

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 8.6** describes how Users may fund all or part of an Expansion;
- (e) **clause 8.10** sets out provisions in relation to Capacity Shortfalls and Access Agreements being conditional on Expansions or Customer Specific Branch Lines;
- (f) **clause 8.11** confirms that Aurizon Network will participate in supply chain coordination including processes in relation to the review of System Operating Assumptions;
- (g) **clause 8.12** describes Aurizon Network's obligations in relation to its proposed Network Development Plan; and
- (h) **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), and 8.2.1(c), ~~9, and [insert other Expansion obligation references]~~, nothing in this Undertaking:
 - (i) obliges Aurizon Network to fund, construct or permit an Expansion, or to agree to do so; or
 - (ii) prevents Aurizon Network from agreeing (in its absolute discretion) to fund, construct or permit an Expansion, or any part thereof.
- (b) Aurizon Network is not obliged to fund an Expansion unless it agrees to do so will undertake and fund all Expansions that:
 - (i) consist of replacement capital expenditure;
 - (ii) are needed to provide Access Holders whose Access Rights are conditional on the completion of an Expansion with additional Access Rights where the Expansion did not result in sufficient Capacity to satisfy all Access Holders with conditional rights (including where Aurizon Network and a user / users have entered into a SUFA and it has failed to deliver the committed Access Rights);
 - (iii) are needed to reduce a deficit between Capacity and Committed Capacity caused by a change in System Operating Assumptions; or
 - (iv) are required to create sufficient Available Capacity to provide Access Rights sought by an Access Seeker unless an Expansion is:
 - (A) a Customer Specific Branch Line; or
 - (B) greater than \$300 million (adjusted for inflation).

except to the extent that such an Expansion is a SUFA.

(c) ~~(b)~~ Aurizon Network is obliged to fund, and construct (where the total cost of the Expansion is less than \$300 million) or permit an Expansion ~~of where all or part of the Rail Infrastructure~~ following circumstances apply only to the extent that one of the following circumstances applies:

- (i) ~~Aurizon Network is satisfied (acting reasonably) that~~ the total cost of the Expansion is \$300 million or less and it is not on an individual user's spur line;
- (ii) Aurizon Network is satisfied (acting reasonably and in good faith) that the Expansion is technically and economically feasible and consistent with the safe and reliable operation of the Rail Infrastructure, ~~or has provided independent expert reports showing otherwise;~~
- ~~(ii) — where Aurizon Network is not required by this Undertaking to fund the cost of an Expansion, it agrees (at its election) to do so or the cost of the Expansion is to be funded using SUFA;~~
- (iii) ~~the parties have entered into SUFA agreements, a Commercial Terms document and/or an Access Agreement (as the case may be);~~ Aurizon Network is required to do so in accordance with a written agreement (which is or becomes unconditional) with an Access Seeker or Funding User in respect of the Expansion, insofar as that written agreement does not agree Access Charges above the relevant WACC or other charges approved by the QCA for that System;
- (iv) the Expansion is fully funded by either:
 - (A) Aurizon Network agreeing to fund the Expansion at the relevant WACC or otherwise on reasonable terms approved by the QCA;
 - (B) Funding Users in accordance with a User Funding Agreement for the Expansion; or
 - (C) Funding Users partially funding the Expansion under a User Funding Agreement and the remainder of the funding being provided by Aurizon Network; and
- (v) ~~(iv)~~ unless:
 - (A) otherwise agreed by Aurizon Network; or
 - (B) the relevant Expansion is to be funded using SUFA,the Expansion (whether or not funded in whole or part by a person other than Aurizon Network) is or will be owned and operated by Aurizon Network.

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

- ~~(i)~~ to the extent that funding is required for Asset Replacement Expenditure, Aurizon Network will be responsible for the provision of that funding as well as undertaking or procuring the undertaking of the capital project to the extent that the capital project involves Asset Replacement Expenditure;
- ~~(ii)~~ an Expansion to the extent that the QCA could not require Aurizon Network to do so under an access determination, having regard to the matters in section 119 of the Act; and
- ~~(iii)~~ a dispute determination under **clause 11** relating to Aurizon Network's obligations to fund, construct or permit Expansions under this 0 must not be inconsistent with

the restrictions in section 119 of the Act (regardless of whether the dispute is determined by the QCA or an expert).

- (e) Where Aurizon Network is required to complete an Expansion by operation of clauses 8.2.1(b) or 8.2.1(c) and the Expansion will be funded by users' Access Charges, Aurizon Network is required to fund the Expansion at the regulated WACC, unless it can prove that it has accepted risks above those accepted on the CQCN.
- (f) If Aurizon Network refuses to comply with clauses 8.2.1(b), (c) and (d), the QCA has the power to compel Aurizon Network to comply in light of the 'efficiency objective' outlined in section 69E of the Act. [Anglo American Note: this is supported by the findings of the Productivity Commission in its Draft Report on the National Access Regime (as reflected in the QCA Act)]
- (g) ~~(e) For clarity, notwithstanding any other provision of this Part 8~~**Error! Reference source not found.**, ~~to the extent that funding is required for Asset Replacement Expenditure, Aurizon Network will be responsible for the provision of that funding as well as undertaking or procuring the Asset Replacement Expenditure. [Note: The definition of Asset Replacement Expenditure should be broadened to include the costs of replacing assets which are lost as a result of Force Majeure (flood and the like) and which are required for Aurizon Network to continue to meet its existing contractual entitlements. Further consideration should be given to what other matters should be referred to in this clause.]~~
- (h) ~~(d)~~ Aurizon Network is not obliged to fund or construct or permit 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. Where Aurizon Network has not agreed to undertake investment in a Customer Specific Branch Line and an Access Seeker or their Customer intends to undertake such investment, Aurizon Network must permit such investment by the relevant Access Seeker or their Customer by:
- (i) providing reasonable access to land for the relevant Access Seeker (or Customer) who is proposing to construct the Customer Specific Branch Line to the extent that access to land is incidental to and essential for construction and ongoing operation of the Customer Specific Branch Line, provided that:
- (A) 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
- (B) the access is not consistent with the terms of any lease, licence or other arrangement to which Aurizon Network is party in respect of the land; and
- (ii) entering into a Rail Connection Agreement with the relevant Access Seeker or Customer ~~seeking to have the~~, in relation to the relevant Customer Specific Branch Line ~~constructed~~; and
- (iii) notifying the Access Seeker or Customer of the interface standards required by Aurizon Network.
- (i) ~~(e)~~ 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 obligation under Part 9.
- (j) ~~(f)~~ 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)~~ ~~(g)~~ Aurizon Network must enter into Access Agreements for the capacity to be created by the expansion.

~~(l)~~ ~~Nothing in this **Error! Reference source not found.**:~~

~~(i)~~ ~~prevents or otherwise restricts Aurizon Network and an Access Seeker (or its Customer) (in each party's absolute discretion) from entering into arrangements relating to or in connection with funding, constructing or permitting an Expansion or Customer Specific Branch Line necessary to provide additional Capacity required to grant Access Rights requested by that Access Seeker; or~~

~~(ii)~~ ~~affects Aurizon Network's rights to fund and construct Expansions or Customer Specific Branch Lines and otherwise invest in the Rail Infrastructure.~~

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

~~(o)~~ ~~(j)~~ ~~In this Part 8 where an Access Seeker has submitted two or more than one Access Application for different hauls or different Access Applications which differ in respect of origins/destinations, quantum of capacity, commencement dates or other capacity requirements in relation to a particular Expansion, it will be treated as a different Access Seeker in respect of each such Aurizon Network will treat each Access Application as a separate Access Application and as if each were lodged by a separate Access Seeker.~~

~~(p)~~ ~~If Aurizon Network refuses to undertake or fund an Expansion on the basis it considers it is not an Expansion of the types considered in this clause 8.2.1, an Access Seeker or Access Holder may refer the issue to the Dispute resolution process in this Undertaking.~~

~~(q)~~ ~~If Aurizon Network refuses to fund all or part of an Expansion on the basis that the total cost will be greater than \$300 million, it must:~~

~~(i)~~ ~~provide the QCA with a statement setting out the reasons for the decision; or~~

~~(ii)~~ ~~where the refusal to fund is a consequence of a decision by the Ultimate Holding Company, procure from its Ultimate Holding Company a statement setting out the reasons for its decision.~~

~~which, in either case, the QCA must publish on its website.~~

~~(r)~~ ~~**Clauses 8.2.3 to 8.13.7 apply only to Expansions for the purpose of providing additional Access to coal carrying Train Services and does not govern the process by which Aurizon Network may fund, construct or permit an Expansion for the purpose of providing additional Access to non-coal carrying Train Services.**~~

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;
 - (v) until:
 - (A) the Access Seekers for any earlier Expansion in a sequence of Expansions have entered into Access Agreements, Commercial Terms or User Funding Agreements, as applicable, (Earlier Expansion Agreements) in respect of that earlier Expansion; and
 - (B) such agreements are or have become unconditional,
 - Access Seekers for any later Expansion in a sequence of Expansions and Aurizon Network must not enter into Access Agreements, Commercial Terms or User Funding Agreements, as applicable, (Later Expansion Agreements) in respect of that later Expansion except where conditional on the requirements in clauses 8.2.2(a)(v)(A) and (B) being satisfied for the Later Expansion Agreement to come into full effect;
 - (vi) ~~(v)~~ subject to clause 8.2.2 (a)(~~vi~~iv), the Capacity expected to be created by an Expansion later in a sequence of Expansions cannot be unconditionally allocated until the outcome Capacity of ~~the~~ Expansions earlier in the sequence is known determined in accordance with this Undertaking; and
 - (vii) ~~(vi)~~ to the extent that events or circumstances affect an expansion in the sequence (for example, by it being delayed, not progressing or not delivering the expected outcomes), there may only be a reprioritisation of Expansions, provided where that reprioritisation is approved by the QCA.
- (b) Where:
- (i) different Access Seekers will be provided with Access through an interdependent sequence of Expansions (Expansion Sequence); and
 - (ii) an Expansion Re-sequence Event has occurred in relation to any Access Seekers (Affected Access Seekers), Aurizon Network may, or if notified under clause 8.2.2(c) of circumstances it considers qualify as an Expansion Re-sequence Event must, acting reasonably and in good faith re-allocate the Affected Access Seekers to a later Expansion in the Expansion Sequence and reallocate other Access Seekers from a later Expansion to an earlier Expansion in the Expansion Sequence.

- (c) If the majority of Access Seekers for a later Expansion in an Expansion Sequence believe an Expansion Re-sequence Event has occurred in relation to an earlier Expansion in that Expansion Sequence, those Access Seekers may notify Aurizon Network of their belief and the grounds on which that belief is based. For the purpose of this clause 8.2.2(c), the majority of Access Seekers will be determined by reference to the number of Train Paths sought by the Access Seekers in relation to the later Expansion.
- (d) If Aurizon Network intends to re-allocate Access Seekers under clause 8.2.2(b) to a different Expansion, it must give the Access Seekers who would be affected by the re-allocation written notice and reasonable details of the intended re-allocation.
- (e) An Access Seeker may within 10 Business Days after being given a notice under clause 8.2.2(d) refer the proposed re-allocation to an expert as a dispute for resolution under clause 11.1.4 and the expert will determine whether Aurizon Network may proceed with the reallocation having regard to the matters in clause 8.2.2(b). The expert's determination will, subject to clause 11.1.4(d), be binding on all of the Access Seekers who will be affected by any re-allocation and Aurizon Network.
- (f) Aurizon Network will not proceed with an intended re-allocation until:
- (i) the period under clause 8.2.2(e) for referring the intended re-allocation to an expert has expired; or
 - (ii) if the intended re-allocation has been referred to an expert under clause 8.2.2(e), the expert determines that Aurizon Network may proceed with the re-allocation.
- (g) If an expert determines that an intended re-allocation may not proceed:
- (i) subject to clause 8.2.2(g)(ii), Aurizon Network is not prevented from giving a new notice under clause 8.2.2(e) in relation to the relevant Expansion Sequence, however, the new notice must be based on different evidence for re-allocation to the initial notice; or
 - (ii) where the expert determines that Aurizon Network's proposed re-allocation should be different, Aurizon Network must adopt the re-allocation determined by the expert.
- (h) ~~(b)~~ Pre-feasibility Studies, Feasibility ~~Studies and~~ Expansions:
- (i) should not ~~be~~ prioritised because of limitations of resources; and
 - (ii) should, to the extent necessary to prioritise one study over another or one expansion over another, be prioritised on the basis ~~of a~~for timeline ~~that~~but meets the reasonably likely time that output capacity will be required by the Expansion Users.

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 ~~form~~erally advises that it has commenced a process to expand an existing coal terminal or to build a new coal terminal which is likely to create demand for additional below rail capacity; or
 - (ii) an Access Seeker submits an Access Application for Access that Aurizon Network concludes cannot be satisfied without Aurizon Network undertaking an Expansion

- with a value of \$300 million or more and that Access Seeker requests, in writing, that Aurizon Network carry out a Concept Study for that Expansion; or
- (iii) at least 3 Access Seekers make an Access Seeker makes a written request to Aurizon network for it to conduct a Demand Assessment.
- (b) Where Aurizon Network undertakes a Demand Assessment for an Expansion, it will do so using the most appropriate means in the circumstances ~~as follows:~~ and considering factors such as (but not limited to):
- (i) the Access Applications it has received;
- ~~(ii) its own market intelligence;~~
- ~~(iii) (ii) any [Expression of Interest] process conducted by Aurizon Network; and [Note: What is to be requested in an EOI should be set out in the Undertaking in detail. Industry object to the scope of information previously requested by AN in and approved by the last EOI process.]QCA;~~
- ~~(iv) (iii) liaison and consultation with participants in coal supply chains and Supply Chain Groups within the relevant Coal System;~~
- ~~(v) any reports or expert papers submitted by participants in coal supply chains evidencing demand and / or capacity information; and~~
- ~~(vi) (iv) analysis or advice from its relevantly experienced and prudent expert advisors.~~
- (c) An Access Seeker may dispute whether Aurizon Network has acted reasonably in determining the means and information to be used for its Demand Assessment under clause 8.2.3(b) (including any information requested under clause 8.2.3(f)). Unless otherwise settled, disputes notified in accordance with this clause must be referred by Aurizon Network or a disputing party to an expert for determination in accordance with the process in clause 11.1.4. The expert's determination will, subject to clause 11.1.4(d), be binding on all of the Access Seekers the subject of the relevant Demand Assessment and Aurizon Network.
- ~~(d) (e) Subject to clause 8.2.3 (de), 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) (a) above, 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 {20} Business Days of the commencement of the assessment study; or
- (ii) in all other cases, within {20} Business Days of the commencement of the assessment study.
- ~~The QCA and each Access Seeker that was the subject of the Demand Assessment will be provided with a copy of the completed Demand Assessment Report. Any completed report prepared as a result of Aurizon Network's Demand Assessment will be made publically available on both Aurizon Network's and the QCA's websites.~~
- ~~(e) (d) The provided Demand Assessment Report will not identify individual Access Seekers or potential Access Seekers by name or, to the extent practicable, precise origins or destinations for trains utilising the potential Expansion.~~
- ~~(f) (e) In order to carry out a Demand Assessment, Aurizon Network may (where reasonable to do so) (acting reasonably) request the following information from Access Seekers and~~

potential Access Seekers identified by Aurizon Network or voluntary noted as potential users of the potential Expansion .The type of information which can be sought by Aurizon Network includes:

- (i) ~~Status of a Coal Resource; [Note: The purpose of this is uncertain. Is it intended to ask whether the Customer has sufficient reserves to support the Access Application?]~~
 - ~~(ii) ——— status of project development;~~
 - (ii) ~~(iii) status of project development:~~ current project development program;;
 - (iii) ~~(iv) status of mining tenure; and~~
 - (iv) ~~(v) status of out-loading capacity assets or rights.~~
- (g) ~~(f) Once a Demand Assessment report has been provided published,~~ 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~~ publication of the completed Demand Assessment Report ~~report to them.~~
- (h) ~~(g) Unless otherwise settled, disputes notified in accordance with clause 8.2.3 (fg) must be referred by Aurizon Network or a disputing party to an expert for determination in accordance with the process in clause [11.1.4]. The expert (who will, failing agreement, be appointed under [clause 11.1.4(b)(i)(B)] will determine whether the Demand Assessment Report published by Aurizon Network was reasonable and, if not, what Demand Assessment conclusions should apply. Aurizon Network will shall promptly provide to the QCA, and publish on its own website 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 corrected 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 the Expert's support for Aurizon Network's original conclusions.
 - (iii) ~~(h) 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 (gh). 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.~~

[Note: Demand Assessment should be defined by clause 12 as:

Demand Assessment means a reasonable estimation of:

- (a) **the demand for Capacity beyond Existing Capacity and committed Expansions; and**
- (b) **the estimated time that the Capacity referred to in paragraph (a) is required, having diligently and prudently considered relevant information.]**

8.2.4 Participation of Customers

- (a) Without limitation to **clauses 8.40 to 8.60**, if a Customer wishes to fund the cost of:
- (i) a Pre-feasibility Study, as a Pre-feasibility Funder under **clause 8.40**;
 - (ii) a Feasibility Study, as a Feasibility Funder under **clause 8.50**; or
 - (iii) an Expansion, as a User under **clause 8.60**,
- ~~as applicable~~, then the Customer must give a notice to Aurizon Network that it wishes to do so and agrees to be bound by the provisions of this Undertaking in relation to such matters.
- (b) Where Aurizon Network does not receive a notice from a Customer under **clause 8.2.41(a)** in respect of a proposed Pre-feasibility Study, Feasibility Study or Expansion (as applicable), then Aurizon Network may refuse to negotiate agreements in relation to such matters with that Customer or to otherwise treat that Customer as a proposed Pre-feasibility Funder ~~or~~ Feasibility Funder or Funding User.
- (c) Where Aurizon Network considers, acting reasonably and in good faith, that a Customer has materially failed to comply with any provision of this Undertaking relating to the funding of the cost of a Pre-feasibility Study, Feasibility Study or an Expansion (as applicable), then Aurizon Network may, without prejudice to any other rights it may have, do either or both of the following:
- (i) give a written Negotiation Cessation Notice to the Customer or its Access Seeker (as applicable) under **clause 4.11**; and
 - (ii) cease any other relevant negotiations with that Customer in relation to the funding of the cost of the Pre-feasibility Study, Feasibility Study or an Expansion (as applicable) by giving written notice to that Customer.
- (d) Where Aurizon Network ~~conducts~~ is to conduct a Demand Assessment ~~or any process in relation to an Expansion or proposed Expansion it must ensure that~~ it must invite all relevant Customers ~~are invited~~ of which it is aware to participate in the Demand Assessment ~~or process. It is acknowledged that for the purpose of determining the relevant Customers where the Demand Assessment relates to a terminal Expansion, relevant Customers are the relevant participants in the terminal Expansion.~~ process.

8.2.5 Compliance with obligations

Aurizon Network must meet its obligations under this 0 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 on the Website general details of:
 - (i) each Concept Study it is undertaking promptly after commencement of work on the Concept Study; and
 - (ii) the conclusions reached in respect of each Concept Study promptly after its completion.
- (c) Aurizon Network will promptly following completion of a Concept Study, ~~provide relevant Access Seekers with~~ publish on its website, and provide to the QCA for the purpose of publication on the QCA website, comprehensive details of the proposed scope of works, procurement methodology and cost and schedule information, ~~(to a reasonable standard of detail)~~ in respect of the scope. The information must provide sufficient detail to:
 - (i) understand the scope of the Concept Study;
 - (ii) understand the scope of the intended works; and
 - (iii) understand the costs involved and how those costs are calculated so that Access Seekers and potential Access Seekers can identify the risks that they may be exposed to.
- (d) Aurizon Network must fund all Concept Studies.

8.4 Pre-feasibility Studies

~~[Note: there should be a Standard Study Funding Agreement. If necessary it can include optional provisions to be included for Feasibility Studies. The QRC has proposed a suggested form of Standard Study Funding Agreement.]~~

- (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)]~~ **~~[Note: What is a PFS should be defined more prescriptively. It should note that a PFS delivers a specified output to a specified amount of information.]~~** if:
 - ~~one or more of the relevant Access Seekers (determined in accordance with clause 8.4(b) or clause 8.4(d), as applicable), (or, if applicable Conditional Access Holders) or their Customers (if any) offers to enter into a Study Funding Agreement (on the terms of the Standard Study Funding Agreement) with Aurizon Network for those Access Seekers, (Conditional Access Holders or Customers, as applicable), to fund the Pre-feasibility Study.~~
 - (i) subject to clause 8.4(b), one or more of Potential Pre-feasibility Funders agree with Aurizon Network for those Potential Pre-feasibility Funders to fund the Pre-feasibility Study and the relevant Studies Funding Agreements become unconditional;
 - (ii) the Potential Pre-feasibility Funders and Aurizon Network agree that Aurizon Network should fund the Pre-feasibility Study; or

(iii) Aurizon Network chooses, at its discretion, to fund the Pre-feasibility Study itself in circumstances where:

(A) no unconditional Studies Funding Agreement comes into effect as contemplated by **clause 8.4(a)(i)**:

(1) within 40 Business Days after the date of a communication referred to in **clause 8.4(d)(ii)** if no dispute has been commenced under **clause 8.4(i)**; or

(2) where a dispute has been commenced under clause 8.4(i), within 15 Business Days after the expert determination; and

(B) no agreement is reached as contemplated by **clause 8.4(a)(ii)**.

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

(b) 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 elect to continue to undertake and complete the Pre-feasibility Study. Where Aurizon Network elects to do so, it may not pass any of the cost through to Access Holders or Customers except where the work undertaken after the Studies Funding Agreements terminate becomes part of a utilised Expansion.

(c) ~~(b)~~ The Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Pre-feasibility Study under **clause 8.54(a)(i)** for an Expansion, as proposed Pre-feasibility Funders, will be:

(i) where Aurizon Network knows that a Capacity Shortfall exists and the proposed Expansion could create Capacity that would reduce or remove the Capacity Shortfall, Access Seekers with Capacity Shortfall Access Applications to which that Capacity Shortfall relates (or, as applicable, their Customers); and

(ii) those Access Seekers (or, as applicable, their Customers) whom Aurizon Network decides, acting reasonably and in good faith, satisfy all of the following requirements:

(A) The relevant Access Seeker:

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

(2) has at least an Exploration Permit for Coal under the *Mineral Resources Act 1989* (Qld);

~~(3) has a credible program for the development of its mine or mine expansion on a basis that is consistent with its Access Application;~~

~~(4) is diligently developing its mine or mine expansion in accordance with the development program referred to in paragraph ((3)); and~~
[Anglo American Note: neither of these things should be Aurizon Network's concern]

- (5) has the ability to meet the funding obligation under the terms of the relevant Studies Funding Agreement. ~~[Note: Bank guarantees should not be required from Investment Grade companies or where a PCG is provided by an investment grade company.]~~ (Acknowledgement by the Access Seeker that it is willing to provide a bank guarantee as required under the relevant Standard Studies Funding Agreement will be deemed to satisfy this criterion).
- (d) ~~(c)~~ Following a decision under **clause 8.4(b)**, Aurizon Network will advise:
- (i) each Access Seeker (or, as applicable, Customer) who was not selected to fund the Pre-feasibility Study of that fact; and
 - (ii) each Access Seeker (or, as applicable, Customer) who was selected to fund the Pre-feasibility Study of that fact and of the Access Rights for which it has been selected to participate in the funding of the Pre-feasibility Study.
- (e) ~~(d)~~ Any Access Seeker (or, as applicable, Customer) that disagrees with the outcome of Aurizon Network's selection process as communicated to it under **clause 8.4(c)** may, within [10] Business Days of that communication, require Aurizon Network to refer the matter to an expert for dispute resolution in accordance with **clause 11.1.4**. The expert (who will, failing agreement, be appointed under **clause [11.1.4(b)(i)(B)]**) shall either confirm Aurizon Network's original decision or substitute the expert's own decision. The expert's decision will subject to clause 11.1.4(d), be binding on all potential Pre-feasibility Funders (and their Customers) and Aurizon Network as to the issues in dispute.
- (f) ~~(e)~~ Each Access Seeker (or where applicable, Customer) that was given an opportunity to fund the relevant Pre-Feasibility Study will be notified promptly by Aurizon Network if a dispute has been referred to an expert under **clause 8.4(d)**. Each Access Seeker (or, as applicable, its Customer) wishing to make a written submission to the expert on its view as to how the dispute should be resolved will have [10] Business Days from the date of notification to do so. The cost of engaging the expert will be borne by the party or parties determined by the expert.
- (g) ~~(f)~~ Unless otherwise agreed by Aurizon Network and relevant proposed Pre-feasibility Funders, a Studies Funding Agreement for a Pre-feasibility Study will be in the form of the Standard Studies Funding Agreement (Pre-feasibility). For clarity, an Access Seeker (or Customer) given an opportunity to fund a Pre-feasibility Study may require that such funding be provided in accordance with the Standard Studies Funding Agreement (Pre-feasibility).
- (h) ~~(g)~~ Aurizon Network must consult with the relevant proposed Pre-feasibility Funders in relation to the scope of the Pre-feasibility Study and reasonably consider the Pre-feasibility Funders' comments, providing detailed reasons where it rejects a suggestion comments. Aurizon Network will provide the Pre-feasibility Funders with written reasons for its position on the scope of the Pre-feasibility Funder Study.
- (i) ~~(h)~~ If Aurizon Network and the relevant proposed Pre-feasibility Funders do not reach agreement on:
- (i) the scope of the Pre-feasibility Study; or
 - (ii) the completion of schedules in a Studies Funding Agreement in the form of the Standard Studies Funding Agreement (Pre-feasibility),
- within:

- (iii) ~~{20}~~ Business Days of a communication referred to in **clause 8.4(c)(ii)**; or
- (iv) if a decision communicated in accordance with **clause 8.41(ed)** is referred for dispute resolution as contemplated by **clause 8.41(de)**, within ~~{5}~~ Business Days following the expert's decision,

then, any of those persons may, within ~~{10}~~ Business Days after the expiration of the relevant period referred to in **clause 8.41(h)(iii)** or **clause 8.4(h)(iv)**, as applicable, require Aurizon Network to refer the issue of scope and/or the schedules to an expert as a dispute for resolution under **clause 11.1.4**. The expert (who will, failing agreement, be appointed under **[clause 11.1.4(b)(i)(B)]**) shall determine whether the scope and information in the schedules to the Pre-feasibility Funding Agreement proposed by Aurizon Network are reasonable (and therefore appropriate) or if not, the scope and the schedule information to be included.

- ~~(i)~~ ~~(i)~~ The determination of a dispute under **clause 8.4(h1(i))** will, subject to clause 11.1.4(d), be binding on all proposed Pre-feasibility Funders and Aurizon Network. Aurizon Network does not breach this Undertaking in doing anything necessary to comply with that determination.

~~(j) — There is no obligation on Aurizon Network to carry out a Pre-feasibility Study where the proposed Pre-feasibility Funders and Aurizon Network have not reached agreement on the terms of the Studies Funding Agreement by:~~

- ~~(i) — if the decision is not subject of a referral for dispute resolution as contemplated by clause 8.4(d), [30] Business Days after the date of a communication referred to in clause 8.4(c)(ii), or~~
- ~~(ii) — if there has been a referral for expert determination as contemplated by clause 8.4(d), within [15] Business Days after that expert determination; and~~

~~where there has also not been a referral for expert determination as contemplated by clause 8.4(h).~~

- (k) Where **clauses 8.4(de)** or **8.4(h)** applies, **clause 11.1.4** will be applied in respect of a proposed Pre-feasibility Funder who is a Customer as though a reference to:
 - (i) an Access Seeker includes a reference to that Customer; and
 - (ii) a Related Party for a Customer includes the Access Seeker for that Customer.
- (l) 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 8.41(l)(ii)**; and
 - (ii) after those Feasibility SFAs become unconditional, Aurizon Network will, in accordance with each relevant Pre-feasibility SFA, repay or reimburse (as applicable) the funding provided by the Pre-feasibility Funder under that Pre-feasibility SFA.
- (m) 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 **8.41**(l) will not be treated as capital expenditure and will not be included in the Regulatory Asset Base.

- (n) Without limiting any provision of this Undertaking, Aurizon Network is not obliged to construct, fund or permit an Expansion or to undertake a Feasibility Study, merely because Aurizon Network undertakes or funds any Pre-feasibility Study relating to that Expansion.
- (o) Aurizon Network will publish on the Website general details of each multi-user Pre-feasibility Study it is undertaking promptly after commencement of work on the Pre-feasibility Study. The publication will not identify individual Access Seekers by name, or precise details of origins and destinations (to the extent possible), or any other confidential information.

8.5 Target Capacity for Feasibility Studies

- (a) Where Aurizon Network:
 - (i) has completed a Pre-feasibility Study in respect of a potential Expansion; and
 - (ii) is proposing that a Feasibility Study should be commenced, prior to applying the provisions in **clause 8.6**, Aurizon Network will notify all relevant Access Seekers that it is proposing that a Feasibility Study should be commenced and the targeted amount of Capacity for the potential Expansion (**Target Capacity**).
- (b) Aurizon Network must provide detailed information in order for Access Seekers and potential Access Seekers to be able to determine whether the calculation of Target Capacity is correct. Information provided by Aurizon Network might include (but is not limited to):
 - (i) expert reports obtained as part of the Pre-feasibility Study;
 - (ii) Aurizon Network's own calculations of network or system capacity; or
 - (iii) data showing the number of Access Seekers or potential Access Seekers requesting the Concept or Pre-feasibility Studies.
- (c) An Access Seeker may, within 10 Business Days after being given a notice under **clause 8.5** or receiving satisfactory information under **clause 8.5(b)** (whichever is later), dispute the Target Capacity for the proposed Feasibility Study by referring the matter to an expert for dispute resolution in accordance with **clause 11.1.4**. The expert must either confirm the Target Capacity or determine the appropriate Target Capacity, unless Aurizon Network has not provided the expert with enough information to make a finding one way or the other. In that instance, Aurizon Network is required to provide the expert with any requested information, although Aurizon Network may insist on the information provided being confidential to the expert. The expert's determination will, subject to **clause 11.1.4(d)**, be binding on all Access Seekers notified under **clause 8.5(a)** and Aurizon Network as to the Target Capacity.
- (d) Aurizon Network will not seek to commence a Feasibility Study until:
 - (i) the period under **clause 8.5(cb)** for referring the Target Capacity to an expert has expired; or
 - (ii) if the Target Capacity has been referred to an expert under **clause 8.5(cb)**, the expert either confirms the Target Capacity or determines the appropriate Target Capacity.

8.6 Feasibility Studies

- (a) Subject to first complying with clause 8.5, following a Pre-Feasibility Study, Aurizon Network must promptly undertake and complete the detailed scoping, design and definition of the preferred scheme selected in the relevant Pre-feasibility Study for that Expansion, including planning and preparation for procurement and construction, (**Feasibility Study**) if ~~[Note: A more detailed description of what a FS is is required. A FS should deliver a specified output to a specified level of detail.];~~
- ~~one or more of the relevant Access Seekers (determined in accordance with **clause 8.5(b)** or **clause 8.5(d)**, as applicable), (or their Customers, if any) offers to enter into a Study Funding Agreement (on the terms of the Standard Study Funding Agreement)~~
- (i) subject to **clause 8.6(b)**, one or more of the Potential Feasibility Funders agree with Aurizon Network to fund the Feasibility Study: **and the relevant Studies Funding Agreements become unconditional**;
- (ii) the relevant Potential Feasibility Funders and Aurizon Network agree that Aurizon Network should fund the Feasibility Study; or
- (iii) Aurizon Network chooses, at its discretion, to fund the Feasibility Study itself in circumstances where:
- (A) no unconditional Studies Funding Agreement comes into effect as contemplated by **clause 8.6(a)(i)**;
- (1) within 40 Business Days after the date of a communication referred to in **clause 8.6(f)(ii)** if no dispute has been commenced under **clause 8.6(g)**; or
- (2) where a dispute has been commenced under **clause 8.6(g)**, within 15 Business Days after the expert determination; and
- (B) no agreement is reached as contemplated by **clause 8.6(a)(ii)**.
- (b) If all of the relevant Studies Funding Agreement for a Feasibility Study terminate prior to completion of the Feasibility Study, then Aurizon Network may elect to continue to undertake and complete the Feasibility Study. Where Aurizon Network elects to do so, it may not pass any of the cost through to Access Holders or Customers except where the work undertaken after the Studies Funding Agreements terminate becomes part of a utilised Expansion.
- (c) ~~(b)~~ Subject to **clause 8.6(d)**, the Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Feasibility Study under **clause 8.56(a)(i)** 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) ~~(provided that those Access Seekers have funded the Pre-feasibility Study); and;~~
- (A) other than any of them Access Seeker who (or whose Customer) was ~~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; unless and
- (B) that Access Seeker (or its Customer) did not have a Capacity Shortfall Access Application lodged at the time that Pre-feasibility Funder status was offered; or

- (C) where that Access Seeker (or its Customer) agree to fund the relevant portion of the Pre-feasibility Study in arrears by reimbursing costs to either Aurizon Network or the Pre-feasibility Funders where appropriate;
- (ii) secondly, subject to clause 8.6(e), those Access Seekers (or, as applicable, their Customers) ~~whom Aurizon Network decides, (acting reasonably) who~~ satisfy all of the following requirements: ~~Subject to clause 8.5(b)(iii), whether the relevant, namely an Access Seeker who:~~
- (A) ~~(1) is~~ participating in a process for the acquisition of out-loading capacity (such as an expression of interest process or study funding process in relation to a coal export terminal or a domestic power station or similar out-loading facility) or who Aurizon Network considers (acting reasonably and in good faith) 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) ~~(2)~~ has at least a Mineral Development Licence under the *Mineral Resources Act 1989* (Qld);
- ~~(C)~~ ~~(3) has a credible program for the development of its mine or mine expansion on a basis that is consistent with its Access Application;~~
- ~~(D)~~ ~~(4) is diligently developing its mine or mine expansion in accordance with the development program referred to in paragraph (3);~~
- (E) ~~(5)~~ has Marketable Coal Reserves (as defined by the JORC Code ~~[definition to be included]~~) equal to at least 10 times the annual capacity for which Access is required (as determined by reference to the Access Seeker's Access Application), following ramp up; and
- (F) ~~(6)~~ where applicable, has the ability to meet the funding obligation under the terms of the proposed Studies Funding Agreement. ~~[Note: See note above]~~ (Acknowledgement by the Access Seeker that it is willing to provide a bank guarantee under the relevant Standard Studies Funding Agreement will be deemed to satisfy this criterion).
- (d) For the purposes of clause 8.6(c):
- (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 8.6(d)(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 8.6(d)(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:
 - (A) subject to **clause 8.6(d)(iii)(B)**, the Customer does not give Aurizon Network a Customer Nomination or an Access Seeker Nomination under **clause 8.6(d)(i)(B)**, only the Access Seeker for the Customer can be eligible for an opportunity to fund the relevant Feasibility Study (and not the Customer); or
 - (B) the Customer does not give Aurizon Network a Customer Nomination or an Access Seeker Nomination under **clause 8.6(d)(i)(B)** and there are two or more Access Seekers for the Customer who are seeking the same Access Rights, neither the Customer nor any of those Access Seekers can be eligible for an opportunity to fund the relevant Feasibility Study.

(e) ~~Notwithstanding satisfaction of the requirements in **clause 8.5(b)(ii)**, if it is not possible for sufficient Capacity to be created by the proposed Expansion~~ If the Target Capacity for the Feasibility Study is such that the Feasibility Study is for an Expansion that is expected to create insufficient Capacity for all the relevant Access Seekers, that satisfy the requirements under **clause 8.6(c)(ii)**, then Aurizon Network will decide (acting reasonably), as between those particular Access Seekers (or, as applicable, their Customers) which will be given an opportunity to fund the Feasibility Study by Aurizon Network priority will be given to Access Seekers or Customers having regard to the following criteria (in order of priority):

- ~~(iii)~~ ~~those Access Seekers who meet the requirements set out in clause 8.5(b)(ii) to a greater extent than other Access Seekers;~~
- (i) ~~(iv)~~ the Access Seekers who funded the Pre-feasibility Study;
- (ii) ~~(v)~~ maximisation of the allocation of capacity; (without discriminating against mines because of long-haul or short-haul status); and
- (iii) ~~(vi)~~ those Access Seekers who meet the requirements set out in **clause 8.5(c)(ii)** to a greater extent than other Access Seekers.
- ~~(iv)~~ ~~(vi)~~ ~~maximisation of the duration of the expected Access having regard to:~~
 - ~~(A)~~ ~~(1) the ratio of coal reserves to the Access capacity sought; and~~
 - ~~(B)~~ ~~(2) the likelihood of continuing to extract such coal reserves over time.~~

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

- (f) ~~(e)~~ Following a decision under **clause 8.5(b)(ii)**, Aurizon Network will ~~advise~~ notify:
 - (i) each Access Seeker (or, as applicable, Customer) who was not selected to fund the Feasibility Study of that fact; and

- (ii) each Access Seeker (or, as applicable, Customer) who was selected to fund the Feasibility Study:
 - (A) of that fact;
 - (B) ~~(ii) each Access Seeker (or, as applicable, Customer) who was selected to fund the Feasibility Study of that fact and~~ of the Access Rights for which the Access Seeker has been selected to participate in the funding of the Feasibility Study; and
 - (C) the date by which Aurizon Network anticipates that an Access Agreement, Commercial Terms or a User Funding Agreement, as applicable, in respect of the funding and construction of the Expansion the subject of the Feasibility Study would become unconditional
- (g) ~~(e)~~ 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 8.56(e)** may, within {10} Business Days of that communication require Aurizon Network to refer the matter to an expert for dispute resolution in accordance with **clause 11.1.4**. The expert, (who will, failing agreement, be appointed under **clause 11.1.4(b)(i)(B)**), shall either confirm Aurizon Network's original decision or substitute the expert's own decision. The expert's decision will subject to clause 11.1.4(d), be binding on all potential Feasibility Funders (and their Customers) and Aurizon Network as to the issues in dispute.
- (h) ~~(e)~~ Each Access Seeker (or where applicable, Customer) that was given an opportunity to fund the relevant Feasibility Study will be notified promptly by Aurizon Network if a dispute has been referred to an expert under **clause 8.56(d)** and will, if the Access Seeker (or, as applicable, its Customer) wishes to do so, has {10} Business Days from the date of notification to make a written submission to the expert on its view as to how the dispute should be resolved. The cost of engaging the expert will be ~~shared equally by Aurizon Network, the party disputing the funding selection process and the parties who elected to make a written submission to the expert.~~ borne by the party or parties determined by the expert.
- (i) ~~(f)~~ Aurizon Network will provide details to each relevant Access Seeker of Aurizon Network's assessment of that Access Seeker's case against the requirements and criteria in **clause 8.56(bc)(ii)**.
- (i) ~~(g)~~ Subject to clause 8.4(l)(i), unless otherwise agreed by Aurizon Network and the relevant proposed Feasibility Funder a Studies Funding Agreement for a Feasibility Study will be in the form of the Standard Studies Funding Agreement. ~~Each (Feasibility). For clarity, an~~ Access Seeker (or Customer) ~~that was given the an~~ opportunity to fund a Pre- feasibility Study may require that such funding be provided in accordance with the Standard Studies Funding Agreement (Feasibility).
- (k) ~~(h)~~ Aurizon Network must consult with the relevant proposed Feasibility Funders in relation to the scope of ~~work the subject of~~ the Feasibility Study and reasonably consider the Feasibility Funders' comments, providing Aurizon Network will provide the Feasibility Funders with detailed written reasons where it rejects a suggestion of a for its position on the scope of the Feasibility Funder. Study.
- (l) ~~(i)~~ If Aurizon Network and the relevant proposed Feasibility Funders do not reach agreement on:
 - (i) the scope of the Feasibility Study; or

- (ii) the completion of schedules in the Studies Funding Agreements in the form of the Standard Studies Funding Agreement (Feasibility),

within:

- (iii) ~~[30]~~ 20 Business Days of the communication referred to in **clause 8.56(cf)(ii)**; or
- (iv) if the decision communicated in accordance with **clause 8.56(cf)** is referred for dispute resolution as contemplated by **clause 8.56(dg)**, within ~~[5]~~ Business Days following the expert's decision,

then, any of those persons may, within ~~[10]~~ Business Days after the expiration of the relevant period referred to in **clause 8.56(i)(iii)** or **clause 8.56(i)(iv)**, as applicable, require Aurizon Network to refer the matter to an expert as a dispute for resolution under **clause 11.1.4**. The expert, (who will, failing agreement, be appointed under **clause 11.1.4(b)(i)(B)**), shall determine whether the scope and information in the schedules to the Feasibility Funding Agreement proposed by Aurizon Network are reasonable (and therefore appropriate) or if not, the scope and the schedule information to be included.

(m) ~~(j)~~ The determination of a dispute under **clause 8.56(i)(i)** will, subject to clause 11.1.4(d), be binding on all proposed Feasibility Funders and Aurizon Network, ~~including if that determination results in a proposed Feasibility Funder ceasing to be a proposed Feasibility Funder.~~ Aurizon Network does not breach this Undertaking in doing anything necessary to comply with that determination.

~~(k) — There is no obligation on Aurizon Network to carry out a Feasibility Study where the proposed Feasibility Funders and Aurizon Network have not reached agreement on the terms of the Studies Funding Agreement by:~~

~~(i) — if the decision is not subject of a referral for dispute resolution as contemplated by **clause 8.5(d)**, ~~[50]~~ Business Days after the date of the communication referred to in **clause 8.5(c)**; or~~

~~(ii) — if there has been a referral for expert determination as contemplated by **clause 8.5(d)**, within ~~[15]~~ Business Days after that expert determination; and~~

~~where there has also not been a referral for expert determination as contemplated by **clause 8.5(i)**;~~

(n) ~~(h)~~ Where **clauses 8.56(dg)** or **8.56(i)** apply, **clause 11.1.4** will be applied in respect of a Customer who is a party to the dispute as though a reference to:

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

(o) ~~(m)~~ 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 **8.56(np)** and **(eq)**, grant that Access Seeker a provisional allocation of the capacity detailed in the Train Service Description included in the Studies Funding Agreement (Provisional Capacity Allocation).

For clarity, where Aurizon Network is funding a Feasibility Study, Aurizon Network will issue an IAP or a revised IAP (as applicable) to any relevant Access Seekers.

~~(p)~~ ~~(n)~~ 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 8.56(mo)(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(bc)(i)**.

~~(q)~~ ~~(e)~~ Subject to clause 8.6(r), all or part of a Provisional Capacity Allocation may be withdrawn by Aurizon Network acting reasonably and in good faith, where:

- (i) the relevant Access Seeker's circumstances change in a substantial way so that the Access Seeker ceases to satisfy all of the requirements in **clause 8.5(bc)(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 an any default or negligent act or omission of Aurizon Network) the relevant mine or out-loading facility (including an expansion of a mine or out-loading facility) will be delayed by 12 months or more as compared to the timeframe that was proposed when Aurizon Network made the original assessment;
- (iii) Aurizon Network exercising a right to lawfully terminate the Studies Funding Agreement with relevant Feasibility Funder for the Feasibility Study due to a breach by the relevant Feasibility Funder; or
- (iv) Aurizon Network and the relevant Access Seeker (or, as applicable, its Customer) do not execute an Access Agreement or an agreement in relation to the funding and/or construction of the Expansion within ~~insert~~ six months (or such longer period as agreed by Aurizon Network) after the Feasibility Study is completed (provided that to the extent that the Access Seeker, or its Customer, is a party to a dispute under **clause 8.69.32** then the time from when that dispute is notified for the purpose of **clause 11.1.4** to the determination of that dispute by the expert is excluded from that period). ~~[Note: The appropriate time for this paragraph depends on the expansion obligation, whether User Funding applies or where there is a dispute in the negotiation of the Access Agreement.]~~

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

~~(r)~~ ~~(p)~~ If Aurizon Network intends exercising its rights under **clause 8.56(eg)** 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 ~~under clause 8.5(e) in the way proposed~~. If having considered any explanation provided by the Access Seeker Aurizon Network (acting reasonably and in good faith) withdraws all or part of the Provisional Capacity Allocation it must give the relevant Access Seeker written notice, including reasons for its decision.

~~(s)~~ ~~(e)~~ An affected Feasibility Funder may within 10 Business Days of receiving notice of Aurizon Network's decision to withdraw Provisional Capacity Allocation under **clause 118.56(pg)** refer the matter to an expert as a dispute for resolution under **clause [11.1.4]**. The expert will determine whether Aurizon Network has acted reasonably and in good faith in deciding to withdraw the Provisional Capacity Allocation ~~should be withdrawn or not~~.

The expert's determination will, subject to clause 11.1.4(d), be binding on the parties to the dispute.

(t) Subject to the terms of the relevant Studies Funding Agreements, where a Provisional Capacity Allocation is withdrawn under clause 8.6(q), Aurizon Network will use reasonable best endeavours to seek a replacement Access Seeker (or, as applicable, Customer) (Replacement) for all or some of that Capacity who:

(i) will be selected using the criteria set out in clause 8.6(c) and subject to clause 8.6(e); and

(ii) is willing to enter into a Studies Funding Agreement as a Feasibility Funder for the relevant Feasibility Study on substantially the same terms as the Feasibility Funder being replaced (except for necessary amendments due to changes in timing, cost or scope as considered below),

subject to that Replacement and the other relevant Feasibility Funders agreeing with Aurizon Network any relevant essential amendments relating to scope, timing and cost of the Feasibility Study in respect of the Studies Funding Agreement for that Feasibility Study. Aurizon Network must provide detailed evidence showing why the requested amendments are required, and where any Feasibility Funder or Replacement disagrees with Aurizon Network's analysis, they may refer it to expert determination under Part 11 of this Undertaking.

(u) For clarity, if a proposed replacement Feasibility Funder enters into a Studies Funding Agreement in respect of the relevant Feasibility Study, then clauses 8.6(o) to (s) apply to that replacement Feasibility Funder.

(v) ~~(r)~~ 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.

(w) ~~(s)~~ 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 8.6(w)(ii); and

(ii) ~~(t)~~ where:

(A) ~~(1)~~ the agreements with Access Seekers (or their Customers) for the funding and construction of that Expansion or the Access Agreement for utilisation of that Expansion have been executed and have become unconditional; and

(B) ~~(2)~~ a Feasibility Funder is a party to those agreements and will use Access Rights granted as a result of the Capacity to be created by that Expansion; or

(C) ~~(ii)~~ where the funding is included in the Regulatory Asset Base,

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.

- (x) ~~(t)~~ 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 8.56** ~~(sw)~~ will not be treated as capital expenditure and will not be included in the Regulatory Asset Base.
- (y) ~~(u)~~ 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.
- (z) ~~(v)~~ Aurizon Network will publish on the Website general details of each Feasibility Study it is undertaking promptly after commencement of work on the Feasibility Study. The publication will not identify individual Access Seekers by name or, to the extent possible, precise details of origins and destinations.
- (aa) ~~(w)~~ Aurizon Network agrees that in making a Provisional Capacity Allocation, negotiating an Access Agreement or entering into an Access Agreement it must not discriminate between a proposed User Funded Expansion and an Expansion to be funded by Aurizon Network.

~~8.6~~ Funding of Studies

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

8.7 Failure to enter into agreements

- (a) ~~Aurizon Network; or~~ If a proposed Pre-feasibility Funder or Feasibility Funder considers that Aurizon Network has failed to enter, or unreasonably delayed entering, into a Studies Funding Agreement in accordance with this Undertaking, then the proposed Pre-feasibility Funder or Feasibility Funder (as applicable) may refer the matter to an expert for dispute resolution in accordance with clause 11.1.4. The expert's decision will, subject to clause 11.1.4(d), be binding on all proposed Pre-feasibility Funders or Feasibility Funders (and their Customers), as applicable, for the relevant Expansion and Aurizon Network as to the issues in dispute.
- (b) ~~a Train Operator, other than where on behalf of a specifically identified Customer. If the expert determines that Aurizon Network has failed to enter, or unreasonably delayed entering, into a Studies Funding Agreement in accordance with this Undertaking, then Aurizon Network must enter into that Studies Funding Agreement within 10 Business Days.~~
- (c) If the expert determines that Aurizon Network has unreasonably delayed entering into a Studies Funding Agreement in accordance with this Undertaking, then Aurizon Network must enter into that Studies Funding Agreement within 10 Business Days and the expert shall determine any cost or scope detriment caused by Aurizon Network's unreasonable delay. Aurizon Network will be liable to fund the Studies Funding Agreement to the extent of the cost or scope detriment and will not be entitled to reimbursement for that cost or to roll that cost into the Regulated Asset Base.

~~8.7~~ **8.8** Step-in where Aurizon Network fails to enter into Study Funding Agreement or delays doing so

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

- (with the approval of all relevant Access Seekers and Customers) determine that the relevant study be undertaken by a nominee of all relevant Customers.
- (b) If an expert determines that the relevant study is to be undertaken by the nominee of all relevant Customers:
- (i) Aurizon Network must comply with that determination;
 - (ii) Aurizon Network must provide the nominee with all information reasonably required by the nominee to undertake the applicable study (provided however that the nominee must only use such information in connection with the performance of the study); and
 - (iii) Aurizon Network must use the relevant study output for the purposes for which it was provided as if that study had been prepared by Aurizon Network.

~~8.8~~ 8.9 Funding an Expansion – general

- (a) Subject to this **clause 8.69 and 8.10**, 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 either:
- (i) is not obliged ~~by~~under this Undertaking to do so; and
 - (ii) ~~either~~ is not willing to do so (as notified or deemed notified under **clause 8.89(bd)**); or
 - (iii) is only willing to do so subject to Commercial Terms that are unacceptable to the Access Seeker.
- ~~(b) Aurizon Network is not obliged to construct or permit an Expansion that is not fully funded.~~
- ~~(c) (b)~~ Aurizon Network will notify where an Expansion is subject to a Feasibility Study that:
- ~~(i)~~ has been funded under Studies Funding Agreements, the Feasibility Funders within 60 20 Business Days after those Studies Funding Agreements become unconditional; or
 - ~~(ii)~~ has not been funded under Studies Funding Agreements, all relevant Access Seekers within 40 20 Business Days of the agreement under clause 8.6(a)(ii) being reached or the choice in clause 8.6(a)(iii) being made, as applicable,
- of whether:
- ~~(iii)~~ (i) Aurizon Network is not may be willing to fund the Expansion; or
 - ~~(ii)~~ is willing to fund the Expansion without Commercial Terms; or
 - ~~(iv)~~ (iii) whether Aurizon Network requires Commercial Terms to be agreed in relation to the funding of the Expansion (and if so detailing those, if so, the details of the conditions that will comprise all the required Commercial Terms).
- ~~(d) (e)~~ If Aurizon Network has not given a notice under **clause 8.89(bd)**, then (for the purpose of Access Seekers commencing the processes under **clause 8.910.1(a)**) Aurizon Network is taken to not be willing to fund the Expansion.
- ~~(e) (d)~~ If Aurizon Network has given a notice under **clause 8.89(bd)** and the relevant Access Seeker is willing to negotiate, then Aurizon Network and the relevant Access Seeker will negotiate in good faith the proposed Commercial Terms (if any) on which Aurizon Network will be willing to fund the Expansion.

- (f) ~~(e)~~ Where Aurizon Network has given a notice under **clause 8.89(bd)(iiiiv)** 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) ~~(f)~~ **Clause 8.89(bd)** 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 8.6.19(fh)** 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) ~~(g)~~ Where Aurizon Network is obliged by under this Undertaking to fund an Expansion, Aurizon Network must negotiate an Access Agreement in accordance with ~~insert~~ this undertaking with those Access Seekers that will utilise the Expansion any Access Seekers that notify Aurizon Network of their intention to use the Expansion.
- (i) Where Aurizon Network is negotiating under clause 8.9(i) and the Expansion was previously subject to Studies Funding Agreements, Aurizon Network must negotiation with Pre-Feasibility Study Funders and Feasibility Study Funders before any new Access Seekers.
- (j) ~~(h)~~ It is acknowledged that an Expansion may be funded partly by Funding Users and partly by Aurizon Network.
- (k) Where an Expansion is not fully funded and is not required under either clause 8.2.1(b) or 8.2.1(c)(i) of this Undertaking, Aurizon Network will be obliged to construct and partially fund the Expansion where the gap in funding is less than \$300 million.
- (l) Where Aurizon Network is:
- (i) granting a Provisional Capacity Allocation under clause 8.6(o); 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~~ **8.10 User Funded Expansions**

~~8.9.1~~ **8.10.1 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) ~~the each~~ proposed Funding Users must ~~each~~ give written notice to Aurizon Network of ~~their~~ 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 notices, Aurizon Network and the proposed Funding Users will negotiate in good faith and in accordance with the principles outlined in this Undertaking a User Funding Agreement;
 - (iii) upon the User Funding Agreement being ~~reached or upon determination~~ agreed by Aurizon Network and the Funding Users, or its terms being determined through dispute resolution ~~as to the terms of the User Funding Agreement, 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 98.10.1(a)(iii)** applies, Aurizon Network will use **reasonable best** endeavours to procure the State to enter into a User Funding Agreement.

~~8.9.2~~ **8.10.2** 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 ~~an expert~~ **the QCA** for ~~dispute resolution~~ **determination** under **clause 11.4.1. 5**.
- (b) The determination of a dispute under **clause 8.910.2(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 8.910.2(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~~ **8.10.3** Operation of a User Funded Expansion and Capital Indicator allocation

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

~~8.9.4~~ **8.10.4** Capacity Shortfalls for User Funded Expansions

- (a) Without limiting **clauses 8.4(bc)(i)** and **8.56(bc)(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~~ **8.10.5** Inconsistency with a User Funding Agreement

- (a) To the extent of any inconsistency, the terms **of this Undertaking prevail over 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~~ **8.10.6** Regulatory pre-approval of scope

~~Promptly after a written request from a Funding User, Aurizon Network must seek approval from the QCA for the scope and standard of work the subject of the Expansion, 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.~~

Promptly after a written request from a Funding User, Aurizon Network must seek approval from the QCA for the scope and standard of work for the relevant Expansion.

~~8.9.7~~ **8.10.7** Obligation to seek inclusion of Expansion cost in Regulated Asset Base

(a) The Regulated Asset Base ~~will~~ may include User Funded Expansions, notwithstanding that the cost of such Expansions are not paid for by Aurizon Network.

(b) Subject to ~~clause 8.910.7(c)~~ as soon as is reasonably practicable, Aurizon Network will apply to the QCA to have all of the costs of a User Funded Expansion included in the Regulatory Asset Base.

(c) The QCA will only approve rolling the cost of a User Funded Expansion into the Regulated Asset Base in situations where all Users receive either:

(i) a direct benefit from the Expansion (eg, improved scheduling, system capacity or throughput); or

(ii) rolling the cost of the User Funded Expansion into the Regulated Asset Base decreases the Reference Tariff paid.

In all other instances the QCA must not approve the rolling of the cost of a User Funded Expansion into the Regulated Asset Base.

[Note from Aurizon Network: Aurizon Network's obligations in relation to seeking to have the capital expenditure for a User Funded Expansion included in the Regulatory Asset Base is set out in the SUFA.]

[Anglo American Note: it is inappropriate to remove this provision from the Undertaking. In situations where users elect not to be involved in a SUFA, they may have no ability to control the socialisation of costs which they have not supported but which Aurizon Network and SUFA Users have agreed should be rolled into the RAB. As such, the power to socialise the costs of a SUFA should remain with the QCA and be open to public submission.]

~~(d)~~ (e) Prior to making an application under ~~clause 8.910.7(b)~~ or making any other submission or communication in relation to the inclusion of the costs of a User Funded Expansion into the Regulatory Asset Base, Aurizon must:

(i) consult with the Funding Users; and

(ii) include any comments or changes reasonably requested by the Funding Users in any application, submission or correspondence to or with the QCA.

~~(e)~~ (d) Aurizon Network will pass on to the Funding Users any material information (including correspondence) in relation to the QCA's assessment of the costs of a User Funded Expansion.

~~8.9.8~~ **8.10.8** Tax rulings

[Note: Please refer to separate Tax Ruling provisions]

~~8.9.9~~ **8.10.9** Review of Standard User Funding Agreement the SUFA

- (a) Promptly after executing ~~SUFA documents for~~ the first User ~~Funded Expansion~~Funding Agreement in the form of the SUFA, Aurizon Network will:
- (i) ~~(a)-~~review the ~~Standard User Funding Agreement~~ SUFA (including having regard to the principles contained in: SUFA principles ~~underlying SUFA~~ should be set out in the Undertaking]; and
 - (ii) ~~(b)-~~consult with the Funding Users and Access Seekers about ~~its~~the workability of the SUFA for User Funding,
- and through a submission to the QCA;
- (iii) ~~(c)-~~propose that amendments be made to the Standard User Funding Agreement – giving reasons for those amendments; or
 - (iv) ~~(d)-~~propose that no amendments are necessary ~~–~~ giving and provide published written reasons for its belief.
- (b) The QCA will consider Aurizon Network’s submission and either approve or reject Aurizon Network’s submission. If the QCA:
- (i) ~~The QCA will consider Aurizon Network’s submission and either approve or not approve Aurizon Network’s submission. If the QCA~~ does not approve Aurizon Network’s submission, it must re-submit its submission (including any amendments to the Standard User Funding Agreement SUFA) as is necessary to comply with the QCA’s decision;
 - (ii) does approve Aurizon Network’s submission, it shall have the effect of a draft amending access undertaking under the Act.
- and, after doing so, 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.

~~8.10~~ 8.11 Contracting for Capacity

~~8.10.1~~ 8.11.1 Access Agreements conditional on an Expansion or Customer Specific Branch Line

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

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

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

¹ Agreement on the scope of work for a User Funded Expansion is determined under **clause 0**.

[Note from Aurizon Network: The Standard Access Agreements (SAAs) already includes provision for the inclusion of a description of an Expansion that is a condition precedent to Train Services commencing. Under the SAAs that description is part of the access agreement and currently can only be amended by agreement.]

[Anglo American Note: it is not appropriate for this provision to be left to the SAA which might be subsequently renegotiated. As such, it is important to leave this provision in the body of the Undertaking.]

~~8.10.2~~ 8.11.2 No amendment of scope of work

- (a) Aurizon Network may not amend the agreed or determined scope of work for an Expansion (other than a User Funded Expansion²) or Customer Specific Branch Line referred to in clause ~~8.10.1~~, other than with the written agreement of the relevant Conditional Access Holders or as determined under clause ~~8.10.1~~.1(b).
- (b) If Aurizon Network and Conditional Access Holders cannot reach agreement on an amendment to a scope of work referred to in clause ~~8.10.2~~1(a), either party may refer the matter to an expert for dispute resolution in accordance with clause 11.4.1.
- (c) The decision of an expert referred to in clause ~~8.10.2~~1(b) is binding on all relevant Conditional Access Holders and Aurizon Network.
- (d) It is acknowledged that a Conditional Access Holder must not withhold its approval to an amendment to the scope of work to the extent that that amendment is necessary to address a latent condition, change in law or force majeure event.

~~8.10.3~~ 8.11.3 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~~1(b), undertake an assessment of the change in Capacity arising as a result of that Expansion (Capacity Change) after the Expansion is commissioned by calculating the Capacity Change as:
 - (i) the Existing Capacity at the time; less
 - (ii) the Existing Capacity of the system in the absence of the Expansion,using consistent System Operating Assumptions. Aurizon Network must ~~provide~~notify all ~~of the relevant~~ Conditional Access Holders with results (and comprehensive reasons) of an assessment undertaken under this clause ~~8.10~~ of the conclusions of that assessment and the basis for those conclusions.~~3~~.
- (b) Aurizon Network may by written notice to all relevant Conditional Access Holders defer an assessment for the purposes of clause ~~8.10.3~~1(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 ~~may refer~~disputes an assessment by Aurizon Network under ~~clause 8.10.3(a)2(a), the Conditional Access Holder may refer that dispute~~ to an expert ~~as a dispute~~ 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

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

the expert. The decision of the expert will be binding on the parties except as under clause 11.1.4(d).

- (d) If Aurizon Network's assessment under clause ~~8.10.3~~1(a) indicates that there is a [Capacity Shortfall] ~~[Note: The definition of Capacity Shortfall needs to be refined and made more simple]~~ 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~~1(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) — Aurizon Network is only obliged to comply with this clause 8.11 to the extent that such compliance:~~
- ~~(i) — is consistent with Aurizon Network's commercial objectives; and~~
 - ~~(ii) — does not (and Aurizon Network is not compelled to do anything that would) inhibit, restrict, fetter or adversely affect Aurizon Network's ability:~~
 - ~~(A) — to exercise any discretion, power, function or right; or~~
 - ~~(B) — to comply with any obligation or to do anything, in accordance with this Undertaking or an Access Agreement.~~
- ~~(g) Aurizon Network is only obliged to comply with this clause 8.11 to the extent that such compliance does not prevent Aurizon Network from complying with an obligation expressly provided for in this Undertaking.~~
- ~~(h) (f) Subject to any agreement with the relevant Conditional Access Holders, where an Expansion (**Shortfall Expansion**) is required as a result of a Capacity Shortfall arising in respect of an earlier Expansion (**Earlier Expansion**) and that Shortfall Expansion is technically and economically feasible:~~
- ~~(i) (subject to paragraph (X)) if the Earlier Expansion:~~
 - ~~(A) (i) (subject to paragraph (iv)) if the Earlier Expansion was funded by Aurizon Network, Aurizon Network will fundbear the cost of the Shortfall Expansion;~~
 - ~~(B) (ii) (subject to paragraph (iv)) if the Earlier Expansion was partly funded by Aurizon Network:~~

(1) ~~(A)~~ Aurizon Network will fundbear 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) ~~(B)~~ the Conditional Access Holder(s) who (or whose Customers) provided funding in respect of the Earlier Expansion will fundbear 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 SUFA Use Funding Agreements on the same terms); or

(C) ~~(iii) (subject to paragraph (iv)) if the Earlier Expansion~~ 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

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

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

~~**[Note: the fact that Aurizon Network bears little risk in the delivery of Expansions means that it is crucial that Users have meaningful input into studies and the scope of studies.]**~~

~~8.11~~ 8.12 Coal supply chain coordination

~~8.11.1~~ 8.12.1 Supply chain coordination

Aurizon Network will ~~use reasonable endeavours~~:

- (a) ~~to~~ participate in a Supply Chain Group in relation to:
 - (i) the coordination and effective performance of a relevant coal supply chain; and
 - (ii) if applicable, the development of a Supply Chain Master Plan;
- (b) ~~to~~ participate in discussions with other service providers and participants in the coal supply chain, on request, with a view to the coordination of maintenance activities in the relevant supply chain; and
- (c) maximise (in order of priority):
 - (i) delivery of contracted capacity under Access Agreements; and
 - (ii) throughput in [each] supply chain.

~~8.11.2~~ 8.12.2 System Operating Assumptions

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

- (a) In reviewing the System Operating Assumptions for a Coal System, Aurizon Network will:
 - (i) notify the QCA, all relevant Access Holders and their Customers, (being those Access Holders and Customers with Access Agreements, Conditional Access Agreements or Access Applications for the relevant Coal System) and the applicable Supply Chain Group (if any) of the relevant System Operating Assumptions and the time in which to make submissions;
 - (ii) consider any submissions from Access Holders or their Customers and from the Supply Chain Group in respect of the proposed System Operating Assumptions or

whether any variation of the System Operating Assumptions is required (as applicable); and

- (iii) respond to any such submissions ~~as soon as reasonably practicable~~ within 10 Business Days including whether and, if so, how Aurizon Network has varied the proposed or existing System Operating Assumptions (as applicable) in response to those submissions.
- (b) Without limitation to **clause 8.11.2(a)**, Aurizon Network will review the System Operating Assumptions for a Coal System as soon as practical after Aurizon Network becomes aware that any permanent change has occurred, or will occur, to that Coal System that materially adversely affects the System Operating Assumptions.
- (c) Aurizon Network will automatically review the System Operating Assumptions in the event of:
 - (i) the connection of a new coal basin or port terminal;
 - (ii) the completion of a major Expansion;
 - (iii) a 30% increase in system capacity; or
 - (iv) where requested by 60% of Access Holders on the relevant system.
- (d) ~~(e)~~ Aurizon Network will keep its most current System Operating Assumptions available on the Website (including with the redaction of any information that is confidential or which, if so published, would give rise to a breach by Aurizon Network of a confidentiality obligation).
- (e) ~~(e)~~ Any amendment or change to the System Operating Assumptions must be approved by the QCA.
- (f) ~~(e)~~ The System Operating Assumptions as at the Approval Date are set out in *[insert]*.

~~8.11.3~~ **8.12.3 Capacity review**

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

- (a) Aurizon Network may undertake an assessment of Capacity for a Coal System in conjunction with the development or review of the Network Development Plan. Aurizon Network must assess the Capacity of each Coal System not less than once each year.
- (b) Aurizon Network will undertake a Capacity review for a Coal System if the System Operating Assumptions are varied as a result of a review under **clause 8.11.2(b) or 8.12.2(c)** or are otherwise varied in a way that materially decreases the Existing Capacity in that Coal System.
- (c) 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.
- (d) Where Aurizon Network undertakes an assessment of Capacity of a Coal System, it must consult with:
 - (i) Access Holders for the relevant Coal System;
 - (ii) any Supply Chain Group for the relevant Coal System; and
 - (iii) ~~(ii)~~ an independent, appropriately qualified expert (acting as an independent expert).
- (e) In undertaking a Capacity assessment Aurizon Network must have regard to:
 - (i) usage in accordance with Good Engineering Practices;

- (ii) ~~a goal~~ the goals of (in order of priority):
 - (A) maximising delivery of contracted capacity; and
 - (B) achieving reasonable maximum capacity;
- (iii) Access Agreements; and
- (iv) interfaces with loading and out-loading facilities.
- (f) Aurizon Network must promptly provide its Capacity assessment, reasonable reasons for its Capacity assessment and the opinion of its independent expert to the QCA, all relevant Access Holders, where relevant, Access Holders' Customers and Access Seekers.
- (g) ~~Insert~~ One or more Access Holders, Customers or Access Seekers may refer under **clause ~~11.4.1~~** Aurizon Network's assessment of Capacity as a dispute for determination by an expert. The expert's determination will be binding. The costs of the expert must be borne by such party or parties determined by the expert.

~~8.12~~ 8.1 Network Development Plan

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

The Network Development Plan will:

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

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

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

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

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

- ~~(c)~~ ~~(H)~~ **Quantifies the impact on Capacity during construction and measures for ameliorating this impact:**
- ~~(d)~~ ~~(m)~~ **Alternatives considered and assessed during the evaluation and the reasons these will not be progressed.]**
- (a) Aurizon Network will develop an initial Network Development Plan on or before ~~insert~~the finalisation of the 2013 Access Undertaking. Aurizon Network must keep its most current Network Development Plan available on the Website.
- (b) The Network Development Plan will identify possible options for increasing Capacity for the next ~~insert~~10 years and include possible options for otherwise developing or improving a Coal System's performance.
- (c) Aurizon Network will review and update the Network Development Plan annually, where it is required to undertake a Demand Assessment and more frequently as it reasonably considers necessary, including (but not limited to):
- (i) the connection of a new coal basin or port terminal;
 - (ii) the completion of a major Expansion;
 - (iii) a 30% increase in system capacity; or
 - (iv) where requested by 60% of Access Holders on the relevant system; or
 - (v) if circumstances change in a way that Aurizon Network expects will materially adversely affect ~~the Network Development Plan~~Management Principles, the Network Development Plan or the System Operating Assumptions.
- (d) In developing or reviewing the Network Development Plan, Aurizon Network:
- (i) will ~~from time to time~~, inform and consult with, and consider submissions from, Access Holders and their Customers, Access Seekers and other interested parties identified by Aurizon Network in relation to the proposed Network Development Plan; and
 - (ii) will have regard to:
 - (A) Good Engineering Practices;
 - (B) forecast changes in demand for Queensland coal exports;
 - (C) any Expression of Interest submissions;
 - (D) any relevant Access Applications;
 - (E) any relevant port terminal developments or development of other out-loading facilities;
 - (F) any Expansion costing less than \$300 million that Aurizon Network is required to complete under this Part 8;
 - (G) any relevant previous or current studies undertaken by Aurizon Network;
 - (H) ~~(G)~~ any supply chain master plan;
 - (I) the Network Management Principles;
 - (J) ~~(H)~~ relevant System Operating Assumptions, System Rules and maintenance plans; and
 - (K) ~~(I)~~ other developments or circumstances which in Aurizon Network's opinion are relevant to the Network Development Plan.

- (e) Aurizon Network will:
- (i) make available to the QCA and the parties consulted with as contemplated by clause ~~8.1.12~~(d)(i), a draft of a new Network Development Plan at least [40] Business Days before publishing the Network Development Plan on the Website; and
 - (ii) will consider any written submissions from those parties which are received no later than [20] Business Days before the intended publication date for the Network Development Plan before finalising and publishing the Plan. (Parties sent the draft Network Development Plan will be told at the time the intended publication date for the finalised Plan).
 - (iii) ~~(f)~~ Neither anything in this clause ~~8.120~~ 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~~ 8.14 Acceptance of capital expenditure projects by Interested Participants

[Note: Industry does not support the proposed process. Industry propose a process which is based on the UT3 version, new Anglo American proposes a voting process like the one in UT3.]