  - (i) publish to the parties a draft determination with reasons;
  - (ii) provide the parties with a reasonable opportunity to respond to the draft determination in writing; and
  - (iii) have regard to the any responsive submissions before issuing a final determination.

#### **11.1.7 Application to Part 8 Disputes**

- (a) **Part 8** expressly sets out additional requirements in relation to resolution of specified disputes (**Part 8 Disputes**).
- (b) Nothing in this **clause 11.1** prevents a person who is entitled to refer a **Part 8** Dispute to dispute resolution under this **clause 11.1** from doing so.

#### **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, including Rollingstock provision, Rollingstock maintenance, non Network Control related communications, train crewing, terminal provision and services, freight handling and marketing and administration of those services and <b>Above Rail</b> has a similar meaning.
<b>Access</b>	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:

- (iii) 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 pursuant to the TIA, the authority to authorise access to that land; and
	(iv) 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.
<b>Access Agreement</b>	An agreement between Aurizon Network and an Access Holder for the provision of Access.
<b>Access Application</b>	A written request for Access: <ul style="list-style-type: none"> <li>(a) using the application form for such requests published on the Website from time to time; and</li> <li>(b) which satisfies: <ul style="list-style-type: none"> <li>(i) the information requirements set out in <b>schedule B</b> and <b>Part 4</b>; and</li> <li>(ii) any additional information or clarification requested by Aurizon Network in accordance with <b>Part 4</b>.</li> </ul> </li> </ul>
<b>Access Charge</b>	The price paid to Aurizon Network: <ul style="list-style-type: none"> <li>(a) for Access under an Access Agreement; or</li> <li>(b) by a Train Operator, if any, for the right to operate Trains on the Rail Infrastructure for that Train Operator's End User,</li> </ul> and for clarity: <ul style="list-style-type: none"> <li>(c) includes any Take or Pay charges; and</li> <li>(d) excludes amounts paid to Aurizon Network in accordance with any Commercial Terms, Studies Funding Agreement, User Funding Agreement or Rail Connection Agreement.</li> </ul>
<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 excluding a Train Operator.
<b>Access Holder Access Agreement</b>	An Access Agreement substantially in the form of the Standard Access Agreement (Access Holder).
<b>Access Provision Period</b>	A month or, where the period specified in the relevant Access Holder's Access Agreement in provisions equivalent to clause 34.5 (Claims and exclusions in respect of non-provision of access) of the Standard Access

	Agreement (Operator) (or an equivalent clause under another applicable Standard 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 excluding a Train Operator.
<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>Adjustment Amount</b>	The meaning given to that term in <b>clause 5.1(a)</b> of <b>schedule F</b> .
<b>Adjustment Charge</b>	The meaning given to that term in <b>clause 5.1(a)</b> of <b>schedule F</b> .
<b>Affected Person</b>	The meaning given to that term in <b>clause 7.6.4(c)(i)(A)</b> .
<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 3.2 of schedule F</b> .
<b>Ancillary Access Rights</b>	Access Rights (that will use Available Capacity without the need for an Expansion or Customer Specific Branch Line) that are ancillary to Transferred Access Rights to the extent required by a Transferee, in addition to the Transferred Access Rights, to provide complete Train Paths using the Transferred Access Rights for the Transferee's origin to destination.
<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>Approved Undertaking</b>	This Undertaking, the 2010 Undertaking, the 2008 Undertaking, the 2005 Undertaking and the 2001 Undertaking.
<b>Approved WACC</b>	8.18% per annum.
<b>Asset Management Plan</b>	The asset management plan accepted by the QCA under <b>clause 2.4, schedule E</b> , as amended from time to time.
<b>Asset Replacement and Renewal Expenditure</b>	Expenditure on capital projects required to maintain the Existing Capacity of the Rail Infrastructure (for example, the replacement or renewal of life expired or obsolete assets).
<b>Asset Replacement Expenditure</b>	Expenditure on capital projects required to maintain the Existing Capacity of the Rail Infrastructure including without limitation: <ul style="list-style-type: none"> <li>(a) the replacement of life expired or obsolete assets; and</li> <li>(b) the replacement of assets which are lost, damaged or destroyed as a result of a Force Majeure Event,</li> </ul> and which are required for Aurizon Network to meet its existing contractual obligations under Access Agreements.
<b>AT<sub>2-4</sub></b>	The aggregate of the AT <sub>2</sub> , AT <sub>3</sub> and AT <sub>4</sub> components of Access Charges.
<b>AT<sub>2-4</sub> Revenue Adjustment Amount</b>	For a Coal System, the amount calculated under <b>clause 3.3(a)(i) of schedule F</b> for that Coal System.

<b>AT<sub>5</sub> Revenue Adjustment Amount</b>	For a Coal System, the amount calculated under <b>clause 3.3(a)(ii)</b> of <b>schedule F</b> for that Coal System.
<b>Auditor</b>	An auditor in accordance with <b>Part 10</b> .
<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) a Force Majeure Event affecting Aurizon Network; 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 in any way:</p> <ul style="list-style-type: none"> <li>(d) to an Access Holder, a Railway Operator or a Railway Operator's customer (including a Customer);</li> <li>(e) to Aurizon Network complying with its Passenger Priority Obligations;</li> <li>(f) to the unavailability of the relevant Access Holder's loading facility or an unloading facility;</li> <li>(g) 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>(h) 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>Aurizon Network's</b>	The person who is, from time to time, the chief executive of

<b>Executive Officer</b>	Aurizon Network.
<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>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: <ul style="list-style-type: none"> <li>(a) in respect of a Renewing Access Seeker, where the circumstances in <b>clause 7.3(d)(iii)</b> or <b>(iv)</b> apply;</li> <li>(b) Capacity that is required to comply with any Passenger Priority Obligation or Preserved Train Path Obligation, subject to the terms of those obligations.</li> </ul>
<b>Below Rail Delay</b>	The meaning given to that term in the Standard Access Agreement (Operator).
<b>Below Rail Services</b>	The activities associated with the provision and management of Rail Infrastructure, 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>	The meaning given to that term in the Standard Access Agreement (Operator).
<b>Below Rail Transit Time Percentage</b>	For a type of Train Service specified in a Train Service Entitlement for a Year means the proportion (expressed as a percentage) which is the sum of the actual Below Rail Transit Times for all Train Services for that type of Train Service operated during that Year divided by the sum of 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) for all of those Train Services during that Year.
<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>	<p>An assessment, based on the relevant Access Seeker's Operating Plan and requested Access Rights, of:</p> <ul style="list-style-type: none"> <li>(a) whether there is sufficient Available Capacity to accommodate the requested Access Rights;</li> <li>(b) if there is not sufficient Available Capacity to accommodate the 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</li> <li>(c) the operational impacts of the requested Access Rights including the impact of the requested Access Rights on the System Operating Parameters,</li> </ul> <p>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).</p>
<b>Capacity Change</b>	The meaning given to that term in <b>clause 8.10.3(a)</b> .
<b>Capacity Information</b>	The information required to be provided by Aurizon Network to an Access Seeker under <b>clause 3 of schedule A</b> .
<b>Capacity Shortfall</b>	A circumstance where the Available Capacity at the time of Aurizon Network is contractually committed to an Expansion plus the Capacity actually created from that Expansion is less than the Capacity that is required to satisfy Access Rights under Access Agreements that were granted on the condition of that Expansion being completed and commissioned.
<b>Capacity Shortfall Access Application</b>	An Access Application that is taken to have been lodged with Aurizon Network in accordance with <b>clause 8.10.3</b> .
<b>Capital Expenditure</b>	The account maintained by Aurizon Network recording the difference between Approved Capital Expenditure and the



<b>Carryover Account</b>	Capital Indicator in the manner specified in <b>clause 7 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>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 Relevant Taxes</b>	Any of the following: <ul style="list-style-type: none"> <li>(a) the imposition of a new Relevant Tax;</li> <li>(b) an increase in the rate of a Relevant Tax; or</li> <li>(c) a change in the basis of calculation of a Relevant Tax.</li> </ul>
<b>Changes in Market Circumstances</b>	Changes in circumstances which have occurred in any market and which have had, or as assessed by Aurizon Network, will have, a material effect on an Access Holder's ability to pay the Access Charges.
<b>Class</b>	(As used in the definitions of Pre-feasibility Study and Feasibility Study), has the meaning given to that term in 'Cost Estimate Classification System – As Applied for the Building and General Construction Industries', AACE International Recommended Practice No. 56R-08, revision of 5 December 2012.

<b>Coal Dust Management Plan</b>	Aurizon Network's Coal Dust Management Plan dated 22 February 2010, including as amended or replaced from time to time.
<b>Coal System</b>	Any one of the following: <ul style="list-style-type: none"> <li>(a) the Newlands System;</li> <li>(b) the Goonyella System;</li> <li>(c) the Blackwater System;</li> <li>(d) the Moura System; or</li> <li>(e) the Goonyella to Abbot Point System.</li> </ul>
<b>Commencing Date</b>	1 July 2013
<b>Commercial Terms</b>	Conditions additional to those in the relevant Standard Access Agreement, whether the conditions are contained in an Access Agreement or a separate agreement, requiring, without limitation: <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 varied or an additional take or pay arrangement including, for example, to address 'back-end' payment risk to an appropriate value equivalent to the exposure (for example, for the development of infrastructure for a new coal mine, the undepreciated component of any relevant Infrastructure Enhancements that were constructed solely for the purpose of the mine);</li> <li>(e) 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 or under an additional take or pay arrangement);</li> <li>(f) the forfeiting of any right to relinquish Access Rights that may arise under this Undertaking; or</li> <li>(g) Access Charges being calculated on the basis of a Varied WACC or other risk adjustments to projected cash flows.</li> </ul>
<b>Committed Capacity</b>	That portion of the Capacity that is required:

- (a) to meet Train Service Entitlements;
- (b) to satisfy Aurizon Network's obligations under **clause 7.3(d)** in respect of a Renewing Access Seeker;
- (c) to comply with any Passenger Priority Obligation or Preserved Train Path Obligation;
- (d) to provide Access Rights for Funding Users in relation to a User Funded Expansion; and
- (e) to provide Access Rights for Access Holders where Aurizon Network has, in relation to those Access Rights, contractually committed to construct an Expansion or Customer Specific Branch Line under Commercial Terms.

**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>8</sup>

**Compliance Officer** The Aurizon Network employee designated as such by the Aurizon Network's Executive Officer.

**Concept Study** A study that:

- (a) conducts a screening analysis of potential project configuration alternatives for providing the capacity required in respect of a potential Expansion;
- (b) selects which of those alternatives are worthy of further consideration; and
- (c) 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 8.10.3(a)**.

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<sup>8</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).

<b>Conditional Access Rights</b>	The meaning given to that term in <b>clause 8.10.3(a)</b> .
<b>Connecting Infrastructure</b>	The rail transport infrastructure (including track, signalling and overhead electric traction (if applicable)) that is managed, controlled or owned by Aurizon Network, which connects the Private Infrastructure to the Rail Infrastructure and that on completion forms part of the Rail Infrastructure.
<b>Constrained Section</b>	<p>As at 1 July 2015, the Rail Infrastructure:</p> <p>(a) for the Blackwater System, between Edungalba and Tunnel; and</p> <p>(b) for the Goonyella System, between Broadlea and Coppabella,</p> <p>and after 1 July 2015, as amended or set out from time to time in the relevant System Operating Parameters.</p>
<b>Contested Train Path</b>	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.
<b>Corporations Act</b>	The <i>Corporations Act 2001</i> (Cth) and the regulations made under it, as amended from time to time.
<b>Costing Manual</b>	<p>A manual prepared by Aurizon Network and approved by the QCA from time to time that identifies the following matters:</p> <p>(i) for financial statements prepared in accordance with <b>clause 10.1.1</b>, 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</p> <p>(ii) the format of financial statements.</p>
<b>CPI</b>	The Consumer Price Index: All Groups – Brisbane (Australian Bureau of Statistics Publication No.6401.0).
<b>Cross Subsidy</b>	<p>Where the Access Charges payable in respect of one Train Service or combination of Train Services are insufficient to meet:</p> <p>(i) the Incremental Cost imposed on the Rail Infrastructure by that Train Service or combination of Train Services; and</p> <p>(ii) in respect of a combination of Train Services, the Common Costs related specifically to sections of Rail Infrastructure that are used solely for the</p>

	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.
<b>Cross System Train Service</b>	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).
<b>Customer</b>	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).
<b>Customer Specific Branch Line</b>	An extension, enhancement, expansion, augmentation, duplication or replacement of all or part of the Rail Infrastructure: <ul style="list-style-type: none"> <li>(a) to be constructed solely to act as a spur line connecting an Access Holder's or Customer's single loading facility to Rail Infrastructure; and</li> <li>(b) that on completion will form part of the Rail Infrastructure,</li> </ul> excluding: <ul style="list-style-type: none"> <li>(c) Connecting Infrastructure; and</li> <li>(d) any capital expenditure project to the extent that it involves Asset Replacement and Renewal Expenditure.</li> </ul>
<b>Cyclic Traffic</b>	A traffic whose Train Service Entitlements are defined in terms of a number of Train Services within a particular period of time, for example, a year, month or week. Coal traffic is an example of such traffic.
<b>Daily Train Plan or DTP</b>	That document detailing the scheduled times for all Train Services and any Planned Possessions, Urgent Possessions and Emergency Possessions for a particular day on a specified part of the Rail Infrastructure.
<b>Demand Assessment</b>	An estimation (acting reasonably) of: <ul style="list-style-type: none"> <li>(a) the demand for Capacity beyond Existing Capacity and committed Expansions; and</li> <li>(b) the estimated time for which the Capacity referred to in <b>paragraph (a)</b> is required,</li> </ul>

	having regard to the relevant information in accordance with <b>clause 8.2.3(b)</b> .
<b>Depreciated Optimised Replacement Cost or DORC</b>	The value of assets determined in the following manner: <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>Discloser</b>	The meaning given to that term in <b>clause 3.11</b> .
<b>Discount Rate</b>	The rate equivalent to the ROA, as defined in <b>clause 6.3.3(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 in writing given under <b>clause 11.1.1</b> specifying the nature of the dispute and the proposed resolution and, where applicable, the information specified in <b>clause 11.1.5(c)</b> .
<b>Distance Discount</b>	The amount calculated in accordance with <b>clause 6.2.5(b)</b> .
<b>Distribution Entities</b>	The meaning given to that term in the <i>Electricity Act 1994</i> (Qld).
<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) of 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>Eligible Operator</b>	A person referred to as an ‘Eligible Operator’ under <b>clause 2.4(n) of schedule F</b> .
<b>Emergency Possession</b>	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.
<b>Endorsed Variation Event</b>	The occurrence of any of the events listed in <b>clause 4.2 of schedule F</b> .
<b>End User</b>	A person other than Aurizon Network who is a party to an End User Access Agreement.
<b>End User Access Agreement</b>	An Access Agreement between Aurizon Network and an Access Holder in the form of the Standard Access Agreement (End User) (which has a pro forma Train Operations Agreement as a schedule).
<b>Environment Compliance Charge</b>	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 Coal Dust

Management Plan:

- (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 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.

**Environmental Risks**

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 Standard Access Agreement (Operator)).

**EP Act**

*Environmental Protection Act 1994* (Qld)

**Evaluation Period**

- (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;
- (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
- (c) when in reference to a combination of Train Services other than referred to in **paragraph (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.

<b>Existing Capacity</b>	<p>The existing capability of Rail Infrastructure (in the absence of any Expansion that has not been constructed and completed) to accommodate Train Services, after taking into account:</p> <ul style="list-style-type: none"><li>(a) Aurizon Network’s reasonable requirements for the exclusive or partial utilisation of that Rail Infrastructure for the purposes of performing activities associated with the maintenance, repair, construction or other enhancement of Rail Infrastructure (including Expansions and Customer Specific Branch Lines), including the operation of work Trains; and</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.</li></ul>
<b>Expansion</b>	<p>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:</p> <ul style="list-style-type: none"><li>(a) Customer Specific Branch Lines;</li><li>(b) Connecting Infrastructure; and</li><li>(c) any capital expenditure project to the extent that it involves Asset Replacement and Renewal Expenditure.</li></ul>
<b>Expansion Tariff</b>	<p>A tariff set out in <b>schedule F</b> excluding a System Reference Tariff, or established by Aurizon Network and authorised by the QCA, for a specified Reference Train Service (as amended, varied or escalated in accordance with this Undertaking or the QCA Act from time to time) excluding a System Reference Tariff.</p>
<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</li></ul>

developed on a basis consistent with:

- (i) if a Reference Tariff is to be developed for a Train Service, the proposed Reference Tariff;
- (ii) the terms of the relevant Standard Access Agreement; and
- (iii) if **paragraph (b)(i)** of this definition does not apply, current applicable Access Charges, except as provided in **clause 6.4.1(b)(iii)**.

<b>Expression of Interest</b>	An expression of interest, request for proposals or other similar process.
<b>Feasibility Funder</b>	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.
<b>Feasibility Study</b>	<p>A study that:</p> <ul style="list-style-type: none"><li>(a) defines and optimises the project configuration alternative that would provide the target capacity for an Expansion in accordance with the capacity requirements specified as part of the Feasibility Study scope of works;</li><li>(b) confirms the technical and economic feasibility of the alternative in <b>paragraph (a)</b>;</li><li>(c) specifies:<ul style="list-style-type: none"><li>(i) a developed scope definition to a Class 2 level;</li><li>(ii) a P50, P75 &amp; P90 capital cost estimate to a Class 2 level (subject to the specific requirements of the applicable Feasibility Funding Agreement on the Feasibility Study scope of work);</li><li>(iii) a fully developed program; and</li><li>(iv) a fully developed procurement methodology; and</li></ul></li><li>(d) includes a written report on the outcome of the analysis, decisions and specifications referred to above, with reasons.</li></ul>
<b>Field Incident Management</b>	The field management of incidents and accidents occurring on or affecting the Rail Infrastructure.
<b>Force Majeure Event</b>	<p>Any cause, event or circumstance or combination of causes, events or circumstances which:</p> <ul style="list-style-type: none"><li>(a) is beyond the reasonable control of the affected</li></ul>

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 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.

**Funding User**

An Access Seeker, Access Holder or its Customer who has entered into a User Funding Agreement with Aurizon

	Network.
<b>General Expansion Capital Expenditure</b>	Expenditure on capital projects required for an Expansion where the relevant Expansion is utilised or to be utilised for the benefit of more than one Customer or more than one Access Holder.
<b>General Track Maintenance</b>	Includes maintenance of track, structures, civil, signalling, electrical overhead and telecommunication systems.
<b>Good Engineering Practices</b>	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.
<b>Goonyella Newlands Connection</b>	The Rail Infrastructure between the North Goonyella mine junction and the Newlands mine junction.
<b>Goonyella System</b>	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: <ul style="list-style-type: none"> <li>(a) the branch line to Gregory mine; and</li> <li>(b) the corridor beyond North Goonyella mine to Newlands mine (and beyond).</li> </ul>
<b>Goonyella to Abbot Point System</b>	The Rail Infrastructure comprising: <ul style="list-style-type: none"> <li>(a) the Goonyella Newlands Connection; and</li> <li>(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.</li> </ul>
<b>GST</b>	The meaning given to that term in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>gtk</b>	Subject to <b>clause 2.2(d)</b> of <b>schedule F</b> , the gross tonne kilometres attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rollingstock utilised in the relevant Train Service (including all goods, product, persons or matter carried) 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>Gtk Forecast</b>	The amount indicated as the 'Gtk Forecast' for the relevant Reference Tariff in <b>schedule F</b> .
<b>Increment</b>	The meaning given to that term in <b>clause 3.3(a)(iii)</b> of <b>schedule F</b> .
<b>Incremental Costs</b>	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.
<b>Indicative Access Proposal or IAP</b>	A non-binding response from Aurizon Network to an Access Application, prepared in writing and including the information set out in <b>clause 4.6(b)</b> .
<b>Infrastructure Enhancement</b>	Expansions and Customer Specific Branch Lines.
<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 the 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</li> </ul>

with a statutory demand as provided in section 459F(1) of the Corporations Act;

- (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;
- (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;
- (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;
- (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
- (f) any similar event occurs in respect of the Access Seeker under the laws of any jurisdiction other than Australia.

**Interested  
Participant**

The meaning given to the term in **clauses 8.13.3(a)** and **Error! Reference source not found.**, as applicable.

**Interface Risk Assessment**

An assessment to:

- (a) identify all reasonably foreseeable Interface Risks and Environmental Risks;
- (b) assess:
  - (i) the likelihood of those Interface Risks and Environmental Risks occurring;
  - (ii) the consequences (including commercial consequences) of those Interface Risks and Environmental Risks occurring; and
  - (iii) any factors relevant to the effective management of those Interface Risks and Environmental Risks;
- (c) identify appropriate measures to effectively manage those Interface Risks and Environmental Risks within a risk management framework, including:
  - (i) an audit, inspection and review regime; and
  - (ii) applicable Safeworking Procedures and Safety Standards having regard to existing Aurizon Network and industry practices; and
- (d) identify the party responsible for implementing, complying with and/or ensuring compliance with the measures referred to in **paragraph (c)** of this definition and ensuring the ongoing effectiveness of such measures.

**Interface Risks**

All risks to the safety of persons or property arising or potentially arising from the interaction between the Access Seeker's or Access Holder's (or, where the Access Seeker or Access Holder is or will be an End User, a Train Operator's) proposed operations and:

- (a) the Rail Infrastructure;
- (b) any land relating to the Rail Infrastructure;
- (c) activities on the Rail Infrastructure (including other Train Services) or any land relating to the Rail Infrastructure; or
- (d) persons on, using or near the Rail Infrastructure or any land relating to the Rail Infrastructure.

<b>Intermediate Train Plan or ITP</b>	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.
<b>IRMP</b>	An interface risk management plan which sets out each of the matters required to be identified and assessed during an Interface Risk Assessment.
<b>JORC Code</b>	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.
<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 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>Marketing Division</b>	Those persons within the Aurizon Group (other than those persons in the positions described in <b>clause 3.9(c)(i) to (iv)</b> ) with responsibility for one or more of the following: <ul style="list-style-type: none"> <li>(a) the marketing of Train Services in competition with other above rail train service providers in the Coal Systems;</li> <li>(b) the negotiation of contracts (including pricing) for the provision of above rail train services in competition with other above rail train service providers in the Coal Systems;</li> <li>(c) the development of above rail service plans for response to a competitive tender process relating to the provision of above rail services in the Coal Systems, where: <ul style="list-style-type: none"> <li>(i) the relevant persons are exercising their responsibility for the purpose of determining Aurizon Group’s tender response (having regard to commercial risks and trade offs associated with the train plan being proposed); and</li> <li>(ii) if the tender is successful, those persons will also be involved in the day-to-day delivery of the applicable above rail train services; and</li> </ul> </li> <li>(d) the commercial decision to enter into a contract for the provision of above rail services in the Coal Systems.</li> </ul>

<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>	<p>(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</p> <p>(b) a breach of a term or condition of a relevant agreement where that breach would lawfully justify termination,</p> <p>where a “relevant agreement” is as described in <b>clause 4.12(b)(ii)</b>.</p>
<b>Material Variation</b>	<p>A variation to the relevant Access Application that materially alters the Access Rights requested by the relevant Access Seeker including a variation that:</p> <p>(a) will result in 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;</p> <p>(b) changes:</p> <ul style="list-style-type: none"> <li>(i) in the way Train Services relating to the Access Rights will be operated (including loading and unloading times) or the Capacity consumed by those Train Services – 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; or</li> </ul> <p>(c) for <b>clause 4.10.2</b> only, would be inconsistent with any parameters or other information upon which a relevant Capacity Analysis has been based.</p>
<b>Maximum Allowable Revenue</b>	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 6.3.3.</b>
<b>MCI</b>	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).
<b>Minimum Revenue Contribution</b>	The amount calculated in accordance with <b>clause 6.2.5(c)</b> .
<b>Moura System</b>	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 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).
<b>Mutually Exclusive Access Applications</b>	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.
<b>Negotiation Cessation Notice</b>	A notice issued by Aurizon Network pursuant to <b>Part 4</b> .
<b>Negotiation Period</b>	The period during which the terms and conditions of an Access Agreement will be negotiated, as described in <b>clause 4.10.1</b> .
<b>Network Controller</b>	A person performing Network Control Services from within a Network Control centre.
<b>Network Control Services</b>	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: <ul style="list-style-type: none"> <li>(a) recording Train running times on Train diagrams and in Aurizon Network's information systems;</li> <li>(b) reporting of incidents occurring on the Rail Infrastructure;</li> <li>(c) managing incidents occurring on the Rail Infrastructure from within a Network Control centre;</li> <li>(d) Field Incident Management and Yard Control</li> </ul>

	services; and
	(e) exchanging information with Railway Operators, and <b>Network Control</b> has a related meaning.
<b>Network Development Plan</b>	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.
<b>Network Executive Team</b>	The meaning given to that term in <b>clause 3.8(a)</b> .
<b>Network Incident</b>	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: <ul style="list-style-type: none"> <li>(a) the death of, or injury to, any person;</li> <li>(b) damage to any property;</li> <li>(c) Environmental Harm; or</li> <li>(d) a disruption to, or cancellation by Aurizon Network of any Train Movement.</li> </ul>
<b>Network Management Principles</b>	The principles set out in <b>schedule G</b> and all System Rules existing from time to time.
<b>New Access Agreement</b>	An Access Agreement to the extent entered into or varied for the purpose of a transfer of Access Rights from a pre-existing Access Agreement under a provision equivalent to clause 14 (Transfer of Access Rights by Customer) of the Standard Access Agreement (Operator).
<b>Newlands System</b>	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 the corridor between the Newlands mine and the North Goonyella mine (and beyond).
<b>Nominal Train Payload</b>	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 6.2(e), 7.2(d), 8.2(c), 9.2(d) or 10.2(b) of schedule F</b> ), as applicable.
<b>Nominated Infrastructure</b>	That Rail Infrastructure over which the relevant Reference Train Service travels between the Nominated Loading Facility/ies and Nominated Unloading Facility/ies.

<b>Nominated Loading Facility</b>	A loading facility specified for a nominated Reference Train Service in <b>schedule F</b> .
<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> .
<b>Nominated Separation Time</b>	Maximum transit time for a Train Service to clear a Constrained Section of the Rail Infrastructure without imposing consequential delays and cancellations for other Train Services as specified in the operating characteristics included in <b>schedule F</b> for each Coal System.
<b>nt</b>	Subject to <b>clause 2.2(d)</b> of <b>schedule F</b> , 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>Old Access Agreement</b>	In relation to a New Access Agreement, the pre-existing Access Agreement to which the relevant transfer relates.
<b>Operating Plan</b>	A description of how the proposed Train Services are to be operated, including the matters identified 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>Operator Access Agreement</b>	An Access Agreement substantially in the form of the Standard Access Agreement (Operator).
<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>Passenger Priority Obligation</b>	The obligations of a Railway Manager pursuant to sections 265 and 266 of the TIA.
<b>Planned Capacity</b>	The increase in Existing Capacity that is expected to result from an Expansion that Aurizon Network is contractually committed to construct.
<b>Planned Possession</b>	A Possession that is entered into the MTP and may adversely impact upon the operation of Train Services.
<b>Possession</b>	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 Maintenance Work, Infrastructure Enhancements or other work on or in the proximity of the Rail Infrastructure which may affect the safety of any person or property.
<b>Possession Protocols</b>	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.
<b>Potential Feasibility Funders</b>	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 <b>clause 8.5(b)</b> and <b>clause 8.5(j)</b> .
<b>Potential Pre-feasibility Funders</b>	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 <b>clause 8.4(c)</b> or <b>clause 8.4(e)</b> .
<b>Pre-feasibility Funder</b>	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.
<b>Pre-feasibility Study</b>	A study that: <ul style="list-style-type: none"> <li>(a) evaluates all of the project configuration alternatives that would provide the capacity requirements that</li> </ul>

are specified as part of the Pre-feasibility Study scope of works;

- (b) selects the project configuration alternative for the capacity in **paragraph (a)** that has the lowest total cost of ownership, after allowing for risk;
- (c) analyses the technical and economic feasibility of the selected alternative;
- (d) specifies:
  - (i) an intermediate scope definition to a Class 4 level;
  - (ii) a 'most likely/central case' capital cost estimate to a Class 4 level (subject to the specific requirements of the applicable Pre-feasibility Funding Agreement on the Prefeasibility Study scope of work);
  - (iii) an intermediate program; and
  - (iv) a preliminary procurement methodology; and
- (e) includes a written report on the outcome of the evaluation, selection, analysis and specification referred to above, with reasons.

**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.

**Private Infrastructure**

The rail transport infrastructure (as defined under the TIA), including track, signalling and electrical overhead traction system (if applicable), that is not Rail Infrastructure.

**Projected Cost**

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.

**Protected Information**

The meaning given to that term in **clause 3.11**.

**Protected Information**

The register established and maintained under **clause 3.20**.

<b>Register</b>	
<b>Provisional Capacity Allocation</b>	The meaning given to that term in <b>clause 8.5(r)</b> .
<b>QCA</b>	The Queensland Competition Authority as established by the Act.
<b>QCA Levy</b>	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 <b>schedule F</b> .
<b>Quarter</b>	Each period of three consecutive months commencing each 1 July, 1 October, 1 January and 1 April in each year.
<b>Rail Connection Agreement</b>	An agreement by which Aurizon Network agrees to the connection of Private Infrastructure to the Rail Infrastructure.
<b>Rail Infrastructure</b>	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.
<b>Rail Infrastructure Manager</b>	The meaning given to that term in the Rail Safety Act.
<b>Rail Safety Act</b>	<i>Transport (Rail Safety) Act 2010 (Qld)</i>
<b>Railway Manager</b>	The meaning given to that term in the TIA.
<b>Railway Operator</b>	The meaning given to that term in the TIA and, for clarity, includes an End User's nominated Train Operator.
<b>Reasonable Demand</b>	The current contracted demand, potential future demand within a reasonable timeframe and any spare rail capacity considered appropriate by Aurizon Network.
<b>Recipient</b>	The meaning given to that term in <b>clause 3.18</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>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 Fee</b>	A Relinquishment Fee (as defined under a Standard Access Agreement) payable to Aurizon Network as a requirement for Access Rights to be relinquished or any other amount payable in such circumstances under a relevant Access Agreement.
<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 4.3 of schedule F</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 6.2.2(d)</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 implemented by Aurizon Network, including supporting communications systems, for the safe operation of Trains and protection of work sites on the Rail Infrastructure.
<b>Second Year Allowable Revenue</b>	The meaning given to that term in <b>clause 3.5(a)(i) of schedule F</b> .
<b>Stand Alone Costs</b>	<p>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:</p> <ul style="list-style-type: none"> <li>(a) as the Efficient Costs; and</li> <li>(b) on the basis of the assets reasonably required for the provision of Access,</li> </ul> <p>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 <b>Stand Alone</b> has a similar meaning.</p>
<b>Standard Access Agreement</b>	The standard form of Access Agreements being the Standard Access Agreement (Operator), Standard Access Agreement (Access Holder) or the Standard Access Agreement (End User), as applicable.
<b>Standard Access Agreement (End User)</b>	The standard form of Access Agreement referred to by that name in Volume 3 (which when executed will constitute an End User Access Agreement).
<b>Standard Access Agreement (Access Holder)</b>	The standard form of Access Agreement referred to by that name in Volume 3.
<b>Standard Access Agreement (Operator)</b>	The standard form of Access Agreement referred to by that name in Volume 3.
<b>Standard Agreement</b>	Any agreement that is in the form of a Standard Access Agreement, Standard Rail Connection Agreement or Standard User Funding Agreement, Standard Studies

	Funding Agreement.
<b>Standard Rail Connection Agreement</b>	The standard form of Rail Connection Agreement set out in Volume 3.
<b>Standard Studies Funding Agreement</b>	The standard form of Studies Funding Agreement set out in Volume 3.
<b>Standard User Funding Agreement or SUFA</b>	The current QCA approved standard form of User Funding Agreement, from time to time.
<b>State</b>	The State of Queensland
<b>Static Length</b>	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).
<b>Stowage</b>	<p>The storage of Trains (excluding individual items of Rollingstock) on the Rail Infrastructure at locations specified by Aurizon Network under the following circumstances:</p> <ul style="list-style-type: none"> <li>(a) during a Possession; or</li> <li>(b) during the operation of a Train Service.</li> </ul>
<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 Group</b>	<ul style="list-style-type: none"> <li>(a) A group that has been established as a whole of coal supply chain coordination group for the purpose of coordinating some or all aspects of the planning or operation of a coal supply chain relevant to the Rail Infrastructure; and</li> <li>(b) a group which Aurizon Network reasonably considers has the support of sufficient participants in the coal supply chain to effectively perform that coordination purpose.</li> </ul>
<b>Supply Chain Master Plan</b>	An integrated plan identifying feasible investment options for increasing the capacity of a coal supply chain (including variations to supply chain operating assumptions for the coal supply chain) and evaluating those investment options from a total cost, risk and timing

**Supply Chain Rights**

perspective.

The following rights:

- (a) where any Private Infrastructure is required to be accessed or used to operate Train Services, rights which are sufficient to allow access or use that Private Infrastructure to operate the Train Services;
- (b) in respect of Train Services that will operate on Private 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 coal carrying Train Services which 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.

**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.

<b>System Path</b>	A path that can be taken by a Train Service from a specific origin to a Nominated Unloading Facility.
<b>System Reference Tariff</b>	The tariffs set out in <b>clauses 6, 7, 8, 9</b> and <b>10</b> of <b>schedule F</b> for a specified Reference Train Service in relation to a Coal System (as amended, varied or escalated in accordance with this Undertaking or the QCA Act from time to time).
<b>System Rules</b>	<p>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, in greater detail than under <b>schedule G</b>:</p> <p>(a) which:</p> <ul style="list-style-type: none"> <li>(i) are approved for a Coal System under <b>clause 7.6.3</b>; or</li> <li>(ii) existed under the 2010 Undertaking immediately prior to the Approval Date, as amended from time to time under <b>clause 7.6.4</b>; and</li> </ul> <p>(b) which may include, for example:</p> <ul style="list-style-type: none"> <li>(i) the declaration of System Paths for a Coal System;</li> <li>(ii) the procedures for Access Holders to submit Train Orders and for Aurizon Network to schedule Train Services in the ITP;</li> <li>(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 <b>clauses 7.2</b> and <b>7.3(c)(i)</b> to <b>(vi)</b> of <b>schedule G</b>;</li> <li>(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 <b>clause 9</b> of <b>schedule G</b>;</li> <li>(v) a methodology for defining path availability/use for the purpose of calculating take-or-pay charges; and</li> <li>(vi) the identification of any circumstances where a full Initial Capacity Assessment or Capacity Analysis is not required for the purposes of <b>clause 4.6(b)(iii)</b> or <b>clause 4.10.2(a)(v)</b>.</li> </ul>

<b>Take or Pay</b>	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 <b>clause 2.4 of schedule F</b> .
<b>Take or Pay Grouping</b>	<p>The Train Service Entitlements for a relevant Eligible Operator (as defined in <b>clause 2.4(n) of schedule F</b>) that:</p> <p>(a) the Eligible Operator has nominated to Aurizon Network in writing; and</p> <p>(b) where that Eligible Operator has a Customer, the Eligible Operator has confirmed to Aurizon Network that the Customer has approved that nomination,</p> <p>prior to the end of May in a Year (in accordance with that Eligible Operator's Eligible Access Agreement, as defined in <b>clause 2.4(n) of schedule F</b>) as grouped together for the purpose of Tariff Take or Pay adjustments under <b>clause 2.4(n) of schedule F</b> in respect of that Year provided that, for clarity, the Train Service Entitlements are only grouped to the extent that Access Charges relating to those Train Service Entitlements are set by reference to the same Reference Tariff.</p>
<b>Tariff Based Access Agreement</b>	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.
<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>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>TIA</b>	<i>Transport Infrastructure Act 1994 (Qld)</i>
<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>Total Actual Revenue</b>	<p>(a) For AT<sub>2-4</sub> in relation to an Coal System, the amount calculated in accordance with <b>clauses 3.3(c) to (e) of schedule F</b>; and</p> <p>(b) for the AT<sub>5</sub> component of Access Charges in relation</p>

to a Coal System, the amount calculated in accordance with **clause 3.3(f)** 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>Train Movement</b>	Any operation of a Train on the Rail Infrastructure by Aurizon Network, any Access Holder or any 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 (excluding an End User) 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 Agreement</b>	An agreement in the form of a 'Train Operations Agreement' as defined under the Standard Access Agreement (End User).
<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 Agreement.
<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>	<p>A change to:</p> <ul style="list-style-type: none"><li>(a) for Timetabled Traffic, the time or times at which; or</li><li>(b) for Cyclic Traffic, the Train Path or Train Paths for which,</li></ul> <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 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 relinquishment by an Access Holder under an Access Agreement of all or part of its Access Rights in order to create Available Capacity that can be used to grant new Access Rights to that Access Holder (who will be an Access Seeker in relation to those new Access Rights) or an Access Seeker nominated by that Access Holder.
<b>Transfer Fee</b>	An amount payable to Aurizon Network pursuant to an Access Agreement as a pre-condition for a Transfer.
<b>Transferred Access Rights</b>	Access Rights that will use the Available Capacity that will be created by the Access Holder's relinquishment as part of a Transfer.
<b>Transferee</b>	The relevant Access Seeker for a Transfer.
<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 3.3</b> .
<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>	Access Seekers, Access Holders and/or their Customers (if any).
<b>Urgent Possession</b>	A Possession required to correct problems that Aurizon Network (acting reasonably) considers potentially dangerous to any person, or property, and that Aurizon Network, complying with the Possession Protocols, will use reasonable endeavours to carry out between seven days and three months after the detection of the fault giving rise to the need for that Possession.
<b>User Funded Expansion</b>	An Expansion that is funded wholly or partly by Funding Users under a User Funding Agreement.
<b>User Funding</b>	The provision of funding to Aurizon Network by a Funding User (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 Trustee</b>	An entity that is the trustee of a trust established under a User Funding Agreement.
<b>Varied WACC</b>	A weighted average cost of capital different to that of the Approved WACC.
<b>Website</b>	<a href="http://www.aurizon.com.au">www.aurizon.com.au</a>
<b>Yard Control</b>	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.
<b>Year</b>	A period of 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 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 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; 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) Where this Undertaking requires a notice or other document (**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.
- (b) 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.
- (c) 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.
- (d) 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
- (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 and, where applicable, requirements for changes to the communication system.
- (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>9</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.

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<sup>9</sup> For example, safety matting next to Track to help people safely walk on the ballast.



- (n) **(Commercial Information)** The applicable Reference Tariffs and Standard Access Agreement and System Rules (if any) together with a 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.

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.

## 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:

<b>Access to rail corridor</b>	<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: <ul style="list-style-type: none"> <li>(v) this information is reasonably available to Aurizon Network; and</li> <li>(vi) Aurizon Network can disclose this information without breaching any confidentiality obligations;</li> </ul> </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 (to the extent that Aurizon Network can disclose this information without breaching any confidentiality obligations); 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>
<b>Compliance information</b>	<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>	<ul style="list-style-type: none"> <li>(a) Information required under section 101(2) of the Act, to the extent not already provided.</li> </ul>

	(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.
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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, if applicable, Ancillary Access Rights, **clause 7** applies (and, except as expressly referred to in **clause 7**, **clauses 2 to 6** and **clause 8** do not apply);
  - (ii) where the proposed Access Application is solely for a Renewal, **clause 8** applies (and, except as expressly referred to in **clause 8**, **clauses 2 to 7** do not apply); and
  - (iii) subject to **clauses 1(b)(i)** and **(ii)**, for all other proposed Access Applications **clauses 2 to 6** 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, that Customer's name and contact details; and
- (c) if the Access Seeker or its 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), the identity of the Customer for those Access Rights are sought is to be confirmed along with information evidencing that the Access Seeker is reasonably likely to have such a Customer. 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 Rail Operator has sufficient facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Services to fully utilise the Access Rights sought; and
- (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.

## 4 Form of Access Agreement

Nominate the proposed form of Access Agreement that the Access Seeker is seeking – for example, a Standard Access Agreement (End User), a Standard Access Agreement (Access Holder), a Standard Access Agreement (Operator) or some other form.

## 5 Coal and freight Train Services

### 5.1 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.

## **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 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 enroute, separately for forward and return journeys.

## **5.3 Rollingstock details**

For all Access Seekers (other than End Users), 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.

#### **5.4 Infrastructure requirements**

Details of any Expansions or Customer Specific Branch Lines that may be necessary for operation of service, where known.

## **6 Passenger Train Services**

### **6.1 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).

### **6.2 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 enroute, separately for forward and return journeys.

### **6.3 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.

#### **6.4 Infrastructure requirements**

Details of any Expansions or Customer Specific Branch Lines that may be necessary for operation of service, where known.

## **7 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) details referred to in **clauses 3 and 4** with reference to the proposed Transfer;
- (e) the proposed date and term for the Transfer;
- (f) the information referred to in **clause 5.1 to 5.3** or **clauses 6.1 to 6.3** (as applicable);<sup>10</sup>
- (g) 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
- (h) 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.

## 8 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) details referred to in **clauses 3 and 4** with reference to the proposed Renewal;

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<sup>10</sup> Ancillary Access Rights do not require any Expansion or Customer Specific Branch Line therefore **clauses 5.4** and **6.4**, as applicable, are not relevant.

- (e) whether the Renewal is for all or part of the relevant existing Access Rights and, where for part only, details of the relevant part;
- (f) details of all changes (if any) in:
  - (i) the information referred to in **clause 5.1 to 5.3** or **clauses 6.1 to 6.3** (as applicable)<sup>11</sup>; and
  - (ii) the Operating Plan,from that relating to the relevant existing Access Agreement.<sup>12</sup>

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<sup>11</sup> A Renewal will do not require any Expansion or Customer Specific Branch Line therefore **clauses 5.4** and **6.4**, as applicable, are not relevant.

<sup>12</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 Plan Requirements

The following matters must, amongst others, must be included in an Operating Plan.

An Operating Plan will adopt a three tiered presentation of information with information for the following categories:

- whole of network information that applies generally to the Train Services of the Access Seeker or the Access Holder (see **Item 1 below**);
- 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 2 below**) but was not provided under **Item 1**; and
- origin/destination pair specific information that applies to the Train Services of the Access Seeker or Access Holder for that origin/destination pair (**Item 3 below**) but was not provided under **Items 1 or 2**.

### 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 standards and</b>	<ul style="list-style-type: none"><li>• Rollingstock Interface Standard:<ul style="list-style-type: none"><li>– Total number of consists</li></ul></li></ul>

- protocols**
  - Overload management standard:
    - Load tables (including loads for Train Services and all relevant requirements and information in relation to the specification of those loads)
- Crewing Plan**
  - Train Service crew requirements:
    - Location of crew depots
    - Crew change points
    - Dwell times at change points (minimum and maximum)
- Recovery Methods**
  - Recovery of marked off Rollingstock at loading/unloading locations/enroute
  - Recovery of derailments
  - Recovery of failed locomotive
- Environmental impacts**
  - Profiling and veneering

## 2 Coal System specific information

The requirement for the information under this **Item 2** is in addition to **Item 1**.

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).

For clarity, it is not necessary to repeat information already provided under **Item 1**.

- Area of operation**
  - Origin and destination
  - Cycle description (including nominated stops enroute)
  - Entry and exit points onto or off of Rail Infrastructure
  - Details regarding repositioning of Rollingstock (prior to, during and after operation of the Train Service)
  - Authority from Private Infrastructure manager to enter and/or exit the Private Infrastructure to enable use of Access Rights (where applicable)
- Operation**
  - Shunting activities on Rail Infrastructure
  - Dwell times at loading facility (minimum and maximum)
  - Dwell times at unloading facility (minimum and maximum)
  - Dwell times enroute and operational requirements (minimum and maximum)
  - Indicative timetable requirements or sectional running times

- |                          |  |
|--------------------------|--|
| <b>Train information</b> | <ul style="list-style-type: none"> <li>• Type, class and number of locomotives per Train</li> <li>• Maximum and average gross tonnage of loaded Train (including locomotives)</li> <li>• Tare of empty Train</li> <li>• Method of operation</li> <li>• Traction type</li> <li>• Train length</li> <li>• Rollingstock and Rollingstock Configuration details (number of wagons/locomotives/carriages/self-propelled units)</li> </ul> |
|--------------------------|--|

### 3 Origin/destination pair specific information

The requirement for the information under this **Item 3** is in addition to **Items 1** and **2**.

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).

For clarity, it is not necessary to repeat information already provided under **Items 1** or **2**.

- |                          |  |
|--------------------------|--|
| <b>Area of operation</b> | <ul style="list-style-type: none"> <li>• Description of any activities that may negatively impact main line running</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>• Special operating parameters (e.g. key arrival and departure windows)</li> <li>• Any critical timings at specified locations</li> <li>• Shunting activities on Rail Infrastructure</li> <li>• Load tables (including the loads for Train Services and all relevant requirements and information in relation to the specification of those loads)</li> <li>• Additional information applying to the requested Train Service which differs from other Train Services on the same coal system</li> </ul> |

# Schedule D

## Ultimate Holding Company Deed

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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 Access Undertaking.
  - B In order to comply with certain obligations imposed on Aurizon Network pursuant to the Access Undertaking, Aurizon Network will require the cooperation of members of the Aurizon Corporate Group.
  - C As required by Clause 3.3 of the Access Undertaking and the QCA's decision to approve the Access 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>Access Undertaking</b>	The Aurizon Network Access Undertaking approved by the QCA on <b>[insert]</b> in accordance with Part 5 of the QCA Act (as amended from time to time in accordance with the QCA Act).
<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 will, and will procure that each other member of the Aurizon Corporate Group:
  - (i) not direct or request Aurizon Network to act in contravention of its obligations in **Part 3** of the Access Undertaking; and
  - (ii) not to disclose Protected Information received from Aurizon Network, as permitted by the Access Undertaking, to any third party otherwise than as permitted by the Access Undertaking or with the consent of the Access Seeker or Access Holder to which the Protected Information belongs or relates.
- (b) Aurizon Holdings will not take any action that would cause Aurizon Network to be in breach of its obligations in the Access Undertaking.

### 3.2 Benefit of Deed

This Deed is provided in favour of the QCA.

### 3.3 Consequences of non-compliance

The consequences of non-compliance with the obligations in **clause 3.1**, will be limited to those described in clause 3.3(b) of the Access Undertaking.

## 4 New Ultimate Holding Company

To the extent that Aurizon Holdings ceases to be the ultimate holding company of Aurizon Network, Aurizon Holdings will use its best endeavours to procure that the new ultimate holding company of Aurizon Network enters a deed poll in substantially similar form to this Deed as soon as reasonably practicable.

# 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

- (a) On an annual basis, Aurizon Network will roll forward the asset values in its Regulatory Asset Base, applying the following principles:
- (i) the opening asset value, being:
    - (A) for the first Year of the Term, the value in the Regulatory Asset Base at the expiry of the 2010 Undertaking<sup>13</sup>; and
    - (B) 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;
  - (ii) depreciation of the assets will be calculated for the Year using asset lives and a depreciation profile as endorsed by the QCA;
  - (iii) subject to **clause 1.1(b)**, where assets are disposed of during the Year the following amount will be subtracted from the Regulatory Asset Base, where the net proceeds on disposing of the assets after deducting all costs and expenses incurred in connection with that disposal are:
    - (A) less than, or equal to, the value in the Regulatory Asset Base for the disposed assets, the net proceeds of the disposal;
    - (B) greater than the value in the Regulatory Asset Base of the disposed assets and there is no User Funding Agreement in relation to those assets, the sum of:
      - (1) the value in the Regulatory Asset Base of the disposed assets; and

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<sup>13</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.

- (2) 50% of the difference between the net proceeds of the disposal of those assets and the value in the Regulatory Asset Base of the disposed assets; or
- (C) greater than the value in the Regulatory Asset Base of the disposed assets and there is a User Funding Agreement in relation to those assets, the value in the Regulatory Asset Base of the disposed assets.
- (iv) prudent capital expenditure will be added to the Regulatory Asset Base, where that expenditure is accepted into the Regulatory Asset Base by the QCA in accordance with **clause 2**; and
- (v) the value of the assets in the Regulatory Asset Base will be adjusted in accordance with **clauses 1.2**.

For the purpose of **clause 1.1(a)(iii)**, a disposal does not include a circumstance where an asset is replaced (in whole or part) by an extension, enhancement, expansion, augmentation, duplication or replacement of all or part of the Rail Infrastructure of which that asset forms a part.

- (b) The subtraction of an amount referred to in **clause 1.1(a)(iii)(B)(2)** from the value of remaining assets in Regulatory Asset Base will be as determined by Aurizon Network subject to acceptance by the QCA. For example and without limitation, that subtraction may occur in relation to all of the remaining assets or specified remaining assets and the amount to be subtracted might be allocated between the relevant remaining assets on a proportional basis.

## **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) at the end of the Term, the value of intangible assets that were not included in the initial valuation of assets contained in the Regulatory Asset Base; or
  - (ii) the Depreciated Optimised Replacement Cost of additional Rail Infrastructure incorporated into the Coal Systems,

provided that the asset value increase has been accepted by the QCA on request by Aurizon Network.
- (b) The value of assets contained in the Regulatory Asset Base may be increased by Aurizon Network by including, after the end of the Term, an amount for equity raising costs calculated under **clause 1.5** provided that the asset value increase has been accepted by the QCA on request by Aurizon Network. The QCA must accept those equity raising costs if they have been calculated in accordance with **clause 1.5**.
- (c) The QCA will not require the value of assets contained in the Regulatory Asset Base to be reduced unless:

- (i) the QCA made its decision to accept the relevant capital expenditure into the Regulatory Asset Base on the basis of information provided by Aurizon Network that Aurizon Network knew, or should have known, was false or misleading at the time it provided the information; and
  - (ii) the provision of this false or misleading information resulted in a materially different outcome from that which would have occurred if the QCA had been provided with information that was not false or misleading.
- (d) Where the QCA requires the value of the assets in the Regulatory Asset Base to be reduced, it must:
- (i) identify those specific assets including the class and location of those assets; and
  - (ii) specify:
    - (A) where the reduction affects any part of the value of those assets is applicable to an Expansion Tariff, the Expansion Tariff(s) that will be affected; and
    - (B) where those assets relate to a User Funded Expansion, the Funding User.
- (e) If the QCA has not notified Aurizon Network of whether it accepts any asset value increase under **clauses 1.2(a)** or **(b)** (as applicable) within 40 Business Days after receiving a request from Aurizon Network under **clauses 1.2(a)** or **(b)** (as applicable), then the QCA is taken to have made a determination to accept Aurizon Network's request.
- (f) Subject to **clause 1.2(e)**, if the QCA refuses to accept Aurizon Network's request, then the QCA must notify Aurizon Network of the reasons why that request was not accepted.

### **1.3 Capital expenditure report**

- (a) Unless otherwise agreed between Aurizon Network and the QCA, Aurizon Network will, as soon as reasonably practicable and no later than six months after the end of each Year in the Term, provide to the QCA the following details for capital expenditure that Aurizon Network considers should be included in the Regulatory Asset Base:
- (i) the name of the project;
  - (ii) the location of the project;
  - (iii) the amount of the capital expenditure;
  - (iv) the extent to which the project has been funded by Aurizon Network or User Funding; and
  - (v) information:

- (A) where applicable, to support the QCA's assessment of the prudence of the capital expenditure under **clauses 2 to 5** (except to the extent that the QCA has already accepted that capital expenditure as prudent in scope, standard or cost); and
- (B) to the extent that the capital expenditure is taken to be prudent in scope because of acceptance by Interested Participants under **clause 8.13** of this Undertaking:
  - (1) evidence that a vote under **clause 8.13** of this Undertaking has occurred and the result for that vote; and
  - (2) an audit certificate in respect of whether the vote conducted under **clause 8.13** of this Undertaking is in all material respects compliant with **clause 8.13** of this Undertaking.
- (b) 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)**.
- (c) Information provided to the QCA under this **clause 1.3** (including in response to a request under **clause 2.3(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) must be kept confidential and not published by the QCA except to the extent that Aurizon Network agrees otherwise.

#### **1.4 Regulatory Asset Base roll forward report to the QCA**

- (a) 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** into the Regulatory Asset Base, Aurizon Network will provide to the QCA 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).

- (b) Information provided to the QCA under this **clause 1.4**:
- (i) will be accompanied by a statement signed by Aurizon Network's Executive Officer confirming that information is, in all material respects, correct;
  - (ii) must be kept confidential and not published by the QCA except to the extent that Aurizon Network agrees otherwise; and
  - (iii) must be based on the roll forward principles in **clause 1.1**.

## 1.5 Equity raising costs

- (a) After the end of the Term, Aurizon Network will calculate an amount for equity raising costs incurred by Aurizon Network in relation to capital expenditure projects occurring during the Term where the capital expenditure for that project has been accepted as prudent by the QCA, having regard to:
- (i) the aggregate of the Adjusted Allowable Revenue determined over the Term under **clause 3.3(b)** of **schedule F**, excluding any Revenue Adjustment Amounts, over the Term;
  - (ii) the Approved Capital Expenditure amounts over the Term;
  - (iii) the tax depreciation that should have applied for the Approved Capital Expenditure (which must be the same as that used in **clause 7(c)(iii)** to calculate the tax depreciation component for the Capital Expenditure Carryover Account);
  - (iv) the tax payable based on the tax depreciation that should have applied for the Approved Capital Expenditure excluding imputation; and
  - (v) the following parameters<sup>14</sup>:
    - (A) dividend reinvestment of 30%;
    - (B) dividend reinvestment plan cost of 1% of the total dividends reinvested;
    - (C) dividend imputation payout ratio of 70%; and
    - (D) seasoned equity raising cost of 3% of total external equity requirements,

to the extent that Aurizon Network can demonstrate that the need to raise new equity was reasonably required having regard to maintaining the debt percentage of the Regulatory Asset Base over the Term that has been assumed in the Approved WACC.

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<sup>14</sup> These parameters are consistent with those relied upon by the AER, as referred to in its Final Decision on the Powerlink Transmission Determination (April 2012) at 2012-13 to 2016 -17.

- (b) The amount calculated in **clause 1.5(a)** 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 acceptance, be applied in determining Reference Tariffs for the next regulatory period.

## 2 Acceptance of capital expenditure into the Regulatory Asset Base 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 some instances, in advance of the capital expenditure being incurred – for example, regarding the prudence of scope of a capital expenditure project.
- (c) Aurizon Network may seek the QCA's acceptance of prudence of scope (**clause 3**) and prudence of standard of works (**clause 4**). Alternatively, Aurizon Network may seek acceptance of scope through a vote of Interested Participants under **clause 8.13** of this Undertaking. If such a vote is successful, then the QCA must accept the outcome of that vote. If such a vote is unsuccessful, Aurizon Network is not prevented from seeking the QCA's acceptance of that matter or a future vote.
- (d) However, certain decisions may only be made by the QCA including:
  - (i) acceptance of the prudence of cost of a capital expenditure project (**clause 5**); and
  - (ii) acceptance of an Asset Management Plan (**clause 2.5**) or a procurement strategy (**clause 6.1**).

### 2.2 Acceptance of capital expenditure into the Regulatory Asset Base by the QCA

- (a) Subject to **clause 2.2(b)**, the QCA will accept capital expenditure in the report provided to the QCA under **clause 1.3** into the Regulatory Asset Base if that capital expenditure either:
  - (i) (A) is or has been accepted as:
    - (1) prudent in scope in accordance with **clause 2.4, 3** or **clause 8.13** of this Undertaking;
    - (2) prudent in the standard of works in accordance with **clause 2.4** or **4**; and



- (3) prudent in cost in accordance with **clause 2.4** or **5**; and
    - (B) has been incurred and either the capital expenditure project has been commissioned or a decision has been made not to proceed with the capital expenditure project; or
  - (ii) (A) is for a Concept Study undertaken by Aurizon Network (regardless of whether that Concept Study gives rise to a capital expenditure project or to any subsequent Pre-feasibility Study, Feasibility Study or other study in connection with a capital expenditure project);
    - (B) has been incurred by Aurizon Network; and
    - (C) is or has been accepted by the QCA as prudent after applying the principles in **clauses 3.1, 4.1** and **5.1**.
- (b) For the purpose of **clause 2.2(a)** and related provisions in this **schedule E**:
  - (i) 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 – whether or not the capital expenditure project proceeds or subsequent related studies are conducted); and
  - (ii) where the prudence of capital expenditure for a study referred to in **clause 2.2(b)(i)** is being considered, a reference to a capital expenditure project under this **schedule E** is a reference to the study and the provisions in this **schedule E** will apply (so far as it is reasonably practicable to do so) as though the relevant study was a capital expenditure project.
- (c) The QCA is not prevented from:
  - (i) consulting with, or seeking submissions from, persons in relation to any consideration by the QCA of the prudence of scope, standard or cost for a capital expenditure project under **clauses 3, 4** or **5** which has been sought by Aurizon Network; or
  - (ii) considering any relevant submissions made to the QCA, provided that:
    - (iii) without limiting the principles in **clause 11.2** of this Undertaking, the QCA must provide Aurizon Network with a reasonable opportunity to respond to any such submissions; and
    - (iv) QCA cannot consult or seek submissions in respect of the scope of a capital expenditure project where that scope has been accepted as prudent by Interested Participants by a vote in accordance with **clause 8.13** of this Undertaking and an audit certificate has been

provided to the QCA indicating the conduct of that vote was in all material respects compliant with **clause 8.13** of this Undertaking.

- (d) Aurizon Network does not have an obligation to construct or fund a capital expenditure project as a result of seeking or obtaining any acceptance of the scope, standard or cost of a capital expenditure project under this **clause 2, clause 3, 4 or 5**.
- (e) The QCA must notify Aurizon Network in writing if it accepts capital expenditure into the Regulatory Asset Base.
- (f) If the QCA is considering refusing to accept all or part of any capital expenditure into the Regulatory Asset Base:
  - (i) the QCA must give Aurizon Network a draft of the QCA's decision (including a statement of reasons including the way it considers the capital expenditure should be adjusted);
  - (ii) Aurizon Network may, within 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 accept or refuse to accept the capital expenditure into the Regulatory Asset Base.
- (g) If the QCA refuses to accept all or part of any capital expenditure into the Regulatory Asset Base, the QCA must give Aurizon Network 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).
- (h) If Aurizon Network does not obtain the QCA's acceptance of any matters under **clauses 3 to 5** in relation to a capital expenditure project at any time, this does not affect its right to seek any such acceptance under **clauses 3 to 5 or clause 8.13** of this Undertaking at a later time.
- (i) If:
  - (i) Aurizon Network has obtained:
    - (A) the QCA's acceptance for any matter under **clauses 3 to 5**;  
or
    - (B) Interested Participants' acceptance for any matter under **clause 8.13** of this Undertaking; and
  - (ii) a material change (including a material change in the scope or standard of works for the relevant capital expenditure project) subsequently occurs in respect of that matter,

Aurizon Network may seek the QCA's acceptance in respect of that change under the relevant process set out in **clauses 3 to 5** or,

alternatively, where **clause 2.2(i)(i)(B)** applies, the process set out in **clause 8.13** of this Undertaking.

- (j) 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.

## 2.3 Assessing prudence of capital expenditure

For the purposes of **clauses 3 to 5**:

- (a) the QCA must:
  - (i) in assessing whether capital expenditure is prudent:
    - (A) only consider information available, or reasonably available, to:
      - (1) Aurizon Network; and
      - (2) where the capital expenditure project is a User Funded Expansion:
        - prior to execution of the User Funding Agreement, the relevant Feasibility Funder(s); or
        - on execution of a User Funding Agreement, the Funding User,at the time of making the decision to incur the capital expenditure; and
    - (B) as it considers necessary, take advice from independent advisors using appropriate benchmarks and experience provided that it gives Aurizon Network a copy of that advice as soon as reasonably practicable and in any event no later than with its notice under **clause 2.3(a)(ii)**; and
  - (ii) give Aurizon Network a notice of any determination that it makes under **clauses 3, 4 or 5** (as applicable) and, if that determination is a refusal to accept anything (in whole or part), that notice must state the reasons for that refusal;
- (b) the QCA may request additional information from Aurizon Network that is reasonably required to make any determination under **clauses 3, 4 or 5** (as applicable) within 45 Business Days after receiving the request from Aurizon Network to make such a determination under **clauses 3, 4 or 5** (as applicable);
- (c) Aurizon Network must respond to a request by the QCA under **clause 2.3(b)** within 30 Business Days after receiving that request;
- (d) for clarity, this **clause 2.3** does not oblige Aurizon Network to give information to the QCA that is not available to, or otherwise able to be provided by, Aurizon Network; and

- (e) if the QCA has not notified Aurizon Network of any determination that it is required to make under **clauses 3, 4 or 5** (as applicable) within 45 Business Days after:
  - (i) where the QCA has not made a request under **clause 2.3(b)**, receiving a request from Aurizon Network under **clauses 3, 4 or 5** (as applicable) to make such a determination; or
  - (ii) where the QCA has made a request under **clause 2.3(b)**, receiving additional information from Aurizon Network reasonably required to make any determination under **clauses 3, 4 or 5** (as applicable) as requested by the QCA,

then the QCA is taken to have made a determination to accept Aurizon Network's request.

## **2.4 Deemed prudence**

Where:

- (a) a dispute (including a failure to agree anything) is referred to the QCA or an expert appointed by the QCA or owing a duty of care to the QCA for determination (whether under this Undertaking or the Act);
- (b) that dispute or failure to agree is determined by the QCA or that expert; and
- (c) the determination directly or indirectly involves a determination or acceptance of the scope, standard of works or cost of a capital expenditure project,

then that scope, standard of works or cost (as applicable) is deemed to be accepted as prudent by the QCA for the purpose of this **schedule E**.

## **2.5 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 acceptance.
- (b) Aurizon Network may amend the Asset Management Plan from time to time, but if Aurizon Network wishes to do so it must provide any proposed amendments to the Asset Management Plan to the QCA for acceptance.
- (c) If the QCA is considering refusing to accept a proposed Asset Management Plan or Asset Management Plan amendments (as applicable) (**Proposal**):
  - (i) the QCA must give Aurizon Network a draft of the QCA's decision (including a statement of reasons including the way it considers the Proposal should be adjusted);

- (ii) Aurizon Network may, within 20 Business Days after being given that draft decision (or such longer period as agreed by the QCA), revise the Proposal and/or provide additional information supporting its view that the Proposal or the revised Proposal should be accepted by the QCA; and
  - (iii) the QCA must consider that revision and/or additional information when deciding whether to accept or refuse to accept the Proposal.
- (d) If the QCA refuses to accept the Proposal, the QCA must give Aurizon Network a notice of the QCA's decision (including a statement of reasons).
- (e) For the purpose of this **clause 2.5**:
- (i) the QCA may request additional information from Aurizon Network that is reasonably required to make any determination under this **clause 2.5** within 45 Business Days after receiving the request from Aurizon Network to make such a determination under this **clause 2.5**;
  - (ii) Aurizon Network must respond to a request by the QCA under **clause 2.5(e)(i)** within 30 Business Days after receiving that request; and
  - (iii) if the QCA has not notified Aurizon Network of any determination that it is required to make under this **clause 2.5** within 30 Business Days after:
    - (A) where the QCA has not made a request under **clause 2.5(e)(i)**, receiving a request from Aurizon Network under to make such a determination under this **clause 2.5**;
    - or
    - (B) where the QCA has made a request under **clause 2.5(e)(i)**, receiving additional information from Aurizon Network reasonably required to make any determination under this **clause 2.5** as requested by the QCA,
- the QCA is taken to have accepted the Asset Management Plan.

### 3 Prudency of scope

#### 3.1 Assessment of prudency of scope

- (a) Assessing the prudency of scope of works for a capital expenditure project involves assessing whether the works are reasonably required.
- (b) The QCA's acceptance of the prudency of scope for a capital expenditure project may be requested at any time including prior to the capital expenditure being incurred.

### 3.2 Process for acceptance of prudence of scope

- (a) Aurizon Network may request the QCA to, and the QCA will, accept the scope of a capital expenditure project as prudent if:
  - (i) for Asset Replacement and Renewal Expenditure, it is in accordance with the Asset Management Plan; or
  - (ii) it is Customer or Access Holder specific capital expenditure and the scope of the capital expenditure has been accepted by that Customer or Access Holder.
- (b) If **clause 3.2(a)** does not apply or acceptance is not sought or obtained under **clause 3.2(a)**, Aurizon Network, an Access Seeker, an Access Holder, Funding User or a Customer may request the QCA's acceptance of the scope of a capital expenditure project as prudent in accordance with **clause 3.2(c)**.
- (c) If a request is made under **clause 3.2(b)**, the QCA will accept the scope of a capital expenditure project as prudent if it is demonstrated to the QCA's reasonable satisfaction, having regard to the factors set out in **clause 3.2(d)**, that:
  - (i) where the expenditure for the capital expenditure project has already been incurred, Aurizon Network or Funding User had reasonable grounds for proceeding with the capital expenditure project given the circumstances relevant at the time the investment decision was made; or
  - (ii) where the expenditure for the capital expenditure project has not already been incurred, reasonable grounds exist for proceeding with the capital expenditure project.
- (d) The factors that the QCA will have regard to for the purposes of **clause 3.2(c)** are, where relevant:
  - (i) any relevant Network Development Plan;
  - (ii) the need to accommodate what is reasonably required to comply with Access Agreements;
  - (iii) the extent of Reasonable Demand, and the need for new capital expenditure projects to accommodate that demand;
  - (iv) the age and condition of existing assets, the need for asset replacement capital expenditure projects and the extent of consistency with the Asset Management Plan;
  - (v) the extent to which the capital expenditure project promotes the economically efficient operation of, use of or investment in the Rail Infrastructure, whether present or future (for example, in relation to extending the life of assets whose economic and/or functional life would otherwise have expired, reducing future operating and maintenance costs or improving the capability or capacity of existing assets, systems and processes);

- (vi) Aurizon Network's legislative and tenure requirements, including relating to rail safety, workplace health and safety and environmental requirements;
- (vii) the outcomes of consultation (if any), about the capital expenditure project, with Access Seekers and Access Holders whose Access Charges (or likely Access Charges) would be affected by including the amount of capital expenditure for the capital expenditure project into the Regulatory Asset Base; and
- (viii) any other matters in submissions by Aurizon Network or Funding Users to the QCA.

### 3.3 Excluded capital expenditure

- (a) If:
  - (i) the capital expenditure for a capital expenditure project has been incurred; and
  - (ii) the QCA, in assessing the prudence of scope of that capital expenditure project for the purposes of **clause 3.2(c)**, determines that the scope of the capital expenditure project is in excess of that needed to accommodate Reasonable Demand,

the QCA may also determine the element of the prudent costs of the capital expenditure project that was not needed to meet Reasonable Demand and was not otherwise needed taking into account the matters referred to in **clause 3.2(d)** (excluding **clauses 3.2(d)(i), (iii) and (vii)**) (**Excluded Capital Expenditure**). For clarity, this **clause 3.3** does not apply where:

- (iii) the QCA has already accepted the scope of the capital expenditure project as prudent;
  - (iv) the QCA accepts the scope of the capital expenditure project as prudent in accordance with **clause 3.2(a)**; or
  - (v) the scope of the capital expenditure project has been accepted as prudent by Interested Participants by a vote in accordance with **clause 8.13** of this Undertaking and an audit certificate has been provided to the QCA indicating the conduct of that vote was in all material respects compliant with **clause 8.13** of this Undertaking.
- (b) If the QCA has determined Excluded Capital Expenditure in respect of a capital expenditure project:
    - (i) that Excluded Capital Expenditure will be set aside and escalated at the rate of the Approved WACC from the date of commissioning of the capital expenditure project until the full scope of the capital expenditure project is accepted by the QCA as required to meet Reasonable Demand (whether on one occasion or in parts over time); and
    - (ii) when the QCA accepts that all or part of the Excluded Capital

Expenditure is required to meet Reasonable Demand:

- (A) the QCA will accept all or the relevant part of the Excluded Capital Expenditure into the Regulatory Asset Base at its escalated value; and
- (B) if only part of the Excluded Capital Expenditure is included in the Regulatory Asset Base, **clause 3.3(b)(i)** will continue to apply to the remainder.

## 4 Prudency of standard of works

### 4.1 Assessment of prudency of standard of works

- (a) Assessing the prudency of standard of works for a capital expenditure project involves assessing whether the works are of a reasonable standard to meet the requirements of the scope for that capital expenditure project and are not overdesigned such that they are beyond the requirements of that scope.
- (b) The QCA's acceptance of the prudency of standard of works for a capital expenditure project may be requested at any time including prior to the capital expenditure being incurred.

### 4.2 Process for acceptance of prudency of standard of works where there is an Asset Management Plan

- (a) 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 standard of works for that Asset Replacement and Renewal Expenditure as prudent.
- (b) If a request is made under **clause 4.2(a)**, the QCA will accept as prudent the standard of works relevant to the Asset Replacement and Renewal Expenditure if that standard of works is consistent with the Asset Management Plan.

### 4.3 General process for acceptance of prudency of standard of works

- (a) If **clause 4.2** does not apply or acceptance is not sought or obtained under **clause 4.2**, Aurizon Network may request the QCA's acceptance of the standard of works of a capital expenditure project as prudent in accordance with this **clause 4.3**.
- (b) If a request is made under **clause 4.3(a)**, the QCA will accept the standard of works of a capital expenditure project as prudent if:
  - (i) it is demonstrated to the QCA's reasonable satisfaction, having regard to the factors set out in **clause 4.3(c)**, that:
    - (A) where the expenditure for the capital expenditure project has already been incurred, reasonable grounds existed for the



- design of the relevant infrastructure given the circumstances relevant at the time that the design was prepared; or
- (B) where the expenditure for the capital expenditure project has not already been incurred, reasonable grounds exist for the design of the relevant infrastructure; or
- (ii) the proposed works are consistent in all material respects with the existing standard and configuration of adjacent infrastructure or existing infrastructure with similar usage levels, or its modern engineering equivalent, to the extent that the standard of the adjacent or existing infrastructure has previously been accepted by the QCA as being reasonable.
- (c) The factors that the QCA will have regard to for the purposes of **clause 4.3(b)(i)** are, where relevant:
- (i) the requirements of Railway Operators and what is reasonably required to comply with Access Agreements;
- (ii) current and likely future usage levels;
- (iii) the requirements of relevant Australian design and construction standards;
- (iv) if applicable, the extent of consistency with the Asset Management Plan;
- (v) Aurizon Network's design standards contained within the Safety Management System;
- (vi) all relevant Laws and the requirements of any Authority (including the Safety Regulator); and
- (vii) any other matters in submissions by Aurizon Network or Funding Users to the QCA.

## 5 Prudency of costs

### 5.1 Assessment of prudency of costs

- (a) Assessing the prudency of costs for a capital expenditure project involves assessing whether the costs are reasonable for the scope and standard of work done or to be done.
- (b) The QCA's acceptance of the prudency of costs for a capital expenditure project may be requested at any time.

### 5.2 Process for acceptance of prudency of costs where there is an accepted procurement strategy

- (a) If the QCA has accepted a procurement strategy for a capital expenditure project under **clause 6.1(b)**, Aurizon Network may request the QCA's acceptance of the costs of that capital expenditure project as prudent in accordance with this **clause 5.2**.

- (b) If a request is made under **clause 5.2(a)**, the QCA will accept as prudent the amounts incurred by Aurizon Network under a contract if the auditor engaged under **clause 6.2** certifies that:
  - (i) the tender for the contract has been conducted in accordance with the accepted procurement strategy;
  - (ii) if applicable, any relevant variations of, and/or escalations under, that contract have been handled in a manner consistent with the relevant contract provisions;
  - (iii) the amounts incurred were incurred in a manner consistent with the relevant contract provisions; and
  - (iv) the capital expenditure submitted to the QCA by Aurizon Network for acceptance of prudence of cost under this **clause 5.2** does not include any material increase in the amount of that capital expenditure to the extent caused or contributed to by Aurizon Network's breach of contract.

### **5.3 General process for acceptance of prudence of costs**

- (a) If **clause 5.2** does not apply or acceptance is not sought or obtained under **clause 5.2**, Aurizon Network may request the QCA's acceptance of the costs of a capital expenditure project as prudent in accordance with this **clause 5.3**.
- (b) If a request is made under **clause 5.3(a)**, the QCA will accept the costs of a capital expenditure project as prudent if the costs are reasonable for the scope and standard of works undertaken having regard to the matters set out in **clause 5.3(c)** given the circumstances relevant at the time when the costs were incurred or the capital expenditure project was undertaken (as applicable).
- (c) The factors that the QCA will have regard to for the purposes of **clause 5.3(b)** are, where relevant:
  - (i) any relevant Network Development Plan;
  - (ii) the level of such costs relative to the scale, nature, cost and complexity of the project;
  - (iii) the circumstances prevailing in the markets for:
    - (A) engineering, equipment supply and construction;
    - (B) labour; and
    - (C) materials;
  - (iv) the allocation of costs attributable to Rail Infrastructure on an optimised Stand Alone Cost basis;
  - (v) where the QCA has accepted a procurement strategy for the capital expenditure project under **clause 6.1(b)**, the extent to

which Aurizon Network has achieved compliance with that procurement strategy;

- (vi) the Asset Management Plan;
- (vii) without limitation to **clause 5.3(c)(viii)**, the extent to which the costs were incurred in accordance with the exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected of a person in the same type of undertaking as a Rail Infrastructure Manager, under the same or similar circumstances and conditions as the person incurring the costs;
- (viii) where the capital expenditure project is funded solely by Aurizon Network, the manner in which the capital expenditure project has been managed by Aurizon Network given the circumstances at the time when relevant management decisions and actions were made or undertaken, including Aurizon Network's balancing of:
  - (A) safety during construction and operation;
  - (B) compliance with environmental requirements during construction and operation;
  - (C) compliance with Laws and the requirements of Authorities;
  - (D) minimising disruption to the operation of Train Services during construction;
  - (E) accommodating reasonable requests of Access Holders to amend the scope and sequence of works undertaken to suit their needs;
  - (F) minimising whole of asset life costs including future maintenance and operating costs;
  - (G) minimising total project cost which may at times not be consistent with minimisation of individual contract costs;
  - (H) aligning other elements in the supply chain; and
  - (I) meeting contractual timeframes and dealing with external factors; and
- (ix) any other matters in submissions by Aurizon Network or Funding Users to the QCA.

## 6 Procurement strategy

### 6.1 Process for the acceptance of a procurement strategy

- (a) Where the QCA has accepted the scope of a capital expenditure project as prudent under **clause 3**, Aurizon Network may request the QCA's acceptance of a procurement strategy for all or part of that capital expenditure project.

- (b) If a request is made under **clause 6.1(a)**, the QCA will accept Aurizon Network's procurement strategy if the QCA is satisfied that the procurement strategy:
  - (i) is in accordance with good industry practice;
  - (ii) will generate an efficient and competitive outcome;
  - (iii) will avoid conflict of interest or collusion amongst tenderers;
  - (iv) is prudent in the circumstances of the capital expenditure project (including having regard to:
    - (A) the factors set out in **clause 6.1(c)**; and
    - (B) whether the procurement strategy tends to assist in achieving the requirements for prudence of costs set out in **clause 5.3**); and
  - (v) will avoid unreasonable exposure to contract variation claims.
- (c) The factors that the QCA will have regard to for the purposes of **clause 6.1(b)(iv)(A)** are whether in the procurement strategy:
  - (i) there is a clear process for the calling of tenders, including having clear specifications for tenders, and processes for mitigating conflicts of interest (except when it is assessed that calling tenders is likely to be less advantageous than an alternative means of negotiating a contract);
  - (ii) there is a tender assessment process which contains clear and appropriate processes for determining the successful tender, with any decisions to approve a tender that is not the lowest tender being appropriately justified and documented;
  - (iii) the basis of payment for works is clearly specified and the basis for undertaking the works is in accordance with good commercial practice;
  - (iv) there is a process for managing contracts before and after award that accords with good commercial practice for a project of the type and scale of the capital expenditure project and provides appropriate guidance on the criteria that Aurizon Network should apply to decisions regarding the management of the capital expenditure project, including:
    - (A) safety during construction and operation;
    - (B) compliance with environmental requirements during construction and operation;
    - (C) minimising disruption to Committed Capacity during construction;
    - (D) accommodation of the reasonable requests of Access Holders, Access Seekers and, if applicable, their Customers

- to change the scope and sequence of construction to suit their needs;
- (E) a prudent balance between:
    - (1) a higher price in return for more certainty as to final cost;
    - (2) a lower price accepting that final cost may be less certain; and
    - (3) costs, schedule and minimising disruption to Committed Capacity during construction;
  - (F) minimising whole of asset life costs including future maintenance and operating costs; and
  - (G) minimising total project cost which may at times not be consistent with minimisation of individual contract costs; and
- (v) there is a process for managing contract variations and/or escalation that occurs post award of a contract, requiring:
- (A) that reasonable consideration be given to:
    - (1) managing the risk of contract variations and/or escalation; and
    - (2) the allocation of potential risks during the management of the contract; and
  - (B) the provision of clear documentary evidence regarding the nature and reasonableness of any variation and/or escalation.
- (d) The QCA will give Aurizon Network a notice in writing regarding:
- (i) whether the procurement strategy is accepted; and
  - (ii) if the QCA decides not to accept the procurement strategy (in whole or part) the reasons for its refusal and the way the processes under the procurement strategy may be amended to obtain the QCA's acceptance.
- (e) In deciding whether to accept a procurement strategy, the QCA may take advice as it considers necessary from appropriately qualified and experienced independent advisors and, if so, the cost of those advisors will be borne by Aurizon Network.
- (f) For the purpose of this **clause 6.1**:
- (i) the QCA may request additional information from Aurizon Network that is reasonably required to make any determination under this **clause 6.1** within 20 Business Days after receiving the request from Aurizon Network to make such a determination under this **clause 6.1**;

- (ii) Aurizon Network must respond to a request by the QCA under **clause 6.1(f)(i)** within 20 Business Days after receiving that request; and
- (iii) if the QCA has not given Aurizon Network a notice under **clause 6.1(d)** within 20 Business Days after:
  - (A) where the QCA has not made a request under **clause 6.1(f)(i)**, receiving a request from Aurizon Network for the acceptance of a procurement strategy under **clause 6.1(a)**; or
  - (B) where the QCA has made a request under **clause 6.1(f)(i)**, receiving additional information from Aurizon Network reasonably required to make any determination under this **clause 6.1** as requested by the QCA,

the QCA is taken to have accepted the procurement strategy. Aurizon Network and the QCA may agree to vary the timeframes set out in this **clause 6.1(f)** based on the nature or circumstances of the relevant capital expenditure project and if varied timeframes are agreed then those alternative timeframes will apply under this **clause 6.1(f)** in relation to the relevant capital expenditure project.

## 6.2 Compliance with accepted procurement strategy

- (a) As part of the implementation of a procurement strategy accepted by the QCA under **clause 6.1**, Aurizon Network will engage an independent external auditor to audit the compliance of Aurizon Network's tender and contract management processes with the accepted procurement strategy.
- (b) For the purpose of **clause 5.3**:
  - (i) the QCA will accept as prudent the costs incurred by Aurizon Network in relation to:
    - (A) an auditor engaged under this **clause 6.2**; and
    - (B) any costs paid or incurred by Aurizon Network under **clause 6.1(e)**,
 as part of the capital expenditure for the relevant capital expenditure project; and
  - (ii) the QCA will accept for inclusion into the Regulatory Asset Base all other costs, paid or incurred by Aurizon Network, that Aurizon Network can demonstrate were prudently incurred for the purpose of this **clause 6** or for compliance with an accepted procurement strategy (such as costs of tender and contract management processes including legal and probity costs).

## 7 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

### 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).

#### 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>15</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 6.1, 7.1, 8.1, 9.1 and 10.1**);
  - (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;

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<sup>15</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.

- (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) operates as an empty Train on the return journey from the relevant Nominated Unloading Facility to the relevant Nominated Loading Facility;
- (vii) operates from its origin (that is the relevant Nominated Loading Facility or Nominated Unloading Facility, as applicable) directly to its destination (that is, the relevant Nominated Unloading Facility or Nominated Loading Facility, as applicable) using the most direct route on the Rail Infrastructure;
- (viii) the capital costs incurred in relation to providing the Access Rights for the Train Service were included in the calculation of the relevant Reference Tariff - other than, for clarity:
  - (A) capital costs that the QCA has refused to accept in the Regulatory Asset Base;
  - (B) capital costs for which the QCA's acceptance into the Regulatory Asset Base will not be sought; and
  - (C) capital costs that the QCA has accepted into the Regulatory Asset Base but has not allocated in relation to the provision of Access Rights for the relevant Train Service;
- (ix) uses bottom dump wagons with the "KWIK DROP" door operating mechanism; and
- (x) uses measures to minimise coal spillage and leakage and coal dust emissions en route and complies with Aurizon Network's Coal Loss Management Standard as published by Aurizon Network on the Website from time to time;
- (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) **(Commercial terms of Access)** operates in accordance with an Access Agreement on the same terms as a Standard Access Agreement applicable to coal carrying Train Services; 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 coal supply chain; and
- (C) comply with the applicable scheduling procedures as set out in the Network Management Principles.

## 2 Reference Tariff

### 2.1 Composition of Reference Tariff

The Reference Tariff is comprised of:

- (a) a charge in relation to Train Services that have operated calculated in accordance with **clauses 2.2** and, if applicable, **clause 2.3** (including Adjustment Charges); and
- (b) a Take or Pay charge calculated in accordance with **clause 2.4**, with specified Reference Tariff inputs and, if applicable, 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 6.2, 7.2, 8.2, 9.2** and **10.2**, 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 6.2, 7.2, 8.2, 9.2** and **10.2**, 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 6.2, 7.2, 8.2, 9.2** and **10.2**, 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 6.2, 7.2, 8.2, 9.2 and 10.2**, 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 6.2 and 7.2**, 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 6.2 and 7.2**, 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 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) specified for the relevant Reference Tariff and any Adjustment Charge are GST exclusive.<sup>16</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

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<sup>16</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.

- (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;
  - (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.

## 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)  $AT_1$  will be the  $AT_1$  input 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)  $AT_2$  will be:
    - (A) where the Train Service operates in the Origin System on capacity constrained Rail Infrastructure identified in **clause 2.3(b)**, the  $AT_2$  input for:
      - (1) the Origin Tariff, for the rtp attributable to the Origin System; and
      - (2) the Destination Tariff, for the rtp attributable to the Destination System; or
    - (B) where **clause 2.3(a)(ii)(A)** does not apply, the  $AT_2$  input for the Destination Tariff;
  - (iii)  $AT_3$  will be the  $AT_3$  input for:
    - (A) the Origin Tariff, for the ntk attributable to the Origin System; and
    - (B) the Destination Tariff, for the ntk attributable to the Destination System; and
  - (iv)  $AT_4$  will be the  $AT_4$  input for the Origin Tariff;
  - (v)  $AT_5$  and EC will be the  $AT_5$  and EC inputs for:
    - (A) the Origin Tariff, for the egtk of the Cross System Train Service attributable to the Origin System; and
    - (B) the Destination Tariff, for the egtk of the Cross System Train Service attributable to the Destination System; and
  - (vi) the QCA Levy input for the Origin Tariff.
- (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 Take or Pay

### *Overview*

- (a) The Take or Pay payable to Aurizon Network will be calculated in a manner consistent with this **clause 2.4**.
- (b) Where Take or Pay is calculated where **clause 2.4(d)(i)** does not apply:
  - (i) firstly:
    - (A) the maximum potential Take or Pay is calculated based on **clauses 2.4(f) to (h)**; and
    - (B) where applicable, **clause 2.4(j)** is applied to determine whether any Take or Pay liability exists; and
  - (ii) then, if Take or Pay liability exists after **clause 2.4(j)** is applied, the maximum potential Take or Pay will be adjusted by applying each of:
    - (A) **clause 2.4(l) (Mine capping)**;
    - (B) **clause 2.4(m) and (n) (Operator capping for Access Holders)**; and
    - (C) **clause 2.4(o) to (q) (Tariff capping)**,as relevant and in that order to determine the actual Take or Pay payable to Aurizon Network.

### *Calculating Take or Pay*

- (c) The Reference Tariff also includes a Take or Pay charge.
- (d) The Take or Pay charge included in the Reference Tariff is calculated in accordance with:
  - (i) where the Access Agreement, or, for a New Access Agreement, the relevant Old Access Agreement, was executed or renewed:
    - (A) on or after 20 December 2001 but prior to 30 June 2006, Clause 3.2, Part A, Schedule F of the 2001 Undertaking provided that where that calculation refers to:
      - (1) the System Gtk, or to gtk in circumstances where that gtk relates to Train Services other than solely those

under the relevant Access Agreement, then that System Gtk, and that gtk:

- exclude any gtk attributable to any Train Service that has the Wiggins Island Coal Terminal as a destination; and
- exclude any gtk attributable to any Train Services where the Access Charges for those Train Services are set based on an Expansion Tariff<sup>17</sup>;

(2) the System Forecast, then that System Forecast is a reference to the Monthly System Forecast for the relevant Coal System set out in **clause 11**; or

(B) on or after:

- (1) 30 June 2006 but prior to 23 October 2008, Clause 2.2, Part B, Schedule F of the 2005 Undertaking; or
- (2) 23 October 2008 but prior to 1 October 2010, Clause 2.2, Part B, Schedule F of the 2008 Undertaking,

provided that:

- (3) 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>18</sup>;
- (4) a reference in that calculation to the “System Forecast” is a reference to the Gtk Forecast for the relevant System Reference Tariff;
- (5) a reference to “Paragraph 7.4.4(f) of the Undertaking” is a reference to **clause 12.4(f)** of this Undertaking;

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<sup>17</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. In the same way, the Monthly System Forecasts for each Coal System under **clause** Error! Reference source not found. only relate to Train Services whose Access Charges are set by based on the relevant System Reference Tariff.

<sup>18</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.



- (6) a reference to “Total Actual Revenue” is a reference to Total Actual Revenue as defined under this Undertaking;
- (7) 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 **paragraph (9)**;
- (8) a reference to “System Allowable Revenue” is a reference to Allowable Revenue as defined under this Undertaking;
- (9) 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; and
- (10) a reference to “the Total Revenue for that Individual Coal System Infrastructure” is a reference to “the Total Revenue” in relation to the relevant System Reference Tariff; or

(ii) where **clause 2.4(d)(i)** does not apply, **clauses 2.4(f) to (q)**.

For the purpose of but subject to **clause 2.4(d)(i)(A)**, the references to System GtK, System Forecast, and gtk in **clause 2.4(d)(i)(A)** have the meanings given to those terms under the 2001 Undertaking.

- (e) In relation to Take or Pay charges in the context of an End User Access Agreement, 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 Train Operations Agreement). Take or Pay charges will not be payable to Aurizon Network by a Train Operator under a Train Operations Agreement relevant to that End User.
- (f) Subject to **clauses 2.4(j) to (q)**, 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  $AT_2$ ,  $AT_3$  and  $AT_4$  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 not be less than zero.

- (g) To calculate nt and ntk for the purpose of **clause 2.4(f)(iii)(B)**, Aurizon Network will:
- (i) identify from the Access Agreement the number of Train Services that would have operated had the full contracted entitlement been used; and
  - (ii) 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, Aurizon Network will allocate Train Services that did not operate due to Aurizon Network Cause firstly to an Access Agreement of the type referred to under **clause 2.4(d)(i)(A)** before allocating any such Train Services to other Access Agreements,
- and calculate the nt and ntk by using the Nominal Train Payload applicable for the relevant Reference Tariff.
- (h) For the purpose of calculating Take or Pay charges:
- (i) where the rtp for the relevant Train Services under the Train Service Entitlement:

- (A) equals one, the payload for a loaded Train in respect of that Train Service equals the Nominal Train Payload applicable to the relevant Reference Train Service; or
- (B) does not equal one, Aurizon Network will calculate the Take or Pay charges in a manner consistent with the relevant Train Service Entitlement; and
- (ii) 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).
- (i) 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:
  - (i) where the Access Holder is an End User:
    - (A) the End User has not nominated a Train Operator to utilise Access Rights relevant to all or any of the Train Services;
    - (B) the End User must ensure a Train Operator does not operate, or Aurizon Network suspends the right of the End User to have a Train Operator operate, all or any of the Train Services; or
    - (C) under the relevant Train Operations 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 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***

- (j) For the purpose of calculating Tariff Take or Pay for a System Reference Tariff and to that extent only, the Tariff Take or Pay for a Year shall 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.
- (k) Where Tariff Take or Pay for a System Reference Tariff is being determined, **clauses 2.4(l), (n) and (p)** only apply where Tariff Take or Pay is payable after **clause 2.4(j)** has been applied.

***Mine capping***

- (l) 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 (**Other Agreement**) with Train Service Entitlements for that same origin to destination and 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 that Other Agreement, the remaining additional revenue may be used to reduce the Take or Pay liability under another Other Agreement (if applicable);
- (iv) the additional revenue from an Exceeded Agreement can only be used for a reduction of Take or Pay liability under this **clause 2.4(l)** 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; and
- (v) where there is more than one Other Agreement the reduction to the Take or Pay liability under each Other Agreement 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.

***Operator capping for Access Holders***

- (m) **Clause 2.4(n)** must:
  - (i) only be applied after **clause 2.4(l)** (if applicable) has been applied; and

- (ii) not be applied in a way inconsistent with adjustments (if any) already made in accordance with **clause 2.4(l)** or that results in any additional revenue used to reduce a Take or Pay liability under **clause 2.4(l)** being re-used to reduce any other Take or Pay liability.
- (n) Subject to **clause 2.4(m)** and for the purpose of calculating Tariff Take or Pay and to that extent only, if:
- (i) an Operator under an Operator Access Agreement;
- (ii) an Access Holder under an Access Holder Access Agreement; or
- (iii) an End User under an End User Access Agreement,
- executed or renewed after 1 October 2010, has obligations to pay Take or Pay as part of the Access Charges associated with the Train Service Entitlements under that Operator Access Agreement, Access Holder Access Agreement or End User Access Agreement, as applicable, (**Eligible Access Agreement**), then:
- (iv) subject to **clause 2.4(n)(v)**:
- (A) where:
- (1) a Train Service Entitlement under any Eligible Access Agreement is part of a Take or Pay Grouping for:
- in the case of an Operator Access Agreement or an End User Access Agreement, the Operator or Train Operator, as applicable;
  - in the case of an Access Holder Access Agreement, the Access Holder,
- (Eligible Operator)**; and
- (2) the Train Services for that Train Service Entitlement exceed that Train Service Entitlement for the relevant Year,
- the aggregate Tariff Take or Pay liability in relation to that Take or Pay Grouping for the relevant Year will be reduced by the amount of the additional revenue from Access Charges for AT<sub>2.4</sub> in relation to that excess ; or
- (B) where:
- (1) a Train Service Entitlement under any Eligible Access Agreement is not part of a Take or Pay Grouping for the Eligible Operator (**Ungrouped Train Service Entitlement**); and
- (2) the Train Services for that Ungrouped Train Service Entitlement exceed that Ungrouped Train Service Entitlement for the relevant Year,

the aggregate Tariff Take or Pay liability in relation to all of the Ungrouped Train Service Entitlements for the relevant Year will be reduced by the amount of the additional revenue from Access Charges for AT<sub>2-4</sub> in relation to that excess (to the extent those Access Charges were set by reference to the relevant Reference Tariff) on a pro rated basis based on the Tariff Take or Pay liability in relation to each Train Service Entitlement comprised in the Ungrouped Train Service Entitlements; and

- (v) where the Train Service Entitlements for an Eligible Operator to which either **clause 2.4(n)(iv)(A)** or **(B)** apply are given effect through a Train Operations Agreement, the reduction in Tariff Take or Pay liability calculated in respect of those Train Services Entitlements under **clause 2.4(n)(iv)(A)** or **(B)**, as applicable:
  - (A) will be allocated to the End User who nominated the relevant Train Operator to utilise those Train Service Entitlements; and
  - (B) will not be allocated to the Train Operator.

For clarity, the use under this **clause 2.4(n)** of any additional revenue for the purpose of a reduction of any Take or Pay liability can only occur 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 arising in respect of any other Year.

#### ***Tariff capping***

- (o) **Clause 2.4(p)** must only be applied after **clauses 2.4(l)** and **(n)** (as applicable) have been applied.
- (p) Subject to **clause 2.4(q)**, and to **clauses 2.4(l)** and **(n)** (where they are 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 Agreement in place on the day immediately prior to 30 June 2006 under a provision equivalent to clause 14 (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 not be payable for that Year under the relevant Access Agreements executed or renewed on or after 30 June 2006 (other than New Access Agreements entered as part of transferring Access Rights from Access Agreements in place on the day immediately prior to 30 June 2006 under a provision equivalent to clause 14 (Transfer

- of Access Rights by Customer) of the Standard Access Agreement (Operator)) (**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.
- (q) In determining what Aurizon Network would be entitled to earn for the purposes of **clause 2.4(p)**, 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;
  - (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, 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.

### 3 Annual review of Reference Tariffs

#### 3.1 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 3.5**; and
  - (ii) for the relevant Year and each subsequent Year during the Term in accordance with **clause 3.1(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;
  - (iii) an adjustment (as an increase or decrease, as applicable) to the Allowable Revenue for each Reference Tariff for the next Year for an increase or decrease in maintenance costs attributable to the difference between the approved GtK Forecast and revised GtK Forecasts calculated as:
    - (A) the revised GtK Forecast for that Reference Tariff for that next Year under **clause 3.1(b)(i)** minus the approved GtK Forecast, for that Reference Tariff for that next Year; multiplied by
    - (B) the Short Run Variable Maintenance Cost Rate for that next Year,

where the Short Run Variable Maintenance Cost Rate for a Year is as follows:

Year	Short Run Variable Maintenance Cost Rate (\$'000gtk)
2013/14	0.98
2014/15	1.01
2015/16	1.00
2016/17	1.01

and

- (iv) 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 3.1(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 must notify Aurizon Network by 1 May of the relevant Year, 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 will 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 3.1(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 3.1**.
- (f) If Aurizon Network makes a submission under **clause 3.1(b)** in respect of a Year but the QCA does not approve or refuse to approve that submission (including a resubmission under **clause 3.1(c)(ii)(B)**) by 30 June, then the submission (or resubmission) is deemed to have been approved by the QCA.

## **3.2 Allowable Revenue**

- (a) Subject to **clause 3.2(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 6.3, 7.3, 8.3, 9.3 and 10.3 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 6.3 and 7.3 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:
- (i) where the Cross System Train Service commenced on or after the Commencing Date, 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)**; 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;
  - (ii) where the Cross System Train Service commenced prior to the Commencing Date, for the Allowable Revenue for AT<sub>2-4</sub>:
    - (A) an amount based on the following \$/000 ntk rates multiplied by the thousand ntk for the Cross System Train Service attributable to the Destination System will be allocated to the Allowable Revenue for the Destination Tariff; and

Origin Tariff	Destination Tariff	2013-14	2014-15	2015-16	2016-17
Blackwater System Reference Tariff	Goonyella System Reference Tariff	4.60	4.45	4.44	4.45
Goonyella System Reference	Blackwater System Reference	4.91	4.96	5.30	5.44

Tariff	Tariff				
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- (B) all 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 **clause 2.3**) less the amount allocated to the Allowable Revenue for the Destination Tariff under **clause 3.2(b)(ii)(A)**, will be allocated to the Allowable Revenue for the Origin Tariff; and
- (iii) 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.

### 3.3 Calculation of Revenue Adjustment Amounts

#### Obligation to calculate Revenue Adjustment Amounts and Increments

- (a) After the end of each Year, Aurizon Network will calculate for that Year for each Reference Tariff:
  - (i) an AT<sub>2-4</sub> Revenue Adjustment Amount for that Reference Tariff by subtracting:
    - (A) the Adjusted Allowable Revenue for AT<sub>2-4</sub> (calculated under **clause 3.3(b)**) for that Reference Tariff; from
    - (B) the Total Actual Revenue for AT<sub>2-4</sub> (calculated under **clause 3.3(c)**) in relation to that Reference Tariff,
 for that Year;
  - (ii) an AT<sub>5</sub> Revenue Adjustment Amount for that Reference Tariff by subtracting:
    - (A) the Adjusted Allowable Revenue for AT<sub>5</sub> (calculated under **clause 3.3(b)**) for that Reference Tariff; from
    - (B) the Total Actual Revenue for AT<sub>5</sub> (calculated under **clause 3.3(f)**) in relation to that Reference Tariff,
 for that Year; and
  - (iii) a performance increment (**Increment**) in relation to that Reference Tariff under **clause 3.4**.

#### Calculation of Adjusted Allowable Revenue

- (b) The Adjusted Allowable Revenue for AT<sub>2-4</sub> or the AT<sub>5</sub> 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 as adjusted under **clause 3.1(b)(iii)**, 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 3.3(b)(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; and
    - (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 operating costs, adjusted to:
    - (A) reflect the difference between:
      - (1) the actual cost of audits required under this Undertaking for the relevant Year; and
      - (2) the forecast costs of audits required under this Undertaking used for the purpose of determining the relevant Reference Tariff for the relevant Year; and
    - (B) include:
      - (1) the actual costs for each expert review of a Capacity Assessment under **clause 8.11.3(e)** of this Undertaking; and
      - (2) the actual costs for a Conditions Based Assessment under **clause 10.4** of this Undertaking,
- provided that where a forecast cost for an actual cost referred to in **paragraph (1)** or **(2)** was used for the purpose

- of determining the relevant Reference Tariff for the relevant Year the adjustment will reflect the difference between that forecast cost and that actual cost;
- (v) the components relating to the payment by Aurizon Network of rebates relating to the capital components of Access Charges attributable to the use of all or part of specified assets relating to the relevant Reference Tariff (other than under a User Funding Agreement), adjusted to reflect the difference between:
    - (A) the actual payment of rebates made under those agreements for the applicable assets; and
    - (B) the forecast payments of those rebates used for the purpose of determining the relevant Reference Tariff for the relevant Year;
  - (vi) all components excluding those costs referred to in any of **clauses 3.3(b)(i) to (v)**; and
  - (vii) for an Adjusted Allowable Revenue for  $AT_{2-4}$ , the amount calculated as:
    - (A) the revenue from the  $AT_1$  component of Access Charges that Aurizon Network was forecast to earn for that Year from coal carrying Train Services for the relevant Reference Tariff based on the approved Gtk Forecast and the  $AT_1$  input for the relevant Reference Tariff for that Year; less
    - (B) the actual revenue for the  $AT_1$  component of Access Charges in respect of coal carrying Train Services for the relevant Reference Tariff for that Year.

**Calculation of Total Actual Revenue for  $AT_{2-4}$**

- (c) The Total Actual Revenue for  $AT_{2-4}$  in relation to the relevant Reference Tariff is the sum of:
    - (i) total revenue from  $AT_{2-4}$  under all Tariff Based Access Agreement, 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  $AT_2$ ,  $AT_3$  and  $AT_4$  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 3.2(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 6.2.2(d)** 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 3.3(d)**, 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 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 10% 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, the 10% 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).

- (d) 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.
- (e) If Aurizon Network reduces the amount of any Relinquishment Fee or Transfer Fee under **clause 3.3(d)**, 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**

- (f) 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 6.5.1(c)** 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 3.2(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 10% 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, the 10% 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).

#### **Approval of Revenue Adjustment Amounts and Increments**

- (g) 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 and Increments for that Year under this **clause 3.3** and **clause 3.4** 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.
- (h) The QCA may give Aurizon Network a written notice requiring Aurizon Network to submit the Revenue Adjustment Amounts and Increments, if Aurizon Network fails to do so under **clause 3.3(g)**.



- (i) The QCA may grant Aurizon Network an extension of the time for submitting, or resubmitting, the Revenue Adjustment Amounts and Increments 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 and Increments within the time specified by the QCA.
- (j) The QCA may calculate Revenue Adjustment Amounts and Increments that are consistent with the requirements specified in this **clause 3.3**:
  - (i) if Aurizon Network does not comply with a notice from the QCA under **clause 3.3(h)** or **3.3(m)(ii)**; or
  - (ii) if the QCA, under **clause 3.3(m)(ii)**, refuses to approve the Revenue Adjustment Amounts and Increments resubmitted by Aurizon Network.
- (k) Where Aurizon Network submits the Revenue Adjustment Amounts and Increments under **clause 3.3(g)**, the QCA may, to the extent it considers it appropriate to do so:
  - (i) publish details of the Revenue Adjustment Amounts and Increments; and
  - (ii) invite and consider comments from Access Holders, Access Seekers and other persons affected by the proposed Revenue Adjustment Amounts and Increments regarding the Revenue Adjustment Amounts and Increments.

To the extent that such comments are provided, the QCA must give Aurizon Network a reasonable period to respond to those comments.
- (l) The QCA will approve any Revenue Adjustment Amounts and Increments if the QCA is reasonably satisfied that they have been calculated in accordance with this **clause 3.3** or **clause 3.4**, as applicable.
- (m) If the QCA:
  - (i) approves the Revenue Adjustment Amounts and Increments, 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 and Increments, 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 and Increments should be amended; and

- (B) requiring Aurizon Network to amend the Revenue Adjustment Amounts and Increments in that way and to resubmit the Revenue Adjustment Amounts and Increments to the QCA within 30 days after Aurizon Network receives that notice.
- (n) Aurizon Network must comply with a notice under **clause 3.3(m)(ii)**.
- (o) The QCA may approve Revenue Adjustment Amounts and Increments resubmitted by Aurizon Network or developed by the QCA under **clause 3.3(j)**, if it is satisfied that they:
  - (i) are consistent with the matters specified under **clause 3.3(l)**; and
  - (ii) if a notice has been issued under **clause 3.3(m)(ii)**, have been amended or developed in accordance with that notice.
- (p) 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 billing period 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).

### 3.4 Calculation of Increment

For the purpose of **clause 3.3(a)(iii)**, the Increments relating to Reference Tariffs will be calculated as follows:

- (a) for each Coal System an amount will be determined calculated as the sum of the following:
  - (i) where in any month in the relevant Year the number of coal carrying Train Services operating on the relevant Coal System exceeds 110% of the coal carrying Train Services for that Coal System that are entitled to be operated in accordance with the existing Access Rights granted for that Coal System (and, for clarity, excluding any right to operate Ad Hoc Train Services), the revenue from Access Charges paid for Train Services that operated on the relevant Coal System on any day in the relevant

month that where not included in the DTP for that day when that DTP was initially scheduled; and

- (ii) where for the relevant Coal System:
  - (A) the Total Actual Revenue for AT2-4 relating to the Coal System is greater than the aggregate Allowable Revenue for AT2-4 for Reference Tariffs relating to the Coal System; and
  - (B) the QCA is reasonably satisfied that the difference between that Total Actual Revenue for AT2-4 and that aggregate Allowable Revenue for AT2-4 (Difference) has, in whole or part, arisen as a direct result of whole of coal chain activities or initiatives of Aurizon Network (or its contractors) which have increased the efficiency of the Below Rail network,

that part of the Difference, as determined by the QCA taking into account the extent to which the Difference has in whole or part arisen as a direct result of the whole of coal chain activities or initiatives of Aurizon Network (or its contractors),

provided that the aggregate of the amounts determined under **clauses 3.4(a)(i) and (ii)** for a Coal System must not exceed an amount equal to 2% of the aggregate Allowable Revenue for AT<sub>2-4</sub> for Reference Tariffs relating to that Coal System; and

- (b) after the calculations under **clause 3.4(a)** has been completed for each Coal System, the amount calculated for each Coal System will be allocated amongst the Reference Tariffs relating to that Coal System as proposed by Aurizon Network and approved by the QCA.

### **3.5 Revenue adjustment**

- (a) Where a Revenue Adjustment Amount has been approved by the QCA under **clause 3.3**:
  - (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 3.5**; 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<sub>2-4</sub> Revenue Adjustment Amount, by subtracting from the relevant Second Year Allowable Revenue:
    - (A) that AT<sub>2-4</sub> Revenue Adjustment Amount less the amount of the relevant Increment; and

- (B) a return on capital amount, calculated by reference to the Discount Rate as applied to the AT<sub>2-4</sub> 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<sub>5</sub> Revenue Adjustment Amount, by subtracting from the relevant Second Year Allowable Revenue:
  - (A) that AT<sub>5</sub> Revenue Adjustment Amount; and
  - (B) a return on capital amount, calculated by reference to the Discount Rate as applied to the AT<sub>5</sub> 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 3.5**, Aurizon Network will vary the relevant Reference Tariff as part of the adjustment of the relevant Reference Tariff under **clause 3.1(a)**.

### **3.6 Amendments to calculation and application of Increment**

- (a) Aurizon Network may submit amendments to the calculation of the Increment under **clause 3.4 (Increment Amendment)** to the QCA including to increase the proportion of the Allowable Revenue at risk or to apply additional Increments to different Coal Systems.
- (b) The QCA may publish details of Aurizon Network's Increment Amendment and invite and consider comments from stakeholders.
- (c) The QCA must take into account the following factors when deciding whether to approve Aurizon Network's proposed Increment Amendment whether the proposed variation is consistent with:
  - (i) the Undertaking;
  - (ii) the pricing principles in section 168A of the Act;
  - (iii) Aurizon Network's legitimate business interests; and
  - (iv) the interests of Access Holders, Access Seekers and, if applicable, Customers.
- (d) If the QCA approves an Increment Amendment:
  - (i) the QCA will give Aurizon Network a notice in writing stating the reasons for the QCA's decision;
  - (ii) unless otherwise requested by Aurizon Network and approved by the QCA, **clause 3.4** will be taken to be amended in accordance with that Increment Amendment with effect from 1 July of the Year following the Year in which the variation was submitted; and
  - (iii) Aurizon Network must:

- (A) publish details of the Increment Amendment on the Website;  
and
  - (B) notify Access Holders and Access Seekers for coal carrying Train Services of the Increment Amendment.
- (e) If the QCA refuses to approve an Increment Amendment:
- (i) the QCA must give Aurizon Network a notice in writing stating the reasons for its refusal and the way in which the QCA considers that the variation should be amended; and
  - (ii) Aurizon Network may choose whether to resubmit a revised Increment Amendment.

## 4 Reference Tariff variations

### 4.1 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 coal transport supply chain; or
  - (ii) will submit a Reference Tariff variation to the QCA, subject to **clause 4.6**:
    - (A) within 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 4.1(b)**; or
    - (B) by 28 February prior to each Year of the Term, in accordance with **clause 3.1(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 4.6**, 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 4**:
- (i) if Aurizon Network does not comply with a written notice given by the QCA under **clause 4.1(b)** or **clause 4.5(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 4.5(e)(ii)**.
- (d) A Reference Tariff variation under this **clause 4** will include a revised GtK Forecasts and Allowable Revenues to the extent applicable to that Reference Tariff variation.

## 4.2 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.

## 4.3 Review Events

The occurrence of any of the following events is a Review Event:

- (a) where Aurizon Network's maintenance costs have been prudently and efficiently incurred, but are greater than its maintenance cost allowance, including where that increase in maintenance costs relates to:
  - (i) Aurizon Network's maintenance practices changing, as reasonably requested by an Access Holder or Customer subsequent to the Commencing Date; or
  - (ii) Aurizon Network through a competitive process, engaging or otherwise appointing a Third Party, or an Aurizon Party (on arms-length terms), to perform any maintenance activities,  
  
which has caused, or will cause, a change in the costs reflected in the AT<sub>3</sub>, AT<sub>4</sub> and/or AT<sub>5</sub> inputs of a Reference Tariff of greater than 2.5%;
- (b) where:

- (i) part of the Rail Infrastructure is used solely to connect an Access Holder or Customer's single loading facility to a Coal System;
  - (ii) a discount applies to the relevant Reference Tariff in respect of that Access Holder's or Customer's use of that part of the Rail Infrastructure to offset a rebate that would otherwise be payable by Aurizon Network to that Access Holder or Customer; and
  - (iii) another Customer connects a loading facility to that part of the Rail Infrastructure;
- (c) 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;
- (d) an increase in the number of contracted coal carrying Train Services using Rail Infrastructure between Burngrove and Minerva;
- (e) where:
- (i) **clause 6.2.4(a)(ii), 6.2.4(b)(ii), 6.2.4(k)(ii) or 6.2.4(l)** of this Undertaking requires that Aurizon Network will seek a variation of a System Reference Tariff or any other Reference Tariff in relation to a proposed Expansion;
  - (ii) a notice has not been given under **clause 6.2.4(m)** of this Undertaking in connection with the relevant Expansion;
  - (iii) the QCA has accepted the cost of that Expansion as prudent in accordance with **clause 5** of **schedule E**; and
  - (iv) the cost so accepted by the QCA is not already included in the Capital Indicator used to calculate the Reference Tariff;
- (f) where a material change occurs in the assumed forecast contracted volumes relevant to an existing Capital Indicator; or
- (g) any other material change in circumstances that Aurizon Network can reasonably demonstrate may give rise to a need to vary the relevant Reference Tariff,

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 4**.

#### **4.4 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 4.1(a)(i)**, include information on:
  - (i) the matters set out in **clause 6.3** (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.

#### **4.5 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 must take into account the following factors when deciding whether to approve Aurizon Network's proposed Reference Tariff variation:
  - (i) whether the proposed variation of the Reference Tariff is consistent with:
    - (A) this Undertaking;
    - (B) the pricing principles in section 168A of the Act;
    - (C) Aurizon Network's legitimate business interests; and
    - (D) the interests of Access Holders, Access Seekers and, if applicable, Customers;
  - (ii) for a variation in respect of an Endorsed Variation Event, whether the proposed variation is consistent with the change in the forecast cost resulting from the Endorsed Variation Event (including incremental maintenance and operating costs and incremental capital costs), calculated as if all other assumptions originally used for the determination of Reference Tariffs are held constant;
  - (iii) for a variation in respect of a Review Event, whether the proposed variation:
    - (A) is consistent with the change in the cost resulting from or that will result from the Review Event; and
    - (B) reflects the impact of the relevant Review Event on the financial position of Aurizon Network (including the impact of



- incremental maintenance and operating costs and  
incremental capital costs);
- (iv) 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);
  - (v) to the extent that the Reference Tariff variation includes revised GtK Forecasts or Allowable Revenue, the revised GtK Forecast is reasonable and the consequential adjustments to Allowable Revenues are calculated properly; and
  - (vi) the matters referred to in section 138(2) of the QCA Act.
- (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 3.1**, 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 must 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 4** in respect of an Endorsed Variation 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 20 Business Days after Aurizon Network receiving the notice, subject to **clause 4.6**.
- (f) Aurizon Network must comply with a notice given under **clause 4.5(e)(ii)**.
- (g) When considering whether to approve a resubmitted Reference Tariff variation or a Reference Tariff variation developed by the QCA under **clause 4.1(c)**, the QCA must take into account:
  - (i) the matters specified under **clause 4.5(c)** (as applicable); and
  - (ii) if applicable, whether the variation has been amended or developed in accordance with the QCA's prior decision (if any) to refuse to approve the relevant Reference Tariff variation.
- (h) For the purposes of **clause 4.1**:
  - (i) a Reference Tariff variation submitted by Aurizon Network or developed by the QCA under **clause 4.1** 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.

#### **4.6 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 4.6(a)**, Aurizon Network must submit or resubmit the Reference Tariff variation within the time specified by the QCA.

## **5 Adjustment Charges**

### **5.1 Calculation of Adjustment Charges**

- (a) Subject to **clause 5.3**, 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 4**) 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, where an Access Holder is an End User and the End User and its Train Operator(s) each pay 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 5.1(a)(i) or (ii)** on and from the Effective Date; and
- (iv) the aggregate of the interest calculated in accordance with **clause 5.1(b)** in respect of the amount of each difference comprising the amount calculated in accordance with **clause 5.1(a)(iii)**,

by making adjustments to the Access Charges (**Adjustment Charge**) payable by Access Holders (or, where an Access Holder is an End User and the End User and its Train Operator(s) each pay 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 5.1(a)(iv)** must be calculated:
  - (i) in respect of the amount of each difference comprising the amount calculated under **clause 5.1(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 5.1(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.

## 5.2 Approval of Adjustment Charges

- (a) Aurizon Network:
  - (i) may, if it submits a Reference Tariff variation under **clause 4.1** 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 4.1** 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 5.2(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 5.2(a)**:
  - (i) Aurizon Network's submission must, without limitation:
    - (A) identify, subject to **clause 5.3(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 billing period(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 3.3**;
- (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 3.3**,

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 5.1(b)(iii)(B)**.
- (c) Aurizon Network must comply with an approval of the QCA given under **clause 5.2(b)(iii)** or **5.2(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 5.2(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 5.2(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).

### 5.3 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 5.3(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 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 does not have a Train Operator; and
    - (B) if that End User had a Train Operator, Adjustment Charges would be applied to that Train Operator in accordance with **clause 5.2(a)**,  
any such Adjustment Charge will apply to the 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 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 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 billing period.

## 6 Blackwater System – System Reference Tariff

### 6.1 Additional Reference Train Service criteria

In addition to **clause 1.3**, the Reference Train Service to which this **clause 6** 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 Comparative 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>19</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;
  - (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>20</sup>	Loading Time (hours) per return trip
Yarrabee (Boonal)	3.8

<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.



<b>Nominated Loading Facilities<sup>20</sup></b>	<b>Loading Time (hours) per return trip</b>
Jellinbah (Boonal)	4.6
Boorgoon	3.8
Curragh	3.3
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>21</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>22</sup>	8.9

<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.

Nominated Unloading Facilities <sup>21</sup>	Unloading Time (hours) per return trip
Stanwell Power Station	2.3
Wiggins Island Coal Export Terminal	1.5 <sup>23</sup>

(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

## 6.2 Reference Tariff inputs

(a) Subject to **clause 6.2(c)**, the Reference Tariff inputs inclusive of revenue cap adjustments for 2011/12 and 2012/13 are:

Reference Tariff input	2013/14 (\$)	2014/15 (\$)	2015/16 (\$)	2016/17 (\$)
AT <sub>1</sub>	0.94	0.96	0.99	1.01
AT <sub>2</sub>	5,030	5,156	5,285	5,417
AT <sub>3</sub>	6.20*	5.81*	6.49*	6.58*
AT <sub>4</sub>	2.09	1.97	2.18	2.20
AT <sub>5</sub>	2.75	2.97	3.04	3.12
EC	0.68	0.68	0.68	0.69
QCA Levy	0.02992	0.03067	0.03143	0.03222

\* This amount must be adjusted by subtracting the System Discount under **clause 6.2(b)** where the System Discount, applies to the relevant Train Service.

(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	2.04	2.03	2.27	2.30

<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.

- (c) The Reference Tariff inputs referred to below in relation to a Nominated Loading Facility replace the equivalent Reference Tariff inputs in **clause 6.2(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>	1.05	1.40	2.22	2.59
	AT <sub>4</sub>	0.41	0.58	0.92	1.08
Minerva	AT <sub>3</sub>	4.63	4.37	4.90	4.95
	AT <sub>4</sub>	1.86	1.78	1.99	2.02

- (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 6.2(e)(iii)**) to which the Reference Tariff in this **clause 6** 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.

### 6.3 Gtk Forecast and Allowable Revenues

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT <sub>2-4</sub> (\$)	Allowable Revenue – AT <sub>5</sub> (\$)
2013/14 <sup>^</sup>	30,117,969	260,617,122	57,580,088
2014/15	33,985,924	291,356,364	78,926,290
2015/16	37,876,747	368,538,915	100,668,352
2016/17	41,168,179	417,058,319	112,288,992

<sup>^</sup> Includes the impact of the 2011/12 revenue cap adjustment.

## 7 Goonyella 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 Goonyella System;
- (b) **(Operational characteristics)** meets the following criteria:
  - (i) a maximum Comparative Length of 2082 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;
  - (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:

Nominated Loading Facilities <sup>25</sup>	Loading Time (hours) per return trip
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

<sup>24</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.

<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.

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

- (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
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

## 7.2 Reference Tariff inputs

- (a) Subject to **clause 7.2(b)**, the Reference Tariff inputs inclusive of revenue cap adjustments for 2011/12 and 2012/13 are:

Reference Tariff input	2013/14 (\$)	2014/15 (\$)	2015/16 (\$)	2016/17 (\$)

<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.

AT <sub>1</sub>	0.65	0.67	0.68	0.70
AT <sub>2</sub>	2,488	2,550	2,614	2,679
AT <sub>3</sub>	6.29	5.95	5.83	5.77
AT <sub>4</sub>	1.32	1.25	1.22	1.21
AT <sub>5</sub>	2.86	2.28	2.30	2.33
EC	0.68	0.68	0.68	0.69
QCA Levy	0.02992	0.03067	0.03143	0.03222

(b) 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 (\$)
Hail Creek	AT <sub>3</sub>	2.11	2.01	2.02	2.05
	AT <sub>4</sub>	0.44	0.42	0.42	0.43
	AT <sub>5</sub>	1.79	1.28	1.33	1.39
Isaac Plains	AT <sub>3</sub>	2.59	2.47	2.46	2.49
	AT <sub>4</sub>	0.54	0.52	0.52	0.52
	AT <sub>5</sub>	2.30	1.75	1.79	1.83
Carborough Downs	AT <sub>3</sub>	3.85	3.66	3.62	3.62
	AT <sub>4</sub>	0.81	0.77	0.76	0.76
	AT <sub>5</sub>	2.49	1.93	1.96	2.00
Millennium	AT <sub>3</sub>	2.99	2.86	2.85	2.88
	AT <sub>4</sub>	0.63	0.60	0.60	0.60
	AT <sub>5</sub>	2.57	2.01	2.04	2.08
South Walker Creek	AT <sub>3</sub>	5.55	5.25	5.14	5.10
	AT <sub>4</sub>	1.16	1.10	1.08	1.07
	AT <sub>5</sub>	2.41	1.86	1.89	1.93
Moorvale	AT <sub>3</sub>	5.58	5.29	5.19	5.15
	AT <sub>4</sub>	1.17	1.11	1.09	1.08
	AT <sub>5</sub>	2.69	2.13	2.15	2.19

- (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 7** applies; or
  - (ii) a Cross System Train Service where the Destination System is the Goonyella System,
- is a nominal nt of 10,055 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> (\$)
2013/14 <sup>^</sup>	32,649,600	294,450,889	90,103,753
2014/15	35,622,580	307,689,585	78,318,791
2015/16	37,444,831	320,042,557	83,048,259
2016/17	39,077,779	333,053,970	88,062,810

<sup>^</sup> Includes the impact of the 2011/12 revenue cap adjustment.

## 8 Moura 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 Moura System;
- (b) **(Operational characteristics)** meets the following criteria:
  - (i) a maximum Comparative Length of 1000 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
  - (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

<sup>27</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.

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>28</sup>	Loading Time (hours) per return trip
Baralaba	4.9
Boundary Hill	3.4
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>29</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>30</sup>	8.9

- (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

## 8.2 Reference Tariff inputs

- (a) The Reference Tariff inputs inclusive of revenue cap adjustments for 2011/12 and 2012/13 are:

<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.

<sup>30</sup> The Unloading Time for the QAL refinery represents the time the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.



Reference Tariff input	2013/14 (\$)	2014/15 (\$)	2015/16 (\$)	2016/17 (\$)
AT <sub>1</sub>	1.75	1.79	1.83	1.88
AT <sub>2</sub>	612	628	643	659
AT <sub>3</sub>	8.88	10.85	11.51	10.64
AT <sub>4</sub>	1.46	1.85	1.96	1.81
QCA Levy	0.02992	0.03067	0.03143	0.03222

- (b) 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**.
- (c) The Nominal Train Payload for:
- (i) a 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 Moura System,
- is a nominal nt of 6,269tonnes.

### 8.3 Gtk Forecast and Allowable Revenues

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT <sub>2-4</sub> (\$)
2013/14 <sup>^</sup>	3,438,649	39,108,076
2014/15	3,832,505	52,846,513
2015/16	3,653,129	53,309,907
2016/17	3,965,176	54,058,052

<sup>^</sup> Includes the impact of the 2011/12 revenue cap adjustment.

## 9 Newlands 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 Newlands System;
- (b) **(Operational characteristics)** meets the following criteria:
  - (i) a maximum Comparative Length of 1402 metres;

- (ii) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220<sup>31</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 160%;
- (d) **(Loading Facilities)** uses the following Nominated Loading Facilities and does not exceed the following Loading Times:

Nominated Loading Facilities <sup>32</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>33</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

## 9.2 Reference Tariff inputs

- (a) Subject to **clause 9.2(b)**, the Reference Tariff inputs inclusive of revenue cap adjustments for 2011/12 and 2012/13 are:

Reference Tariff input	2013/14 (\$)	2014/15 (\$)	2015/16 (\$)	2016/17 (\$)

<sup>31</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.

<sup>32</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> 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 (\$)	2015/16 (\$)	2016/17 (\$)
AT <sub>1</sub>	1.82	1.86	1.91	1.96
AT <sub>2</sub>	6,976	7,150	7,329	7,512
AT <sub>3</sub>	4.05	5.25	4.83	3.63
AT <sub>4</sub>	0.12	0.00	0.00	0.00
QCA Levy	0.02992	0.03067	0.03143	0.03222

- (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:

Nominated Loading Facility	Reference Tariff input	2013/14 (\$)	2014/15 (\$)	2015/16 (\$)	2016/17 (\$)
Sonoma	AT <sub>3</sub>	1.84	2.89	2.35	1.32
	AT <sub>4</sub>	0.12	0.00	0.00	0.00

- (c) 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**.
- (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 9** applies; or
  - (ii) a Cross System Train Service where the Destination System is the Newlands System,
- is a nominal nt of 6,871 tonnes.

### 9.3 Gtk Forecast and Allowable Revenues

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT <sub>2-4</sub> (\$)
2013/14 <sup>^</sup>	3,255,724	39,299,966
2014/15	3,413,741	43,437,203
2015/16	3,596,255	46,303,534
2016/17	3,950,946	49,045,747

<sup>^</sup> Includes the impact of the 2011/12 revenue cap adjustment.

## 10 Goonyella to Abbot Point 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 Goonyella to Abbot Point System;
- (b) **(Operational characteristics)** meets the following criteria:
  - (i) a maximum Comparative Length of 1402 metres;
  - (ii) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220<sup>34</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 160%;
- (d) **(Loading Facilities)** uses the following Nominated Loading Facilities and does not exceed the following Loading Times:

Nominated Loading Facilities <sup>35</sup>	Loading Time (hours) per return trip
Riverside	3.0
Peak Downs	3.0
Lake Vermont	2.05 (estimate) <sup>36</sup>
Blair Athol (Clermont)	2.04 (estimate) <sup>36</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

<sup>34</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.

<sup>35</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>36</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.

Facilities and does not exceed the following Unloading Times:

Nominated Unloading Facilities <sup>37</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	7.35 per consist every 20 days
Excluding Train examination	1.35

## 10.2 Reference Tariff inputs

(a) The Reference Tariff inputs inclusive of revenue cap adjustments for 2011/12 and 2012/13 are:

Reference Tariff input	2013/14 (\$)	2014/15 (\$)	2015/16 (\$)	2016/17 (\$)
AT <sub>1</sub>	1.46	1.50	1.54	1.58
AT <sub>2</sub>	6,976	7,150	7,329	7,512
AT <sub>3</sub>	1.61	1.42	1.36	1.35
AT <sub>4</sub>	3.48	2.41	2.14	1.86
QCA Levy	0.02992	0.03067	0.03143	0.03222

(b) The Nominal Train Payload for:

(i) a 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 Goonyella to Abbot Point System,

is a nominal nt of 6,871 tonnes.

## 10.3 Gtk Forecast and Allowable Revenues

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT <sub>2-4</sub> (\$)
2013/14	11,051,057	123,980,118
2014/15	13,317,088	124,577,747
2015/16	14,432,770	126,951,186

<sup>37</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.

Year	Gtk Forecast (,000 gtk)	Allowable Revenue – AT <sub>2.4</sub> (\$)
2016/17	15,512,057	129,481,818

## 11 Transitional provisions – Monthly System Forecasts for 2001 Undertaking Access Agreements

(a) This **clause 11** sets out Monthly System Forecasts for the Blackwater System, Goonyella System and Newlands System<sup>38</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 11**.

### Blackwater System\*

Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)
Jul-13	2,644,511	Jul-14	2,984,137
Aug-13	2,673,258	Aug-14	3,016,576
Sep-13	2,489,136	Sep-14	2,808,808
Oct-13	2,621,044	Oct-14	2,957,656
Nov-13	2,430,950	Nov-14	2,743,149
Dec-13	2,354,822	Dec-14	2,657,244

<sup>38</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.

Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)
Jan-14	2,355,576	Jan-15	2,658,095
Feb-14	2,125,614	Feb-15	2,398,600
Mar-14	2,458,645	Mar-15	2,774,401
Apr-14	2,522,091	Apr-15	2,845,995
May-14	2,662,900	May-15	3,004,888
Jun-14	2,779,424	Jun-15	3,136,376

\* 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

Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)
Jul-13	2,878,736	Jul-14	3,140,866
Aug-13	2,898,606	Aug-14	3,162,545
Sep-13	2,909,598	Sep-14	3,174,538
Oct-13	2,926,580	Oct-14	3,193,066
Nov-13	2,772,941	Nov-14	3,025,437
Dec-13	2,618,202	Dec-14	2,856,608
Jan-14	2,606,125	Jan-15	2,843,431
Feb-14	2,147,509	Feb-15	2,343,056
Mar-14	2,361,479	Mar-15	2,576,509
Apr-14	2,759,895	Apr-15	3,011,203
May-14	2,911,029	May-15	3,176,099
Jun-14	2,858,899	Jun-15	3,119,223

#### Newlands System

Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)
Jul-13	290,726	Jul-14	304,836

<b>Month</b>	<b>System Gtk (,000 gtk)</b>	<b>Month</b>	<b>System Gtk (,000 gtk)</b>
Aug-13	299,278	Aug-14	313,804
Sep-13	285,659	Sep-14	299,523
Oct-13	251,275	Oct-14	263,471
Nov-13	293,766	Nov-14	308,024
Dec-13	258,157	Dec-14	270,687
Jan-14	279,271	Jan-15	292,825
Feb-14	193,359	Feb-15	202,744
Mar-14	254,766	Mar-15	267,131
Apr-14	269,575	Apr-15	282,659
May-14	287,604	May-15	301,562
Jun-14	292,289	Jun-15	306,475





# Schedule G

## Network Management Principles

### 1 Interpretation

In this **schedule G**, a reference to an Access Holder excludes an End User and includes a Train Operator.

### 2 Provision of information

- (a) Any obligation to provide or otherwise make available information to an Access Holder or to publish information on the Website under the Network Management Principles, including this **schedule G**, is subject to Aurizon Network being reasonably able to do so (including by redacting information) without causing or contributing to a breach of Aurizon Network's obligations under **Part 3** of this Undertaking, an Access Agreement or any relevant confidentiality agreement.
- (b) Where Aurizon Network is obliged to provide a notice under **clause 9.6**, or a report under **clause 10.2**, to a Train Operator, then Aurizon Network will also provide a copy of that notice or report (as applicable) to the relevant End User.

### 3 Train Service Entitlements

Train Service Entitlements:

- (a) for the same types of traffics, will be defined using consistent terminology;<sup>39</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).

### 4 Strategic Train Plan principles

- (a) Aurizon Network will make the STP available to Access Holders in each June after the Approval Date.
- (b) An STP will provide an indication of the Existing Capacity that is anticipated by Aurizon Network to be necessary to meet its obligations in

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<sup>39</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.

relation to Train Service Entitlements for a subsequent period of at least one year (but not more than two years) commencing on 1 July.

- (c) Aurizon Network is not obliged to prepare a STP in relation to all Train Service Entitlements in all Coal System in aggregate, but Aurizon Network may prepare a separate STP for each Coal System, for groups of Coal Systems or a combination of individual and groups of Coal Systems.
- (d) In preparing a STP, Aurizon Network will consider:
  - (i) the known and reasonably anticipated:
    - (A) track maintenance requirements; and
    - (B) impacts of the construction of Expansions, for the period of the STP;
  - (ii) the relevant System Operating Parameters; and
  - (iii) any other known or reasonably anticipated factors that Aurizon Network considers 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.
- (e) Aurizon Network may (acting reasonably) make assumptions in developing the STP. The STP will set out the material assumptions that Aurizon Network has made in preparing it.

## 5 Master Train Plan principles

### 5.1 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 and other relevant characteristics of each Coal System.
- (b) The MTP will be in a table form that is readily convertible to an ITP and DTP and indicates the capability of Aurizon Network to deliver Train Service Entitlements in each Coal System for a period of up to 3 months given other activities on the relevant Rail Infrastructure. The MTP will separately identify where applicable:
  - (i) for Cyclic Traffics, the System Paths allocated to Cyclic Traffics, where such Train Paths reflect the Existing Capacity required for the maximum level of operation for relevant Train Service Entitlements, but may not necessarily reflect the particular Train Paths that those Train Services will operate on;
  - (ii) for Timetabled Traffics, the particular Train Paths allocated in accordance with the Train Service Entitlements;
  - (iii) time allocated for Planned Possessions; and

- (iv) any other factors known to or anticipated by Aurizon Network that Aurizon Network considers may materially impact on the Existing Capacity necessary for Aurizon Network to meet its obligations in relation to Train Service Entitlements.
- (c) Aurizon Network will, on request, make the current MTP (from time to time) available to Access Holders..

## 5.2 Modifying the MTP

- (a) The MTP may be modified by Aurizon Network in accordance with any of **clauses 5.2(b), (c) and (d)**. For clarity, so long as a modification can be made in accordance with one of **clauses 5.2(b), (c) or (d)**, it is not necessary for each of those clauses to be complied with in respect of that modification.
- (b) Aurizon Network may make modifications to the MTP on a case-by-case basis without the need for consultation 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; or
  - (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.
- (c) Aurizon Network may make modifications to the MTP, on a case-by-case basis after consulting with any Access Holders 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:

- (i) Aurizon Network notifies all affected Access Holders that it wishes to make a long-term Train Service Change, provided that change:
  - (A) is within the scope of the relevant Access Holders' Train Service Entitlement/s; and
  - (B) is intended to accommodate:
    - (1) 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;
    - (2) the creation of new Planned Possessions or the modification of existing Planned Possessions; or
    - (3) any other Operational Constraint affecting the MTP; and
  - (C) 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
- (ii) 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.
- (d) Aurizon Network may make modifications to the MTP where Aurizon Network and all affected Access Holders, agree. Aurizon Network will invite all Access Holders 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 Business Days prior to the scheduled consideration of the modification in the forum.
- (e) Aurizon Network will 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 5.2(c)** or **5.2(d)**.

- (f) Without limitation to **clause 5.2(e)**, Aurizon Network will 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) Aurizon Network considers may be affected by any modification to the MTP that is made under this **clause 5.2**.

## 6 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 10** to allocate the Contested Train Path.
- (e) Aurizon Network will notify relevant Access Holders of the ITP once it is finalised by Thursday 1600 hours unless otherwise stated in the System Rules.
- (f) 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.

## 7 Daily Train Plan principles

### 7.1 Purpose and form of a DTP

A DTP indicates all scheduled Train Services and Planned Possessions, 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.

### 7.2 Scheduling and notification of a DTP

Aurizon Network will schedule a DTP at least 24 hours prior to the day to which the DTP relates (**Day of Operation**), and provide all relevant Access Holders and Infrastructure Service Providers with a copy of the DTP by 1400 hours on the day prior to the Day of Operation.

### 7.3 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 requirements from time to time. For clarity, Aurizon Network will notify of Access Holders of those requirements in advance from time to time.
- (c) The DTP may be scheduled in variation to the ITP where at least 48 hours 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 7.3(c)(i) to (iii)**, without the need for consultation;
  - (ii) under **clauses 7.3(c)(iv) or (v)**, after consulting with any affected Access Holders; or
  - (iii) under **clause 7.3(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 prior to the forum.
- (e) Where the DTP is scheduled in variation from the ITP under this **clause 7.3**, Aurizon Network will notify any Railway Manager for Private Infrastructure that is directly connected to the Rail Infrastructure and who Aurizon Network considers may be affected by those variations. The notification will be given to the Railway Manager in that person's capacity as a Railway Manager.

#### **7.4 Variations to a DTP after it is scheduled**

- (a) 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



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.

(b) For the purpose of **clauses 7.4(a)(ii)(A) and (B)**:

- (i) where more than one request or notice is given in relation to a DTP, Aurizon Network will assess the requests or notices in the order in which they were received;
- (ii) Aurizon Network will assume the requirement in **clause 7.4(a)(ii)(A)(2) or 7.4(a)(ii)(B)(3)**, as applicable, is not complied with unless Aurizon Network is able to satisfy itself (acting reasonably) that no other Access Holder's scheduled Train Service and no Possession will fail to be met because of the requested or notified variation;

- (iii) without limitation to **clause 7.4(b)(i)** and **(ii)**, if there is insufficient time (taking into account all of the relevant circumstances) between Aurizon Network being given the request or notice by the Access Holder and the time when the proposed variation is to take effect, then Aurizon Network may not be able to properly satisfy itself in accordance with **clause 7.4(b)(ii)** and may therefore refuse to make the proposed variation; and
  - (iv) where Aurizon Network makes or refuses to make a variation to the DTP following a request or notice under **clause 7.4(a)(ii)(A)** or **(B)**, Aurizon Network is not liable, howsoever that liability may arise, to the QCA, any affected Access Holder, any affected End User or Customer (if any,) or any other affected person, provided that Aurizon Network has, subject to **clauses 7.4(b)(i)** to **(iii)**, made a good faith and reasonable attempt in all the circumstances to comply with **clause 7.4(a)(ii)(A)** or **(B)**, as applicable.
- (c) Aurizon Network may vary the DTP under **clause 7.4(a)** without the need for consultation.
- (d) Other than as detailed in this **clause 7.4**, 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 9** including in the event of Out-Of-Course Running. Those deviations will occur according to the Network Control principles in **clause 9**.
- (e) For clarity, if:
- (i) a variation is requested or notified to Aurizon Network under **clause 7.4(a)(ii)(A)** or **(B)** and Aurizon Network 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.
- (f) Where a variation to the DTP occurs under this **clause 7.4**, Aurizon Network will notify any Railway Manager for Private Infrastructure that is directly connected to the Rail Infrastructure who Aurizon Network considers may be affected by those variations.

## 8 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.

## 9 Network Control principles

### 9.1 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.

### 9.2 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 that deviation.

### 9.3 General principles

- (a) The following general principles apply to Access Holders, Network Controllers and Aurizon Network (as applicable):
  - (i) the Access Holders 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, EIRMRs;
  - (ii) Access Holders 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; and
  - (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.
- (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.

### 9.4 Application of traffic management decision making matrix

- (a) The traffic management decision making matrix in **clause 11** will be provided to assist Network Controllers in the resolution of disputes in accordance with the general Network Control principles under **clause 9.3**.

- (b) Subject to **clause 9.4(c)**, where the operation of a Train Service differs from the DTP, Network Controllers will apply the traffic management decision making matrix in **clause 11** for the purposes of Network Control.
- (c) Aurizon Network may depart from the traffic management decision making matrix in **clause 11** 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 complies with this **clause 9** and uses reasonable endeavours to return to normal Network Control procedures for resolving conflicts that arise from Out-Of-Course Running as soon as reasonably practical after the occurrence of the Network Incident or Force Majeure Event (as applicable).
- (d) Where **clause 9.4(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.

## 9.5 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.

## 9.6 Monthly Train Service Entitlement notice

After the end of each calendar month, Aurizon Network will provide a notice to each Access Holder which identifies for each origin to destination pair:

- (a) the number of Train Paths that the Access Holder was entitled to under the Access Holder's Train Service Entitlement;
- (b) the number of Train Paths planned in the MTP in relation to that Train Service Entitlement;

- (c) the number of Train Paths in respect of which Train Services were operated for the Access Holder under the relevant Train Service Entitlement; and
- (d) the extent to which the Access Holder's Train Service Entitlement was used,

for that calendar month.

## 10 Contested Train Path decision making process

### 10.1 Purpose

The purpose of this **clause 10** 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 6**) with the objective of:

- (a) ensuring Aurizon Network meets its contractual obligations with Access Holders;
- (b) ensuring Access Holders are not unfairly differentiated between in respect of the use of their Train Service Entitlement; and
- (c) maximising the throughput of Trains on the Rail Infrastructure subject to:
  - (i) Operational Constraints;
  - (ii) other restrictions or constraints affecting the whole, or partial unavailability of, the supply chain; and
  - (iii) Aurizon Network's obligations to provide Access in accordance with Train Service Entitlements.

### 10.2 TSE Reconciliation Report

- (a) For the purpose of the planning and scheduling of Train Orders<sup>40</sup>, after the end of each Relevant Period, Aurizon Network will provide a report (**TSE Reconciliation Report**) to each Access Holder 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

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<sup>40</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.

- (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 10.2(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 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 Paths scheduled or operated for the purpose of **clause 10.2(b)** include the following:
  - (i) The point at which a schedule for Train Services is considered final will be:
    - (A) as specified in the System Rules; or
    - (B) if the System Rules do not specify that point or there are no applicable System Rules, Train Paths are taken to be scheduled either:
      - (1) when the ITP is finalised as per **clause 6(e)**, unless **paragraph (2)** applies; or
      - (2) where the relevant DTP is scheduled in variation from the ITP, 48 hours prior to the Day of Operation subject to **clause 10.2(c)(iv)**.
  - (ii) The number of Train Paths scheduled will be reduced by the number of scheduled Train Paths not provided due to Aurizon Network Cause in the period to which the schedule applies as per **clause 10.2(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 in a Coal System 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 in that Coal System 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 if it uses the Mainline Path that would have been used by the First Entitlement.

- (iv) Where the scheduled time of the Train Path is varied in accordance with **clause 7**, 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 10.2(c)(ii)**) the Train Service Entitlement is taken to be operated in respect of that cancelled Train Path.
  - (v) 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, 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.
- (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 10.2(a)(ii)(A)** is calculated as:
- (i) the number of Train 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 10.2(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 10.2(a)(ii)(B)** is calculated as:
- (i) the number of Train 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 10.2(a)(i)(C)**).

### 10.3 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) 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) 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) 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 as follows:
    - (A) the Train Paths finally scheduled, in accordance with **clause 10.2(c)(i)**, for which Train Services did not operate due to Aurizon Network Cause 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) The Access Holder whose request for the Contested Train Path is within the scope of that Access Holder's pool of Mainline Paths based on its Train Service Entitlements for the relevant Coal System as set out in the MTP, subject to the availability of Existing Capacity.
  - (v) 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 10.2(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.
  - (vi) 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 10.2(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.

- (vii) Where the application of above principles does not result in a determination by Aurizon Network as to which requested Train Service is to be scheduled, Aurizon Network will 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 10 Train Services per week, and another Access Holder has an entitlement to 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.
- (b) Aurizon Network will advise each party of the Contested Train Path decision and the principle that determined the result.

## 11 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	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 B – Current Status	Train Running “On Time”	On Time Exit	Scheduled Cross	A or B Rule 2	B Rule 3
	Train Running “Ahead”	On Time Exit	A or B 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 (where there are System Rules in place).

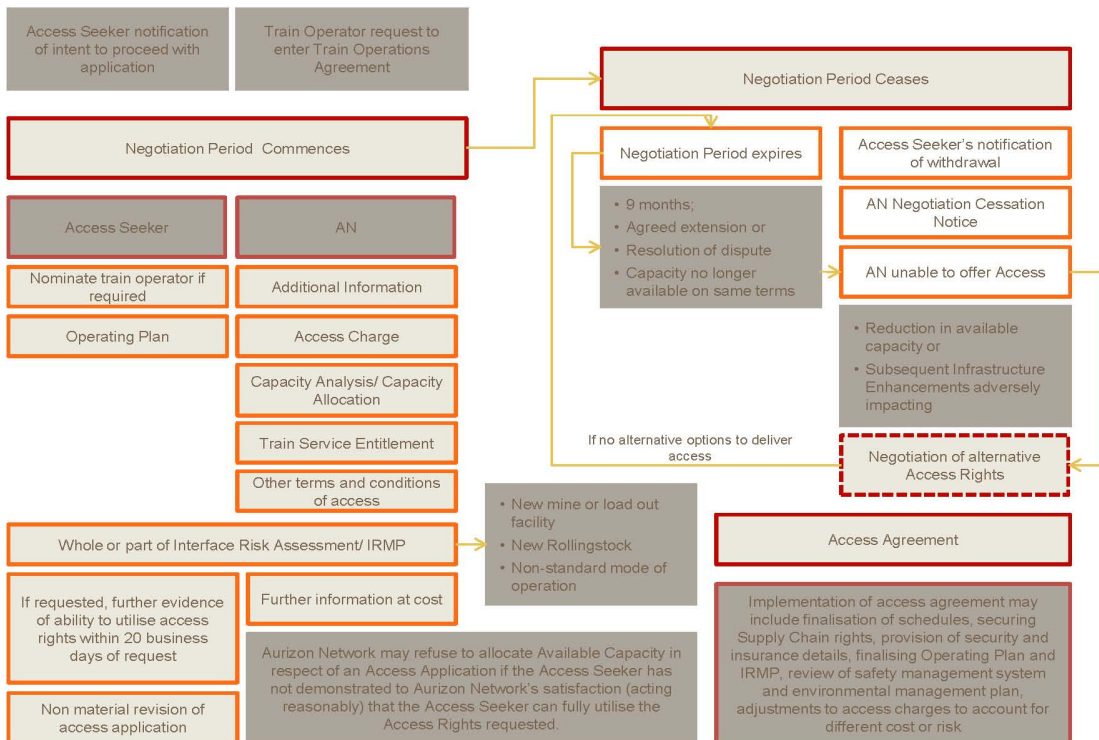
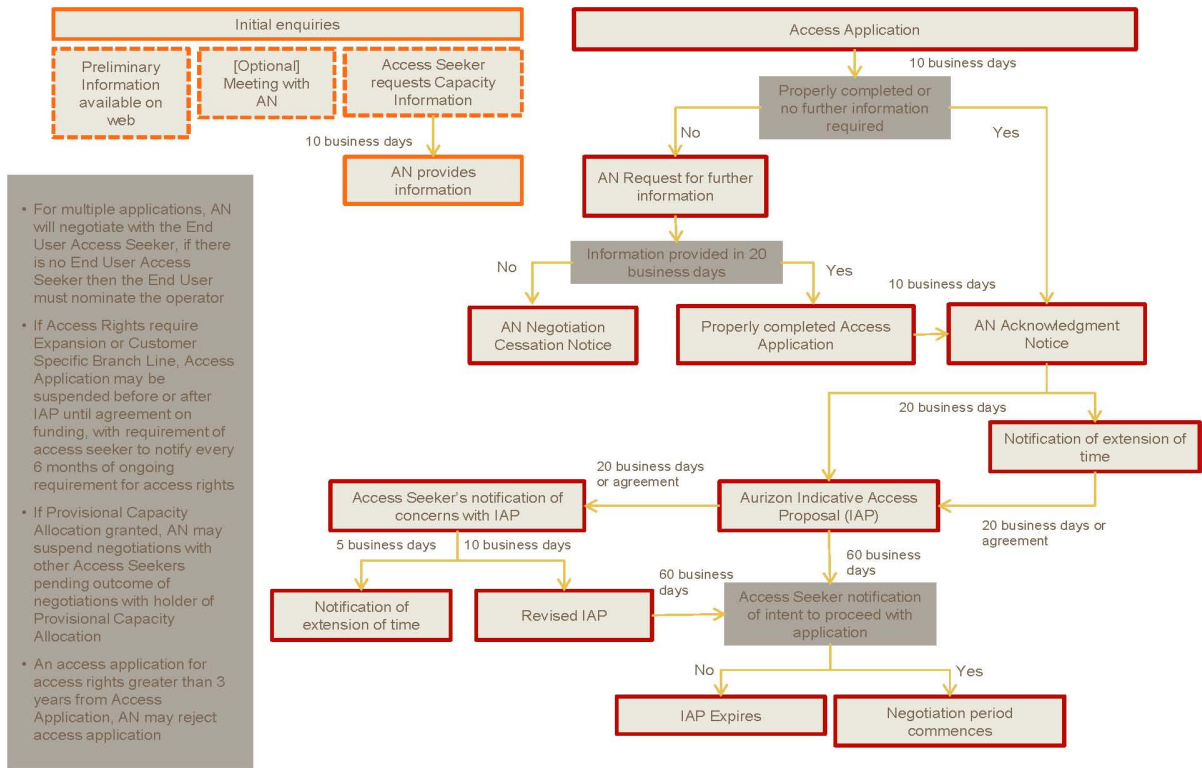
# Schedule H

## Explanatory diagrams and flowcharts

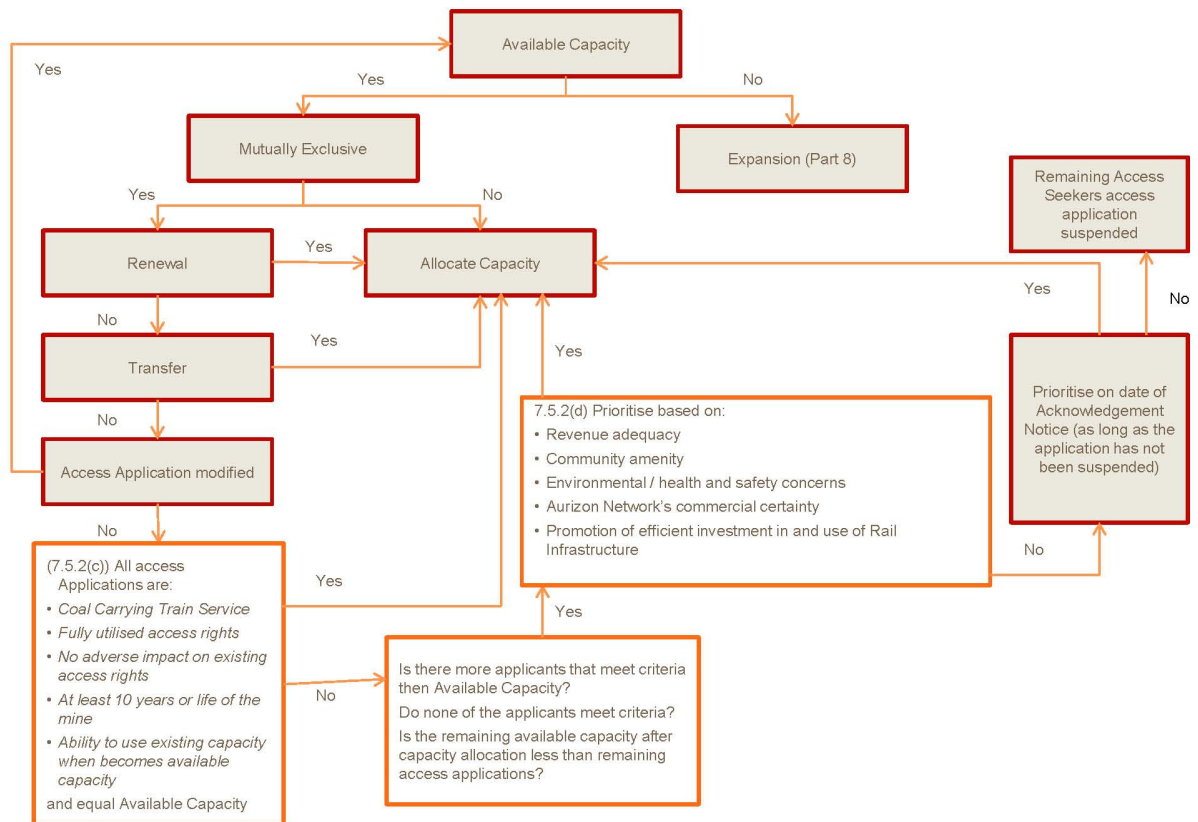
The diagrams and flowcharts in this **schedule H**:

- (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



## Capacity Allocation – no Extension



# 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



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**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 (Discloser)**

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## Background

- A The parties have agreed to enter into this agreement to facilitate the negotiations in respect of the potential granting of Access by Aurizon Network under an Access Agreement or Train Operations Agreement (as applicable).
- B This agreement provides for the disclosure of Protected Information by the Discloser to 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>Transaction</b>	The execution of an Access Agreement or Train Operations Agreement (as applicable) under which Aurizon Network agrees to provide the Discloser with Access.
<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 Protected Information to Aurizon Network 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 Discloser

Under this agreement, the Discloser can only be an Access Seeker or a Train Operator.

## 4 Confidentiality

Aurizon Network agrees to abide by all of its obligations under Part 3 of the Undertaking relating to Protected Information, subject to the exceptions, exclusions and permitted disclosures of Protected Information in the Undertaking.

## 5 Termination

- (a) This agreement terminates on:
  - (i) the execution by the parties of:
    - (A) an Access Agreement or Train Operations Agreement (as applicable); or
    - (B) a subsequent confidentiality agreement imposing confidentiality obligations on Aurizon Network in respect of the Protected Information;
  - (ii) the cessation of negotiations in respect of the Transaction, in accordance with the Undertaking; or
  - (iii) the withdrawal by the Discloser of its Access Application relating to the Transaction.
- (b) Where termination occurs under **clause 5(a)(i)**, this agreement terminates immediately.

- (c) Where termination occurs under **clause 5(a)(ii)** or **(iii)**, this agreement terminates immediately on the date specified in **Item 3** 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.

## 6 Notices

### 6.1 Form of Notice

Any notice, demand, invoice, process or other communication relating to this agreement (**Notice**) must be in writing in English and may be given by an agent of the sender and may, if agreed by Aurizon Network, be in electronic form.

### 6.2 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.

### 6.3 Particulars for giving of Notices

The particulars for giving of Notices are detailed in **item 2** of **schedule 1**, or as most recently notified to the party sending the Notice.

### 6.4 Notice by post

Subject to **clause 6.7**, 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, 10 Business Days after posting.

### 6.5 Notice by fax

Subject to **clause 6.7**, 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.

## **6.6 Notice by email**

Subject to **clause 6.7**, 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.

## **6.7 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.

# **7 General**

## **7.1 Variation**

No provision of this agreement may be varied other than in writing executed by the parties to this agreement.

## **7.2 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.

## **7.3 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.

## **7.4 Counterparts**

This agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one agreement.

## **7.5 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.

## **7.6 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.

## 8 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>Discloser</b>	Name: [insert] ABN: [insert] Address: [insert]
2	<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] <b>Discloser</b> Delivery address: [insert] Postal address: [if there is no PO box, insert 'Same as delivery address'] Facsimile: [insert] Email address: [insert] Attention: [insert]
3	<b>Termination date</b>	The date that is [insert] months after an event in <b>clause 5(a)(ii) or (iii)</b> occurs.

# Execution

**Executed** as a agreement.

**[Appropriate execution blocks to be inserted]**